A.Nos.4176 & 4177 of 2017
in C.S.No.331 of 2014

N.SATHISH KUMAR.J.,

This common order shall dispose of both the applications, viz., A.Nos.4176 and 4177 of 2017.

2. Application No.4176 of 2017 has been filed by the applicant/1st defendant to reject the plaint in C.S.No.331 of 2014 and A.No.4177 of 2017, has been filed to strike off of the plaint.

3. Mr.T.V.Ramanujam, the learned Senior Counsel appearing for the applicant/first defendant submitted that the suit is not maintainable, as the same has been filed by a unregistered Partnership Firm, and there is no vakalat filed by any authorised person. Only the Manager has signed in the vakalat and he has not filed any Power of Attorney, given by the plaintiff, authorizing him to sign and file vakalat and pursue the suit. Further, it is submitted that an Authorized Agent is one, who holds a Power of Attorney and he is the one, who has the power to authorize an Advocate to appear on his behalf, whereas, in this case, no such authorisation has been given to the Manager, therefore, the said Manager could not have signed the vakalat, authorizing the counsel to appear on behalf of the plaintiff, and though the plaintiff claims that P.W.1, during evidence deposed that he filed application to amend the plaint to include the partner's name instead of the Manager, as on date, the plaintiff has not pursued the same and it is still pending and Further, the certificate of registration filed was for the Firm, under the name and style, ''Sree Devi Films'', whereas, the name of the plaintiff's Firm is 'Sreedevi Video Corporation'', and though the plaintiff contend that Firm has changed its name, no document is produced to prove the same. Even otherwise also, the suit is not maintainable, for, the plaintiff has not filed any receipts proving the sale of the goods over an internet portal, and despite an opportunity being given to him to file such documents, during evidence of P.W.1, the plaintiff has not chosen to file any such document. Therefore, the learned Senior Counsel contended that with no document to establish that the product was purchased, there is no cause of action for the plaintiff to file the present suit. Further, he contended that the suit is liable to be rejected and the plaint has to be struck off, since, all the defects in the suit has not occurred due to some irregularity/inadvertence, but owing to some illegality, which goes to the root of the matter. Therefore, the learned Senior Counsel sought for allowing the applications.

4. Per contra, learned counsel for the plaintiff contended that the applications filed for rejection of the plaint and to strike off the same are abuse of process of law and the same have been filed only to drag on the suit proceedings and the same is evident from the fact that the applications have been filed only after the evidence of P.W.1 is recorded and cross examined, which would per se prove that these applications have been filed to drag on the proceedings. The learned counsel contended that the plaintiff is a registered-Firm, and even in the plaint, the plaintiff has averred that the Firm is a registered Partnership Firm, and the suit has been filed by an authorised person, namely, the Manager. It is further submitted that the contention of the first defendant that the certificate of registration filed was for the Firm, under the name and style, ''Sree Devi Films'', whereas, the name of the plaintiff's Firm is 'Sreedevi Video Corporation'' and they came to know all these facts/defects only in the course of cross-examination of the plaintiff's witness, are all false due to the reason that right from the time, the first defendant entered appearance, they were aware of these defects. The learned counsel further submitted that P.W.1, even in his deposition stated that the name of the plaintiff-Firm was changed and he has also filed an application for amendment of cause title. Though the first defendant contended that the Manager of the Firm has not filed any Power of Attorney given by the plaintiff, the same could not be filed at the relevant point of time and and said error is a curable defect, and all the defects pointed out by the first respondent is not due to illegality, but only due to some irregularity and on this ground alone, the first defendant cannot seek for rejection of the plaint. Further, when the Partner of the firm is examined as P.W.1 and cross examination by the defendant, he has sought for dismissal of the applications filed by the applicant herein.

5. Further, the learned counsel for the plaintiff contended that even assuming that the plaintiff-Firm is not registered, the same will not debar the suit to enforce the statutory right or common law right. In support of the submission, he has placed reliance on the following judgments:-

(i) K.Santhanam Vs S.Kavitha [2011 (1) CTC 286];

(ii) Salem Advocate Bar Association, T.N., Vs Union of India [(2005) 6 Supreme Court Cases 344] ;

(iii) Purushottam Umedbhai Vs Manilal and Sons [(1961) 1 SCR 982 : AIR 1961 SC 325];

(iv) Haldiram Bhujiawala and Another Vs Anand Kumar Deepak Kumar and Another [(2003) 3 Supreme Court Cases 250] and

6. Heard both sides counsel and perused the materials on record.

7. The present two applications have been filed by the first defendant, one seeking rejection of the plaint and the other to strike out the pleadings. The suit is of the year 2014, and it has been filed by the partnership firm against the defendant for declaration of certain copyrights in the subject matter of the suit-Firm. Along with the suit, the plaintiff also filed application for interim injunction, and the same has been granted against the defendant. As against which, appeals are filed in OSA.No.115 of 2016 and the Division Bench Passed an order, to expedite the trial. Accordingly, one Krishnamoorthy, the learned District Judge was Appointed as Court Commissioner to record evidence. Before the Commissioner, P.W.1, one of the partners of the plaintiff firm was examined and cross examined by the defendant. These facts are not in dispute.

8. It is to be noted that, only after the evidence of P.W.1 was over, the present applications were filed for rejection of the plaint and to strike out the pleadings on the ground that the suit has not been properly filed by the partnership firm and there was not proper authorisation and there is a no compliance of mandatory requirement under Order 3 rule 1 C.P.C. Further, the suit filed by an unregistered firm is not maintainable. It is relevant to be noted that the plaint can be rejected on the following grounds under Order XII Rule 11 of C.P.C. which reads as follows:

> *"The plaint shall be rejected in the following cases:-*
> *(a) Where it does not disclose a cause of action;*
> *(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct that valuation within a time to be fixed by the Court, fails to do so;*
> *(c) Where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) Where the suit appears from the statement in the plaint to be barred by any law."*

9. As per the provision of the Order VII Rule 11, the plaint can be rejected only on the ground as stated above. Other than that, the plaint cannot be rejected in toto. Similarly, all the pleadings can be struck of at any stage of the proceedings only on three circumstances as per Order XI Rule 6, which reads as follows:

> *"The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleadings-*
>
> *(a) Which may be unnecessary, scandalous, frivolous or vexatious, or*
>
> *(b) Which may tend to prejudice, embarrass or delay the fair trail of the suit, or*
>
> *(c) Which is otherwise an abuse of the process of the Court."*

10. Admittedly, the suit was filed by the partnership firm. Though the authorisation was given to the Manager, without granting any power of attorney as required under Order III Rule 1, and such authorisation may not be in compliance of Order III Rule 1, such defects, is in the opinion of the Court, is only curable defect. Further, one of the Partners of the firm himself examined as P.W.1 and subjected to cross examination by defendant. Besides that, he also filed application to amend the plaint to include the partner's name instead of the Manager. Such being the position, these defects, as rightly pointed out by the learned counsel for the plaintiff, are all curable defects in nature and on that ground, the suit cannot be rejected. In this connection, this Court would like to refer to a decision rendered by the learned Single Judge of this Court in the case of ***K.Santhanam Vs. S.Kavitha 2011 1 CTC*** in Para 16 and 17 held as follows:

16. Thus, it is seen that while Order 3, enables 'the holder of a Power of Attorney' to appear, apply and act on behalf of a party to a suit, as his 'recognised agent', Order 6, Rule 14, enables 'any person duly authorised by a party to sign the pleading' if the party pleading is, by reason of absence or for other good cause, unable to sign the pleading. Thus, it appears from Order 6, rule 14, that even in the absence of a Power of Attorney, a party to a suit is entitled to have the pleading signed on his behalf, by any person duly authorised by him to sign. This inference is inevitable on account of the difference in the expressions used in Order 3, Rule2, vis-a-vis Order 6, Rule 14. While Order 3, Rule 2, uses the expressions "recognised agents' and "persons holding duly authorised by him". Rule 15(1) of the Order 6, goes one step further and empowers "some other person" to verify the pleadings, if it is proved to the satisfaction of the Court that he is acquainted with the facts of the case.

17. It is well settled that a defective presentation of a plaint, cannot result in the rejection of the plaint. The grounds on which a plaint can be rejected are listed under Order 7, Rule 11, C.P.C A defect which is curable in nature, does not fall within the ambit of Order 7, Rule 11. This is why even in cases where the relief claimed is under valued or where the relief is properly valued but the

plaint is insufficiently stamped, the Court is required to call upon the plaintiff to correct the valuation and supply the requisite stamp papers."

11. Therefore, when the partner of the Firm seeks to substitute himself in the plaint instead of the Manager, who initially presented the plaint and he has already been examined and subjected to cross examination, the contention of the learned counsel for the first defendant that plaint filed by the Manager, without any authorisation, has to be struck or rejected, is not sustainable, as the defect, viz., failure on the part of the plaintiff to give power of attorney to the Manager to file the suit, as required under Order III Rule 1 is only defect, which is curable in nature and the said defect has also been sought to be cured by the plaintiff himself during evidence. That apart, he also filed application to amend the causetitle. Therefore, the contention of the applicant that the suit should be rejected or struck cannot be countenanced.

12. The another contention of the first defendant that the suit has been filed by an unregistered partnership Firm, and therefore, it is not maintainable. This Court would like to point out here that plaintiff is a registered partnership, and not unregistered Firm, as alleged by the first defendant. In fact, P.W.1 was also examined in this regard, where, the registered partnership certificate of registration also filed along with the plaint. Further, P.W.1 also in his evidence clarified that name of the firm got subsequently changed. Therefore, it cannot be stated that the suit has laid by the unregistered partnership, and it is not maintainable. Further, issue as to whether the plaintiff Firm is a registered one or unregistered can be adjudicated only at the time of trial not at this stage, and the first defendant cannot seek for rejection of plaint on that ground. Further, it is relevant to note that the bar under Section 69 of the Indian Partnership Act will operate or arise only when the suit is filed to enforce the right arisen from any contract or for any other right confronted in the Partnership act, whereas, the present suit has been filed only in respect of copyright and it is a statutory right, and such rights can be agitated in the suit under the copyright Act. However, as long as suit is not filed by any unregistered partnership firm to enforce any right arising out of the contract or any right arose under the partnership Act, the bar under Section 69 Class 2 of the Indian partnership Act does not come into play. The Hon'ble Apex Court in judgment reported in ***Haldiram Bhujiawala and Another Vs. Anand Kumar Deepak Kumar and Another [(2003) 3 SCC 250)]*** held that there is no bar for unregistered firm to enforce statutory right or any other right.

13. Hence, I do not find any merits in both the applications Accordingly, the applications are dismissed.

25.10.2019

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N.SATHISH KUMAR.J.,

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A.Nos.4176 & 4177 of 2017
in C.S.No.331 of 2014

25.10.2019