

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
CIVIL REVISION PETITION No.3690 of 2018

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by the return of the plaint filed by them before the Commercial Court, Ranga Reddy District, alleging infringement of a copyright, the plaintiff in an un-numbered suit has come up with the above revision under Article 227 of the Constitution of India.

2. Heard Mr. Ashok Ram Kumar, learned counsel for the petitioner.
3. On 02.07.2018, notice was ordered in this revision. Personal notice was also permitted. After sending personal notice on 06.07.2018, the counsel for the petitioner has filed a memo of service enclosing the postal track record. The respondent has not chosen to enter appearance through counsel.
4. The suit instituted by the petitioner herein in COS(SR).No.2394 of 2018, was for a permanent injunction restraining the respondent from infringing the copyright that the petitioner has in the design of the packing in which their product is sold. The suit was returned by the office on 04.06.2018 pointing out certain defects. After complying with the returns, which are relevant and after pointing out that two returns, which related to registration, were irrelevant, the petitioner represented the papers.

5. Yet the office insisted upon the irrelevant returns, which related to the registration under the Copyright Act and the Patent Act. Therefore, the petitioner sought hearing in the open Court.

6. After hearing the petitioner, the Commercial Court returned the plaint by order dated 18.06.2018 in terms of Section 12(A)(1) of the Commercial Courts Act, 2015 (for short 'the Act'), on the ground that the petitioner should first exhaust the remedy of pre-institution mediation. Therefore, the petitioner is before us.

7. At the outset, the impugned order shows complete non-application of mind on the part of the learned Judge of the Commercial Court. In fact, it appears that the petitioner filed two suits one for an injunction relating to a groundless threat under the Trademarks Act, 1999 and the other for a permanent injunction restraining the respondent from infringing their copyrights. The order passed in the other suit in COS(SR).No.2429 of 2018 has simply been cut and pasted even in this case by the learned Judge. The result is that a suit for permanent injunction restraining the respondent from infringing the copyright, has been rejected by quoting the provisions of the Trademarks Act, 1999. This one ground is sufficient to set aside the impugned order.

8. In addition, the learned Judge has directed to return the plaint on the ground that the petitioner should first exhaust the remedy of pre-institution mediation under Section 12(A)(1) of the Act. To see whether the invocation of Section 12(A)(1) of the Act in this

case was right, it would be necessary to extract the provisions of Section 12(A)(1) of the Act. It reads as follows:

“12A. Pre-Institution Mediation and Settlement.-
(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

9. It can be seen from what is extracted above that it is only in cases where the suit does not contemplate any urgent interim relief that there is a bar for institution of the suit without the plaintiff exhausting the remedy of pre-institution mediation. The expression used in Section 12(A)(1) of the Act is “A suit which does not contemplate any urgent relief”.

10. Unfortunately, the learned Judge has read the above expression to mean as if only in cases where the plaintiff is entitled to urgent interim relief, the provision will not apply. The entitlement of a party to an urgent relief is a matter that would come up for consideration if the suit is numbered and several aspects taken into account. What is required to satisfy Section 12(A)(1) of the Act is the contemplation of an urgent relief.

11. In any case, the very nature of a suit for injunction against infringement of a copyright, is such that urgent reliefs will invariably be contemplated. Therefore, it is completely wrong on the part of the Commercial Court to say that there is no urgency in the matter.

12. In view of the above, the impugned endorsement made on the plaint, filed by the petitioner, is wholly illegal and liable to be set aside.

Accordingly, the revision is allowed, the impugned endorsement is set aside and the Commercial Court is directed to number the suit, if other procedural aspects are in order and proceed with the matter in accordance with law.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

February 21, 2019
DSK

Dr. SHAMEEM AKTHER, J

