

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM

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

O.S.A.Nos. 86 to 88 of 2020

1. Prosound Products

Partnership Firm

Rep. By its Partner Mr.Pradeep Ahuja

C/o.Audioplus

A1/A2, Giriraj Industrial Estate,
Mahakali Caves Road Andheri (East)
Mumbai - 400 093, Maharashtra.

2.Audioplus

Partnership Firm

Rep. By its Partner Mr.Pradeep Ahuja

C/o.Audioplus

A1/A2, Giriraj Industrial Estate,
Mahakali Caves Road Andheri (East)
Mumbai - 400 093, Maharashtra.

..Appellants
in OSAs

Vs.

John Enterprises

28/13, Narasingapuram Street,

Opp. Raheja Complex, Anna Salai,

Chennai - 600 002, Tamil Nadu

Also at:

46/54, Kakka Thoppu Street,

Town Hall Road, Madurai - 625 001.

..Respondent
in OSAs

PRAYER : Appeals filed under Clause XV of Letters Patent read with Order XXXVI Rule 9 of O.S. Rules against the order dated 10.02.2020 in O.A.Nos.845 & 846 of 2019 & A.No.8052 of 2019 filed in C.S. (Comm Div) No.542 of 2019 on the file of this Court.

For Appellants : Mr.M.S.Bharath
(in all)

For Respondent : Ms.L.Maithili
(in all)

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

These appeals have been preferred against the order of the learned Single Judge in dismissing the applications filed for injunction and allowing the vacate injunction petition primarily on the premise that the appellants, being aware of the dispute between M/s. Ningbo Soundking Group Co.Ltd and themselves, have not placed the relevant facts.

2. The learned counsel appearing for the appellants would submit that neither M/s. Ningbo Soundking Group Co.Ltd nor M/s.Nippon Enterprises South are necessary parties to decide the lis between the appellants and the respondent/defendant. The respondent/defendant has not proved the fact the it is a dealer of M/s. Nippon Enterprises South, which, in turn, is the dealer of M/s. Ningbo Soundking Group Co.Ltd.

3. The learned counsel further submitted that without prejudice to the aforesaid contention, liberty may be given in the event of this Court not agreeing with them to file a fresh application after impleading the other two parties and in that case, all the issues may be left open.

4. The learned counsel appearing for the respondent/defendant submitted that it is the appellants who filed opposition to the Trademark Application. The rectification application filed by M/s. Ningbo Soundking Group Co.Ltd., has also been opposed by the appellants. The respondent is nothing but a distributor and agent of M/s. Ningbo Soundking Group Co.Ltd.

5. By way of reply, the learned counsel appearing for the appellants would submit that there is no material to substantiate the fact that the respondent/defendant was only an agent and distributor of M/s. Ningbo Soundking Group Co.Ltd. through M/s. Nippon Enterprises South.

6. By way of clarification, the learned counsel appearing for the respondent/defendant submitted that what the respondent/defendant does is merely selling the product of M/s. Ningbo Soundking Group Co.Ltd., which steps into the shoes of the erstwhile concern, namely, STUDIOMASTER, on giving the share transfer in its favour.

7. Considering the above said submission, we are of the view that the adjudication can only be made by impleading the two entities referred above.

8. The learned Single Judge dismissed the injunction applications primarily on the premise that the appellants notably did not bring it to the notice of the Court the aforesaid facts, which might warrant the impleadment of the said entities as party defendants.

9. In such view of the matter, we set aside the finding rendered by the learned Single Judge and remit the matter for fresh consideration by giving liberty to the appellants with the direction that the appellants will have to implead these two entities. After impleading is ordered, the injunction applications will have to be decided afresh leaving open all the issues both on facts and law.

10. The Original Side Appeals stand disposed of. No Costs. Consequently, connected C.M.P.Nos.4528, 4530, 4534, 3524, 3526 and 3521 of 2020 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssm
To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+3 CCS to M/s.M.S. Bharathi, Advocate sr 1705
+1 CC to Ms.L.Maithili, Advocate sr 17048.

O.S.A.Nos.86 to 88 of 2020

KS (CO)
SP(28/05/2020)