

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 17TH DAY OF FEBRUARY 2020

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

A.Nos.9692, 9693 and 9694 of 2019
in

C.S.No.458 of 1998 and C.S.No.333 of 2004

C.S.No.458 of 1998

Texmo Industries,
Coimbatore 29,
Represented by its Partner,
Damayanti Ramachandran ..Plaintiff

-Versus-

Techmo Industries,
Coimbatore-6
Represented by its Partner K.Vellingiri ..Defendant

C.S.No.333 of 2004

1.Aqua Pump Industries
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their Branch office at
No.21, P.H.Road, Koyambedu
Chennai 600 107.

2.Aquasub Engineering
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their Branch Office at
No.21, P.H.Road, Koyambedu
Chennai 600 107.

..Plaintiffs

-Versus-

Tecmo Industries
44A, South Street No.21 Avarampalayam
Coimbatore 641 006.

..Defendant

C.S.No.458 of 1998 in A.Nos.9692, 9693 of 2019

Tecmo Industries
Coimbatore-6.
Represented by its Partner,
K.Vellingiri ..Applicant

-Versus-

Texmo Industries,
Coimbatore-29.
Represented by its Partner,
Damayanthi Ramachandran ..Respondent

A.No.9692 of 2019

Application praying that this Hon'ble Court be pleased to try the present suit jointly with C.S.No.333 of 2004.

A.No.9693 of 2019

Application praying that this Hon'ble Court be pleased to permit the applicant/defendant to file its additional written statement along with documents.

C.S.No.333 of 2004 in A.No.9694 of 2019:

Tecmo Industries,
44A South Street No.2,
Avarmapalayam
Coimbatore-641 006. ..Applicant/Defendant

-Versus-

1.Aquapump Industries
Rep. by its Managing Director
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their Branch office at
No.21, P.H.Road, Koyambedu
Chennai 600 107.

2.Aquasub Engineering
rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their Branch Office at
No.21, P.H.Road, Koyambedu

<https://hcservices.eco.nic.in/hcservices/>

..Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to permit the applicant/defendant to file its additional written statement along with documents.

These Application coming on this day before this Court for hearing, the Court made the following Order:-

These applications are filed to receive the additional written statement along with the documents and for joint trial along with C.S.No.333 of 2004.

2. As far as the applications for receiving the additional written statement are concerned, it is strongly opposed by the plaintiff on the ground that the suit is of the year 1998, the Commercial Division of this Court has taken out the jurisdiction long back, which mandates time line for disposal of the suit. Accordingly, issues were framed and the matter is ripe for trial. At this juncture, the present applications are filed to receive the additional written statement, which discloses certain facts, which are related to the events long before the Commercial Division assumed jurisdiction.

3. The learned counsel appearing for the defendant would submit that after determination of the jurisdiction under the Commercial Courts Act, the plaintiff filed the application to receive the additional documents and that was allowed. In that additional documents, there are certain facts, which required to be refuted by way of

written statement and document or else, the defendant will be left un-defended without appropriate pleadings regarding those documents.

4. In para 3 of the affidavit filed for receiving additional written statement, the defendant has specifically stated that only in the course of filing the reply statement by the plaintiff, the present defendant has gained knowledge about the manner in which the plaintiff was illegally claiming right over the trademark TEXMO and has secured the rights for the said trademark. Hence, filing additional written statement along with the documents has become inevitable.

5. No doubt, under Commercial Courts Act strict time line has been prescribed and there cannot be any compromise in the said time line. However, in a suit, which has been filed as a regular suit and transferred to the Commercial Division, strict time line could not be applied due to various reasons. As far as this case is concerned, when this Court is inclined to allow the plaintiff to file additional documents, which were not part of the plaint schedule, the fair opportunity should be given to the defendant to confront the said document. Such opportunity may either by allowing the defendant to file document or file additional written statement.

6. In this case, the defendant has opted to file the additional written statement as well as the additional documents, which according to his legal advice is necessary and inevitable. At this stage, we have to ensure a fair opportunity is given to the contesting parties. Hence, these applications to receive the additional written statement along with the documents are allowed.

7. As far as joint trial is concerned, it is contended that the parties and facts relevant to decide the lis are one and the same and therefore, the joint trial has to be ordered.

8. Whereas, the learned counsel appearing for the applicant/plaintiff in C.S.No.458 of 1998 would submit that earlier when a similar plea was made this Court has ordered simultaneous trial and declined to order joint trial. The cause of action for both the suits are different and therefore, there cannot be a joint trial. therefore, the earlier order for simultaneous trial should prevail.

9. However, the learned counsel appearing for the applicant/defendant in C.S.No.458 of 1998 would submit that due to change of circumstances, joint trial should be ordered.

10. The learned counsel appearing for the plaintiffs in C.S.No.333 of 2004 also not in agreement for joint trial.

11. This Court went through the pleadings in both the suits and the relief sought. Considering the nature of the dispute, which has arisen between the family members primarily regarding the use of the trade mark TEXMO, these suits have been laid. However, the time gap between these two suits is six years and several events have taken place from the date of instituting the prior suit in the year 1998 and the subsequent suit in the year 2004.

12. In the said circumstances, for all practical purposes and to avoid confusion, simultaneous trial will be the right solution and not joint trial. Hence, the application for joint trial is dismissed. There shall be simultaneous trial of these two suits to prevent confusion in appreciation of evidence.

Sd./-G.J.J

17.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 21/02/2020

COURT OFFICER(O.S.)

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