

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
CIVIL REVISION PETITION No.3687 of 2018

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

Aggrieved by a judicial order passed by the Commercial Court, Ranga Reddy District, returning the plaint with a direction to the plaintiff to exhaust the remedy of pre-institution mediation in terms of Section 12(A)(1) of the Commercial Courts Act, 2015 (for short 'the Act'), 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 and Mr. Venkatreddy Donthi Reddy, learned counsel for the respondent.

3. The petitioner herein instituted a commercial suit in COS(SR).No.2429 of 2018 on the file of the Commercial Court, Ranga Reddy District, seeking a declaration and permanent injunction with reference to the alleged groundless threat of illegal proceedings held out by the respondent, under Section 142 of the Trademarks Act, 1999. The papers in the plaint were returned on 04.06.2018 for rectification of certain defects. Though some of the defects pointed out were completely out of context, there were other returns, which had to be complied with by the petitioner. Therefore, the petitioner complied with the relevant returns and made an endorsement about the irrelevancy of certain returns, such as, requirement of registration

under the Copyright Act and the Patent Act, which had nothing to do with the case under the Trademarks Act, 1999.

4. After the petitioner represented the plaint, the office again returned it with regard to the objection relating to the registration under the Copyright Act and the Patent Act. Frustrated at this tiring-out tactics, adopted by the office, the counsel for the petitioner sought hearing before the Court. Therefore, the matter was called before the Court and the learned Judge passed a judicial order dated 18.06.2018 directing the return of the plaint on an entirely new ground, which was different from the ground on which the plaint was returned earlier.

5. The only ground on which the learned Judge has ordered the return of the plaint is that the petitioner is obliged to exhaust the remedy of pre-institution mediation in terms of Section 12(A)(1) of the Act. Despite the fact that the petitioner also pleaded for interim order of injunction, in an interlocutory application, the Court below took a view that the mere filing of an application for interim injunction would not establish urgency in the matter. Therefore, left with no alternative, the petitioner has come up with the above revision.

6. At the outset, it should be pointed out that there was no application of mind on the part of the office of the Commercial Court in invoking the provisions of the statutes, which had nothing to do with the statute under which the suit was filed. A suit for an injunction, regarding groundless threat, is maintainable under the Trademarks Act, 1999. When the very suit is confined only to trademarks,

we do not know how the provisions of the Copyright Act and the Patent Act were invoked.

7. Compounding what the office did, the learned Judge of the Commercial Court has gone on a different footing and returned the plaint. To see whether the invocation of Section 12(A)(1) of the Act in this case was right, it should be necessary to extract the provisions of Sections 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.”

8. 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”.

9. Unfortunately, the learned Judge has read the above expression to mean as though 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.

10. In any case, the very nature of suit for injunction against groundless threat is actually in the nature of an interlocutory application. This is for the reason that the moment a suit for infringement is filed by the person holding out a threat, a suit for groundless threat would actually become frustrated. Therefore, it is completely wrong on the part of the Commercial Court to say that there is no urgency in the matter.

11. 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

Dr. SHAMEEM AKTHER, J

February 21, 2019
DSK