

A.No.475 of 2021
in
C.S.No. 131 of 2015

C.V.KARTHIKEYAN, J.

Heard the learned counsel for the plaintiff and the learned counsel for the defendant.

2. This application had been filed seeking to introduce further pleadings in Paragraph Nos.14 and 21 respectively and also to include a further relief in the plaint. Necessity to file the present application arose owing to the filing of an additional written statement by the defendant, which in turn led to the filing of reply statement by the plaintiff.

3. It is the grievance of the plaintiff that originally though the suit was instituted on the strength of the registration of a particular trademark which, subsequent events showed that the defendant had abandoned in the year 2016, the plaintiff had introduced a further colour scheme to their labels by introducing an unique floral pattern and had also applied for registration of the Trade Mark Nos.3352398, 3352399, 3352400, 3352401, 3352402, 3352403, 3352404 & 3352405 under Clause 30.

4. The defendant is said to have also introduced the same floral pattern and it is the grievance of the plaintiff that they introduced it in the year 2020. This necessitated filing of an additional reply statement by the plaintiff to the additional written statement of the defendant. After having stated the pleadings and necessary averments in the additional reply statement, the plaintiff now seeks to bring in Paragraph Nos.14(A) and 21(A) which in essence had already been pleaded in the reply statement. But, however, as a corollary to such pleadings the plaintiff now also seeks to have an additional relief in Paragraph No.32(A).

5. The main objection expressed by Mr.Diwakar, learned counsel for the defendant is that the reliance placed by the plaintiff on the aforesaid trademarks can not be introduced in a suit which had been instituted in the year 2015. The registrations came into effect only in the year 2016 and therefore, there has been a remarkable shift the cause of action from what had been pleaded in the plaint. But, this is an event which had been invited by the defendant themselves. The defendant filed an Additional written statement bringing to the notice of not only the plaintiff but also of the Court about introduction of new floral designs and the plaintiff then awoke and realized that the said new floral designs were similar to the floral designs which they

had introduced in the year 2016.

6. Naturally, the scope of the suit then widened to include restriction from infringement of the said trademarks which had been registered in the year 2016. Even though viewed from a narrow compass it would appear that the cause of action has been expanded, the plaintiff and the defendants are at lis with respect to the plaintiff's registration in Registration Nos.3352398, 3352399, 3352400, 3352401, 3352402, 3352403, 3352404 & 3352405 and whether the defendants have encroached such registrations or infringed such registrations by introducing in their packaging materials, a colour scheme, which, according to the plaintiffs are deceptively the similar and whether there was bonafidee on the part of the defendant in such introduction of floral patterns in their packaging materials. These are issues which will have to go to trial. It is only appropriate that the plaintiff is given opportunity to have necessary pleadings in that regard.

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7. Any defence to be taken by the defendant owing to the introduction of such reliefs, can always be done by way of further additional written statement. I am conscious that by such pleadings the scope gets expanded, but in a trademark infringement complaint there is a continuous cause of action

and the entire issue cannot always be foreclosed. The pendulum swings with the plaintiff's grievances expanding against the acts of the defendant.

8. In this case, it would only be appropriate that all the issues between the plaintiff and the defendant are decided in one suit and the parties are not pushed to the rigour of instituting a fresh suit. That would only add to multiplicity of proceedings and to avoid such procedure, I am of the opinion that it would only be appropriate that further relief in Para 32(A) can be incorporated in the plaint.

9. In view of these reasons, the application is partly allowed, with rejection of introduction of Paragraph Nos.14(A) and 21(A), but allowing the application insofar as it seeks to introduce Paragraph No.32(A).

Note:

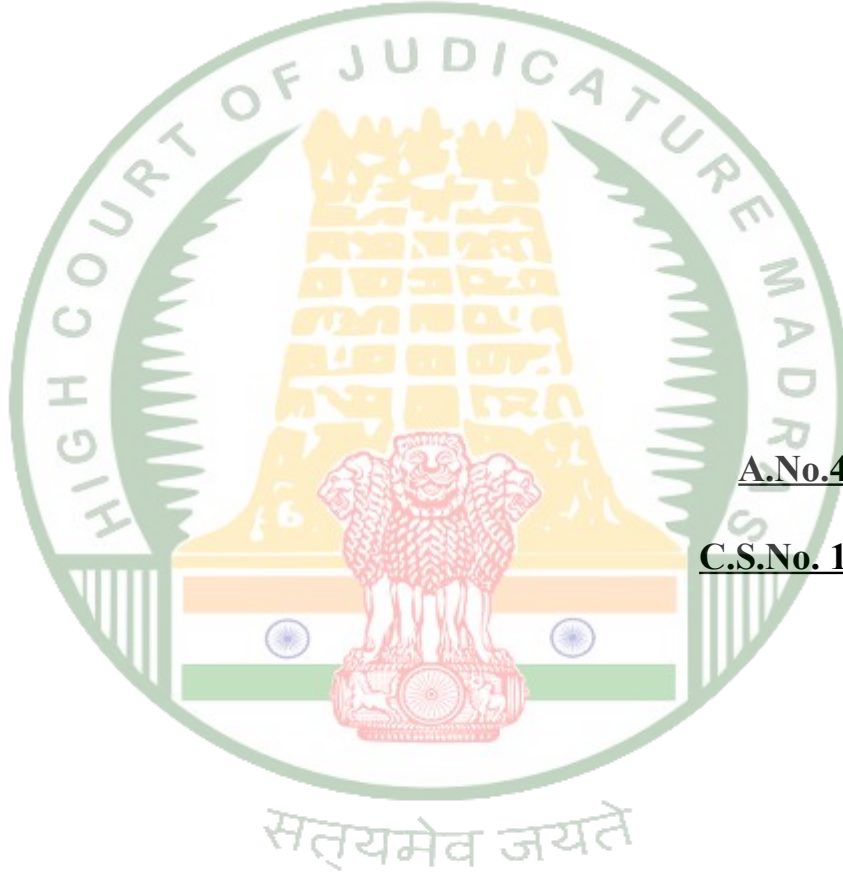
Registry is directed to carry out necessary amendment in the plaint.

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10.03.2021

C.V.KARTHIKEYAN, J.

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