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A No.1214 of 2021
in
C.S.No.322 of 2020

N.ANAND VENKATESH. J.,

This application has been filed by the 3rd defendant, to reject the plaint insofar as the 3rd defendant is concerned.

2. The 1st respondent / plaintiff has filed a suit seeking for permanent injunction restraining the defendants from producing or selling the products manufactured by Sujatha Biotech. The 1st respondent / plaintiff is basing his right on an assignment agreement dated 30.07.2016 that was entered into between the 1st respondent and the 2nd respondent. As per this agreement, the 2nd respondent has taken a loan from the 1st respondent and has agreed to repay the same as per the terms of the agreement. One of the terms in the agreement stipulates that if the 2nd respondent fails to pay the sales commission as per the agreement, the 1st respondent will be permitted to use the brands that is manufactured by the 2nd respondent for production and sales during the remaining period till the repayment of the loan. According to the 1st respondent, the agreement has been violated and inspite of the same, the



respondents 2 and 3 are continuing to produce and sell the brands.

Aggrieved by the same, the present suit has been filed by the 1st respondent.

3. The applicant / 3rd defendant has filed this application for rejection of plaint on the ground that the applicant is neither a party in the agreement nor there is a cause of action as against the applicant and the applicant is neither a necessary nor a proper party in the present suit. The specific case of the applicant is that they are the distributors of the products manufactured in the name of “NIVARAN 90 COUGH SYRUP and NIVARAN 90 ANTACID” only. Since there is no cause of action as against the applicant, the application is seeking for rejection of the plaint.

4. Heard Mr.R.Sathish Kumar, learned counsel appearing on behalf of the Applicant and Mr.C.Santhosh Kumar for Mr.A.L.Ganthimathi appearing on behalf of the respondents.

5. The only allegation that has been made against the applicant / 3rd defendant in the plaint is extracted hereunder :-



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“ IX. Hence as per the agreement plaintiff submits that since the defendants 1 and 2 has not repaid the amount within 3 years, plaintiff became the exclusive owner of the brand and is entitled to sell the same to raise the funds. Further with an intention to cheat the plaintiff, the 1st and 2nd defendants have also allowed the 3rd defendant to produce and sell the brands.”

6. The actual dispute in the present case is as between the 1st respondent /plaintiff and the 2nd respondent /1st defendant. The Enforcement of the agreement and the claim made under the agreement will be agitated as between these two parties. The applicant / 3rd defendant is brought-in as a party only on the ground that the applicant / 3rd defendant is allowing the distribution of the products manufactured and sold by the defendants 1 and 2. Apart from this, there is no other cause of action available as against the applicant/3rd defendant.

7. The applicant / 3rd defendant distributes the products



that are handed over by any party who claims to have the right to manufacture and sell the products. It is not the look out of the applicant / 3rd defendant to determine who actually is the owner of the registered trade mark. If ultimately, the assignment agreement is held to be valid and an order of injunction is passed as against defendants 1 and 2, obviously they will not be able to distribute the products through the 3rd defendant or through any other distributor. Therefore, the role of the applicant / 3rd defendant is more consequential in nature and the applicant has absolutely nothing to do with the present dispute that has been projected in the suit. There is absolutely no cause of action as against the applicant / 3rd defendant. The applicant / 3rd defendant is neither a necessary nor a proper party in the present suit and hence, the applicant need not undergo the process of defending the suit any further.

8. The learned counsel for the 1st respondent / plaintiff submitted that there is a subsequent development in this case wherein the plaintiff came to know that the 1st defendant has entered into an assignment agreement with the applicant / 3rd



defendant. Even though this statement was made across the bar, there was no material available and there is no such pleading in the plaint and therefore, this Court cannot act upon a mere oral statement. While deciding an application for rejection of plaint, this Court has to merely go by the pleadings in the plaint and the documents filed in support of the plaint. This Court can neither add nor subtract anything from the plaint. The law on this issue is well settled. Even if for the sake of arguments, the submission made by the learned counsel for the 1st respondent / plaintiff is taken as it is, the same only gives rise to a subsequent cause of action and that cannot in any way sustain the presence of the applicant / 3rd defendant in this suit as it stands.

9. In the result, this Court has absolutely no hesitation to allow this application and accordingly, the plaint shall stand rejected as against the applicant/ 3rd defendant. This application is accordingly allowed.

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