

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.(CAD) No.20 of 2021

Varalakshmi Starch Industries Pvt. Ltd.
No.127/1, Gandhi Road
Hastampatty
Salem 636 007.

.. Appellant

Vs.

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindu

5. M/s. Shri Varalakshmi Company
All residing at No.3, Komarapalaym
Mallur, Rasipuram Taluk
Namakkal District
Tamil Nadu 636 203.
Branch Office at 5/1, 6th Floor
Greenwood Apartments
Cenotaph Road, Teynampet
Chennai 600 018.

6. V.Anbalagan

.. Respondents

Appeal filed against the Fair and Decretal Order of this Court dated 27.04.2021 in A.No.1381 of 2021 in C.S.No.91 of 2021.

For Appellant : M/s. Lakshmi Kumarn and Sridharan

For Respondents : Mr.S.Parthasarathy, S.C.
For Mr.Suhrith Parthasarathy

JUDGMENT
(Made by the Hon'ble Chief Justice)

The appeal is by the defendant in a trade mark infringement suit. The grievance of the defendant is that despite the Court directing return of the plaint to the plaintiff, the subsisting interim injunction has been continued.

2. The more substantive appeals have been filed by the plaintiff, challenging the very authority of this Court to return a plaint. An issue of maintainability of the appeals by the plaintiff has arisen. Similar questions under Section 13(1A) of the Commercial Courts Act, 2015 have arisen in other matters. These issues are proposed to be dealt together and all matters of such kind have been tentatively scheduled to be taken up on August 9, 2021.

3. The defendant in the suit insists that it is entitled to the interim order being vacated. Indeed, the defendant's appeal is restricted to the continuation of the interim order despite the effective conclusion of the suit as far as this court is concerned. The defendant relies on an unreported order of the Supreme Court rendered on January 14, 2019 in SLP (C) No.33902/2018 (M/s. Om Sakthy Agencies (Madras) Pvt. Ltd v. M/s. Harsha Estates). In that case, there was an issue of jurisdiction which arose and, during the pendency of the appeal in this High Court, an interim order was passed restraining the defendant from interfering with certain properties. The relevant appeal as to territorial jurisdiction was disposed of by holding that this Court has no jurisdiction to entertain the suit. It was in such context that the Supreme Court observed as follows:

"In our considered view, while the suit was directed to be presented before the court of competent territorial jurisdiction, the granting of interim order or otherwise should have been left to the discretion of the transferee court."

4. Despite such observation, however, the interim order granted was not interfered with and the Supreme Court merely said that the transferee court would take a decision on the interim relief uninfluenced by the observations in the order of this court granting interim relief.

5. The unreported order is not an authority for the proposition that a subsisting interim order cannot be continued while a plaint is returned.

6. The return of plaint implies that the Court perceives that the Court does not have the authority to entertain or proceed with the action. The finding of such count has no nexus with the merits of the claim of the plaintiff.

7. At the time that the interim order was originally granted, there was no challenge to the jurisdiction of the court to entertain the suit and the court was guided purely by the merits of the plaintiff's claim to issue an interim injunction. It is usually the practice, particularly when returning a plaint, to continue any subsisting order of injunction since the return of the plaint has nothing to do with the merits of the claim, but only pertains to the authority of the forum to receive the action. However, the subsisting injunction is generally limited in duration, as in this case, and is also made subject to the decision of the transferee court, as has also been done in this case.

8. Accordingly, OSA No.20 of 2021 is dismissed as the order impugned does not call for any interference. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To

1.The Sub Assistant Registrar,
Original Side, High Court,
Madras - 104.

2.The Sub Assistant Registrar,
Commercial Cases,
High Court,
Madras - 104.

+1cc to Mr.Lakshmi Kumaran, Advocate, SR.NO.33172(02/02/2022)

O.S.A.(CAD) No.20 of 2021

RSV (CO)
PR (20/07/2021)