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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 216/2019**

STAR DENTAL CENTRE PVT. LTD. Plaintiff

Through: Mr. Pavan Duggal, Adv.

Versus

KARNATAKA STATE DENTAL COUNCIL & ORS.Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.04.2019**

IA No.5988/2019 (u/S 149 CPC)

1. The counsel for the plaintiff undertakes that the requisite court fees shall be deposited within the course of the day.
2. Accepting the said undertaking, the time for deposit of the court fees is extended.
3. The application is disposed of.

IAs No.5987/2019 & 5989/2019 (both for exemption)

4. Allowed, subject to just exceptions.
5. The applications are disposed of.

IA No.5990/2019 (u/O V R-9 CPC)

6. As and when summons are ordered to be issued, the same will be ordered to be served by email.
7. The application is thus infructuous and is disposed of.

IA No.5992/2019 (u/O XI R-1(4) CPC)

8. For the reasons stated, the plaintiff is permitted to file the additional documents latest with the replication, if any.
9. The application is disposed of.

IA No.5991/2019 (u/S 151 CPC r/w S-80(2) CPC)

10. The application is misconceived and is dismissed.

CS(COMM) 216/2019 & IAs No.5985/2019 (u/O XXXIX R-1&2 CPC) & 5986/2019 (u/S 79 of IT Act)

11. The plaintiff has instituted this suit (A) for declaration that the Press Release and the public notice dated 13th April, 2019 issued by the defendant No.1 is null and void as the same has been issued without following the mandatory procedure of the Dentists Act, 1948 and without providing any opportunity of being heard to the plaintiff and in breach of the principles of natural justice; (B) for perpetual injunction restraining the defendants (i) from defaming the plaintiff; (ii) from causing any interference in the conduct by the plaintiff of its activities in the regular course of business; (iii) from infringing the copyright of the plaintiff; and, (iv) from uploading any further information relating to the plaintiff; (C) mandatory injunction (i) directing the defendants No.1 to 3 to (i) remove the public notice; and, (ii) remove all messages pertaining to the Press Release from the social media; and, (D) for recovery of damages in the sum of Rs.3 crores.

12. Though the plaint is long winded, running into as many as 85 pages, containing legal submissions and quoting Court orders/judgments, and all of which is against the canons of drafting of pleadings and unnecessarily leads to delay in disposal of the suit, but nevertheless on going through the same, no cause of action for the entitlement of the plaintiff to sue the defendants for infringement of copyright is found to have been made out.

13. The defendant no.1, Karnataka State Dental Council, of which defendants no.2,3 and 5 to 9 are officials/members, in exercise of its powers

under the Dentists Act, 1948 and finding the plaintiff to be in violation of the Ethical Rules for Dentists prescribed by the Dental Council of India by indulging in advertising and giving other benefits to attract patients, has issued notice asking the plaintiff to desist therefrom. I fail to understand, how use by the defendant no.1, of the name of the plaintiff along with “Clove Dental”, being the name of Dental Clinics of plaintiff, while communicating with the plaintiff amounts to infringement of copyright. Rather, I have asked the counsel for the plaintiff that if I am not to address him as Mr. Pavan Duggal, how else am I to address him.

14. The counsel for the plaintiff states that he withdraws the claim in the plaint for infringement.

15. Similarly, the defendants No.2,3 & 5 to 9 namely (i) Dr. Rajkumar S. Alle, President, Karnataka State Dental Council (KSDC), (ii) Shri Srinivasan R., Registrar, KSDC, (iii) Dr. Ranganath V., (iv) Dr. T.N. Tilak Raj, (v) Dr. Satish Kumar G. Patil, (vi) Dr. Aaquib Hashmi, and, (vii) Dr. Sanath Kumar Hegde H. are not found to be necessary parties and no ground for issuing summons to the said defendants is made out.

16. The plaintiff has pleaded that defendant no.1 is entitled to sue and be sued in own name. Once it is so, in the absence of any pleading making the said defendants personally liable, no cause of action against them is shown.

17. The counsel for the plaintiff states that he does not press the suit against the said defendants.

18. Once the aforesaid relief of infringement of copyright is withdrawn, the claim of the plaintiff in the suit remains only for defamation and compensation therefor and which does not qualify as a commercial suit and

the suit has to be re-numbered as an ordinary suit.

19. Rather than issuing summons on the basis of plaint in which changes aforesaid have to be made on the statement of the counsel for the plaintiff, it is deemed appropriate that the plaintiff files a lean plaint, confined to facts only and not containing legal submissions and not quoting Court orders/judgments.

20. The counsel to, on the next date of hearing, also satisfy as to why the plaintiff should not be relegated to the jurisdiction of the Courts at Bangalore, Karnataka, where all the defendants are situated and why should the defendants be compelled to travel to Delhi for contesting this suit especially when the counsel for the plaintiff, on enquiry, states that the dental clinics of the plaintiff are also at Bangalore.

21. It also appears that the jurisdiction of the defendant No.1 KSDC would be confined only to the State of Karnataka and not bind the dentists practising in other States and for this reason also the Courts in Karnataka or Bangalore are found to be more appropriate Courts for dealing with the suit and the principle of forum *conveniens* will apply.

22. Though it is the case of the plaintiff that the defendant No.1 KSDC has not given any opportunity before the impugned publication but a perusal of the documents of the plaintiff from pages 65 to 76 shows that the plaintiff was called upon as far back as on 14th February, 2018 to with immediate effect stop advertising objected to by the defendant No.1 KSDC. Though the plaintiff thereafter has been in touch with the defendant No.1 KSDC but at least from the documents filed it does not appear that the direction contained in the letter dated 14th February, 2018 of the defendant No.1

KSDC was suspended at any point of time. The grievance, if any of the plaintiff from the said direction, should have been addressed immediately thereafter.

23. The plaintiff though has claimed the relief of declaration of the publication as bad but there are no averments in the plaint as to why the direction of the defendant No.1 KSDC directing the plaintiff to stop advertising the profession of dentistry on the ground of the same being in violation of Ethical Rules for Dentists prescribed by the Dental Council of India, is bad in law. Even if such direction was issued more than one year prior to the institution of the suit without hearing the plaintiff, without the Court being satisfied of the actions of the plaintiff being in accordance with law, the Court would be reluctant to interfere with the actions of the professional body.

24. The counsel for the plaintiff to, on the next date of hearing, also address on, whether there is any provision in law of remedy against the direction of a State Dental Council. In all probability, there is a remedy therefor before the Dental Council of India.

25. The pendency of this suit to not be a ground for the defendant No.1 KSDC to not undertake the proceedings before it, stated to be listed on 29th April, 2019.

26. On request of the counsel for the plaintiff, list on 29th April, 2019.

RAJIV SAHAI ENDLAW, J.

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27. The counsel for the plaintiff has mentioned the matter before lunch
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and states that he has instructions to withdraw the suit with liberty to approach the appropriate Court other than at Delhi.

28. The counsel for the plaintiff also states that he has ready with him court fees and will be depositing the same in the Court today and seeks refund of the same.

29. Subject to deposit of court fee, a certificate entitling the plaintiff to refund of court fees paid less Rs.25,000/- be issued and handed over to the counsel for the plaintiff.

30. The date of 29th April, 2019 is cancelled.

RAJIV SAHAI ENDLAW, J.

APRIL 26, 2019

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