



Application No.2312 of 2021
in C.S. (Comm. Div.) No.411 of 2020

N.ANAND VENKATESH,J.,

This application has been filed by the defendant seeking for the relief of rejection of plaint.

2.The respondent/plaintiff has filed the suit with a grievance that the defendant is infringing the respondent's trademark and trade style "SLAM LIFESTYLE AND FITNESS STUDIO" by using the offending trademark and trade style "GRAND SLAM FITNESS". The respondent has therefore sought for various reliefs against the applicant in the main suit.

3.The application for rejection of plaint has been filed primarily on two grounds. The first ground is that the respondent has sought for the relief of infringement of trademark and passing off and both these reliefs cannot be simultaneously sought for unless the respondent seeks for leave to file joinder of cause of action. The second ground on which this application has been filed is that the applicant is a prior registered proprietor of the trademark GRAND SLAM in respect of goods and services and is the prior user of the said trademark and hence, there is no cause of action for the respondent to file the present suit.



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4. Heard the learned counsel for the applicant/defendant and the learned counsel appearing on behalf of the respondent/plaintiff.

5. Insofar as the first ground that has been raised by the applicant, the same is no longer sustainable in view of the order passed by this court in Application No.1787 of 2021, wherein, this court had granted leave to the respondent to file joinder of cause of action for the reliefs of infringement of trademark and passing off.

6. Insofar as the second ground is concerned, this court has to necessarily look into the plaint filed by the respondent and the documents relied upon. The specific case of the respondent is that they started the gym and lifestyle and fitness studio in the year 2015 under the name SLAM LIFESTYLE AND FITNESS STUDIO. The further case of the respondent is that they have registered the trademark under service Class 41. The further case of the respondent is that they are running the gym and fitness studio with nearly 32 branches spread over Tamil Nadu and Bangalore.

7. The respondent was aggrieved by the fact that the applicant was attempting to use their trade mark GRAND SLAM registered in product Class



28 and was taking steps to open a gym and fitness studio. It is on this cause of action, the suit was laid by the respondent.

8. On a plain reading of the plaint filed by the respondent along with the documents relied upon, it is seen that the respondent has made out a cause of action for filing the suit and based on the averments made in the plaint, the respondent is justified in seeking for the various reliefs against the applicant.

9. The stand taken by the applicant as if they are the prior user of the trademark GRAND SLAM, cannot be a ground to reject the plaint since the applicant has admittedly registered the trademark for product Class 28. Therefore, even if the applicant traces their right to section 34 of the Trademarks Act 1999, such a vested right can be traced only for the goods falling under Class 28. Such a vested right cannot be stretched even to include service Class 41 under which the respondent has a registered trademark SLAM LIFESTYLE AND FITNESS STUDIO.

10. In the considered view of this court, the applicant has not made out any ground for rejection of the plaint and this court does not find any merits in this application.



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N.ANAND VENKATESH,J.,

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11.In the result, this application is dismissed and the applicant is directed to pay costs of a sum of Rs.10,000/- to the State Legal Services Authority on or before 10-12-2021.

01.12.2021

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