

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. Nos. 252 & 253 of 2017

OSA No. 252 of 2017

1. Mr.Riaz Razzack
2. Ms.Rafia Razzack

...Appellants

Vs.

1. M/s. Wooltop Design Private Limited,
F72, Anna Nagar East,
Opposite Chintamani Super Market,
Chennai - 600 102
Rep. By its Director
Mr. N. Jayaraman

2. M/s. Innovativ Dezines
Rep. By its Partner,
Mr. Riaz Razzack,
No.10/11, Rutland Gate, 5th Street,
Nungambakkam, Chennai - 600 034

3. Mrs. A.D. Subapradha A.D

4. Mrs. A. Sreedevi

5. Mr. Baranidharan

...Respondents

OSA No. 253 of 2017

- M/s. Innovativ Dezines
Rep. By its Partner,
Mr. Riaz Razzack,
No.10/11, Rutland Gate, 5th Street,
Nungambakkam, Chennai - 600 034

...Appellant

Vs.

1. M/s. Wooltop Design Private Limited,
F72, Anna Nagar East,
Opposite Chintamani Super Market,
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Rep. By its Director
Mr. N. Jayaraman

2. Mrs. A.D. Subapradha A.D

3. Mr. Riaz Razzack

4. Ms.Rafia Razzack

5. Mrs.A.Sreedevi

6. Mr.Baranidharan

...Respondents

Prayer in O.S.A.No.252 of 2017 : Appeal under Order XXXVI Rule 2 of the O.S. Rule read with Clause 15 of the Letters Patent against the judgment and decree dated 10.03.2017 passed in A.No. 2071 of 2015 in C.S. No. 195 of 2013.

Prayer in O.S.A.No.253 of 2017: Appeal under Order XXXVI Rule 2 of the O.S. Rule read with Clause 15 of the Letters Patent against the judgment and decree dated 10.03.2017 passed in A.No. 2076 of 2015 in C.S. No. 195 of 2013.

Prayer in A.Nos.2071 & 2076/2015:

Application praying that this Hon'ble Court be pleased to strike out the pleadings in Para Nos.9,10,11,12, 13,35,36,37,38,41,42,43 and consequently Prayers a, b, d & e in the Plaint in C.S.No.195 of 2013.

Prayer in C.S.No.195 of 2013:

a) The Suit, C.S.No.195 of 2013 has been filed and prayed that this Hon'ble Court may be pleased to pass a Judgment and decree (a) for a declaration that the plaintiff is the sole and absolute owner, having copyright in and having exclusive rights to deal in any manner the products more particularly set out in the Annexure A to the plaint;

(b) for permanent injunction restraining the defendants jointly and severally, their agents, representatives, men and all and every person claiming through them from in any manner infringing upon the plaintiff's copyright in the products and samples of the plaintiff, including the products more particularly set out in the Annexure A to the plaint, including by way of selling and / or exporting the products to buyers, modifying the product design, using the samples including displaying, recreating, modifying the samples and / or procuring orders from the samples;

(c) for permanent injunction restraining the defendants jointly and severally their agents, representatives, men and all and every other person claiming through them from in any manner dealing with the customers of the plaintiff, namely the companies (1) M/s. Maison Du Monde, France (2) M/s. Ludvik Ilebekk AS, Norway, (3) M/s. Festival AS, Norway, (4) M/s. Black Design AS, Norway, (5) M/s. Filigree Holdings Limited, United Kingdom, (6) M/s. Kika Israel Limited, Israel and (7) M/s. Samkjop BA, Norway, including by way of exporting products to the said companies and directly or indirectly doing any business competitive to that of the plaintiff's business and;

(d) for a direction to the defendants jointly and severally, their agents, representatives, men and all and every other person claiming through them to hand over to the plaintiff the samples of the plaintiff company including the samples corresponding to the products as set out in Annexure A to the plaint, copies of the samples, counter samples, finished products made out of the samples, work in progress using the samples and products manufactured based on the variations of the plaintiff's samples;

(e) for a direction to the defendants jointly and severally, their agents, representatives, men and all and every person claiming through them to account for and pay the plaintiff the profits made in the first defendant company.

(f) Pass such further or other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellants : Mr.K.M.Aasim Shehzad
in all OSAs

For Respondents: Ms. M. Vidya for R1
in all OSAs No Appearance for others

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

These appeals have been preferred against the order of the learned Single Judge, who, after going into the contentions raised, was pleased to dismiss the same.

2. Learned counsel appearing for the appellants would contend that the scope and ambit of Section 15(2) of the Copyright Act has to be considered by this Court and the learned

Single Judge has committed an error in dismissing the applications.

3. We are not inclined to allow these appeals for the simple reason that, on an earlier occasion, in the appeal filed on the dismissal of application under Order VII Rule 11 of CPC, a Division Bench of this Court in M/s. Innovativ Dezines v. M/s. Wooltop Design Private Limited and others (dated 22.01.2015 passed O.S.A. No.113 of 2014), while dismissing the appeal, by taking note of the stage of the suit, was pleased to hold that subject to the maintainability of the suit, the suit may be proceeded with. We, accordingly, reproduce the operative portion of the order passed:-

"5. The suit would now itself proceed to trial subject to the right of the appellant to move any other application, as may be advised and feasible, which may be a bar to the maintainability of the suit, which would be examined by the learned single Judge, if so moved, on its own merits, subject to the defences of the first respondent/original plaintiff.

6. The appeal stands dismissed as withdrawn, in terms aforesaid, by consent. Trial expedited. No costs."

4. In view of the above, we are of the view that the applications filed to strike out the pleadings, which, according to the appellants, are contrary to the embargo imposed on Section 15(2) of the Copyright Act cannot be construed as an issue qua the maintainability of the suit. Even the Division Bench on an earlier occasion held that the relief sought for is on an altogether different legal premise. There are prayers which are not affected by the plea of bar on Section 15(2) of the Copyright Act. Taking note of the same, it was accordingly observed that there cannot be a piecemeal adjudication of an application for rejection of the plaint. We reproduce the relevant paragraph:-

"2. We are of the view that the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'the Code') filed by the appellant/first defendant in the suit could not have been maintainable, for the reason that there are undisputedly certain prayers, which are not affected by the plea of bar of Section 15(2) of the Copyright Act. There cannot be a piecemeal adjudication of an application for rejection of the plaint."

5. Thus, in the light of the above, these appeals are dismissed. However, inasmuch as the appellants have filed an application on misconception of the order passed, we do not find any reason to impose cost as done by the learned Single Judge. In such view of the matter, the cost as ordered by the learned Single Judge stands set aside leaving all the issues open to be decided in the suit, including the plea of bar under Section 15 (2) of the Copyright Act.

6. We further observe that at the time of disposing the suit, the learned Single Judge may not be influenced by any of the observations made in the order under appeal.

7. These appeals stand dismissed with the above said observations. No costs. Consequently, connected CMP Nos. 16328 to 16331 of 2017 stand closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

ssm
To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1 CC to M/s.M. Vidhya, Advocate sr 7473.

O.S.A. Nos. 252 & 253 of 2017

RGN (CO)
SP(12/03/2019)

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