

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.No.1 of 2020

M/s.Taranga Technologies,
Plot No.59, 4th Line, Syamalnagar,
Guntur 522 066,
Andhra Pradesh. ... Appellant

Vs.

M/s.Neels Enterprises Pvt. Ltd.,
Represented by its Managing Director,
Mr.A.K.Neelakrishnan,
Basement Floor, No.38/40, North Boag Road,
T.Nagar, Chennai - 600 017 ... Respondent

PRAYER : Appeal filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent against the order passed in Appl.No.8110 of 2019 in Appl.No.6646 of 2019 in C.S.No.555 of 2019 dated 16.12.2019.

A.No.8110 of 2019:Application filed to revoke the leave to granted on 12.09.2019 in Applicatio No.6646 of 2019 under clauses 12 of the Letter patent to the Application to institute the instant suit.

Application No.6646 of 2019:Application has been filed to grant leave of court to the applicant/Plaintiff to sue for the relief against the respondent/Defendant for infringement of registered desingn and passing off by the respondent/Defendant herein before this court

CS.No.555 of 2019:The Plaintiff therefore prays that this Honourable court may be pleased to grant a judgment and decree infavour of the plaintiff on the following terms:

a) A permanent Injunction restraining the defendant their partnery associates, all their principal officers, staff men, agent, servants, successors assigns in business representatives, distributors stockistor any other person acting under or through them from infringing the registered designs in any manner by manufacturing or marketing the manhole covers with the specifif design which is identical with or deceptively similar to the plaintiff's Registered Design Nos.245523 and 285400;

b) A permanent Injunction restraining the Defendant, their partners, Associates, all their principal in business, representatives, servants successors, assigns in business, representatives and any other person from passing off his /their goods by using the same and deceptively similar designs as registered by the plaintiff having registered Design Nos.245523 and 285400 in respect of manhole covers, and thereby restraining the defendant in any manner from passing off;

c) Directing the defendant to pay the plaintiff damages quantified at Rs.5,00,000/-(Five Lakhs Only) for the Act of infringement of registered design and pasing off by the Defendant.

d) for the Costs of the suit.

For Appellant : Mr.Madhan Babu

For Respondent : Mr.Ramesh Ganapathy for
M/s. Mission Legal

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

This appeal has been preferred against the order passed by the learned Single Judge dismissing the application filed by the appellant/defendant seeking to revoke the leave granted in favour of the respondent/plaintiff.

2. The suit has been filed in C.S.No.555 of 2019 by the respondent being the plaintiff seeking an order of injunction on the ground of infringement of registered design and passing off. The following is the cause of action while invoking Clause 12 of the Letters Patent Act:-

"34. The cause of action arose in Chennai, within the Jurisdiction of this Hon'ble Court, in the month of November 2018, when the Plaintiff noticed some Manhole Covers which were installed in a BPCL Petrol Bunk in Madipakkam, Chennai, looked identical and highly & deceptively similar to the product of the Plaintiff having registration nos.245523 and 285400, by manufacturing and selling Manhole covers in a specific design. The cause of action also continued in the month of June 2019 when Defendant has also applied for a tender for supply & installation of the impugned "Manhole covers" all over India with BPCL. The cause of action for the subject matter is continuous in nature and continues to arise on each day as Defendant continues to violate the Plaintiff's statutory rights in their registered design. Thus, this suit is not barred by limitation.

35. The Plaintiff states that this Hon'ble Court has jurisdiction to hear and decide the matter in accordance with Clause 12 of the Letter Patent Act. It is further submitted that, the present suit is for infringement of registered designs and passing off and is a commercial dispute as per section 2(1)(c) (XVII), by virtue of the first proviso to Sec.7 of the Commercial Courts Act, 2016 r/w and Section 22 of the Designs Act, 2000, this Hon'ble Court has jurisdiction to entertain the present suit."

3. The learned Single Judge, after taking note of the affidavit filed in support of the application seeking leave to sue along with the plaintiff's averments, found that inasmuch as there is specific averment that the appellant applied for the tender for supply and installation of the impugned "Manhole covers" all over India with BPCL which is inclusive of Chennai, the suit averments were sufficient enough to contest on merit.

4. The learned counsel appearing for the appellant would submit that there is no averment to show that the infringed product was actually supplied within the jurisdiction of this Court. The averment with respect to the tender with BPCL would not be sufficient enough to give a cause of action, in the absence of any product having been found within the territorial jurisdiction of this Court. In support of his contention, the learned counsel has relied on the following decisions (i) Oil

and Natural Gas Commission v. Utpal Kumar Basu and others reported in (1994) 4 SCC 711, (ii) Dhodha House v. S.K.Maingi reported in (2006) 9 SCC 41 and (iii) Alchemist Ltd. and another v. State Bank of Sikkim and others reported in (2007) 11 SCC 335.

5. The learned counsel appearing for the respondent submitted that the fact remains that the appellant has become a successful tenderer. As per the tender, the appellant has to supply materials within the jurisdiction of this Court also. In fact, this position is not denied or disputed. Therefore, paragraphs 34 and 35 of the plaint averments are sufficient enough to give cause of action to invoke territorial jurisdiction of this Court. These averments are to the effect that the infringed products were found at Madipakkam and, thereafter, the respondent also came to know about the participation in the tender of the appellant in whose favour the contract has been given by BPCL. Hence, the appeal will have to be dismissed and the judgments relied on by the learned counsel appearing for the appellant are not applicable to the case on hand.

6. We do not find any merit in this appeal. The fact remains that the appellant has been awarded contract by BPCL. The contract is also for supply of materials throughout the country including Chennai. This particular averment that the appellant has applied for tender has to be seen independent of the earlier averment that the respondent noticed some manhole covers which were installed in BPCL Petrol Bunk in Madipakkam at Chennai. Though Madipakkam would not come within the purview of the territorial jurisdiction of this Court, the fact that the appellant being the successful tenderer with BPCL and as per the terms and conditions, he has to supply the materials within the territorial jurisdiction of this Court. This would be sufficient enough to give jurisdiction.

7. The learned counsel appearing for the appellant raised a plea with respect to forum conveniens. Even this plea cannot be countenanced. Forum conveniens will have to be seen on the facts of each case. Merely on an averment that some manhole covers were installed in Petrol Bunk in Madipakkam at Chennai, the respondent cannot be non-suited from filing the suit before this Court. In fact, the core issue is with respect to the tender given in favour of the appellant. The cause of action with respect to Madipakkam is nothing but a consequential one pursuant to the appellant being the successful tenderer. Thus, this contention also stands rejected.

8. An order of injunction can certainly be sought for restraining the party from committing any infringement and attempting to pass off his goods as that of the plaintiff. In such view of the matter, the decisions relied upon are not applicable to the case on hand.

9. Hence, we do not find any error in the order passed by the learned Single Judge as he merely took into consideration all the averments made in the plaint along with the affidavit filed in support of the leave sought for, which process cannot also be stated to be an illegal one.

10. In view of the above, the Original Side Appeal stands dismissed. No Costs. Consequently, connected C.M.P.No.89 of 2020 is closed.

-s/d-
Assistant Registrar

true Copy
Sub-Assistant Registrar

ssm

To

The Sub Assistant Registrar
Original Side,
High Court, Madras.

+1 cc to Mr.R.Parthasarathy advocate sr6576
+1 cc to M/s.Mission Legal Advocate sr7069

O.S.A.No. 1 of 2020

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