



Application No.4001 of 2021
in C.S.No.605 of 2019

N.ANAND VENKATESH,J.,

This application has been filed under Order VIIIA Rule 8 of C.P.C. by the applicant/1st defendant.

2.The 1st and 2nd respondents who are the plaintiffs have filed the suit against the defendants seeking for damages and for a permanent injunction and for other consequential reliefs. The pleadings were completed and issues were framed and the suit was at the stage of trial. At that point of time, the present application came to be filed by the 1st defendant on the ground that they were made to believe that the 2nd defendant had held the ostensible authority to grant the license in favour of the 1st defendant and accordingly the 1st defendant had featured the film. It is only thereafter, a legal notice was issued by the plaintiff alleging that the 2nd defendant did not have the right.

3.The applicant/1st defendant even at the time of framing of the issues, had circulated the draft issues and one of the draft issue that was circulated is extracted below:

In the event this Hon'ble Court comes to the conclusion of infringement, whether the 2nd Defendant is liable and has to indemnify the 1st Defendant?



4.The above draft issue was not framed as an issue in the suit and this Court had directed the trial to be conducted in the suit. The applicant/1st defendant has come up with this application on the ground that they believed the 2nd defendant and had proceeded further to feature the film. If ultimately, the 2nd defendant is held not to have any right to grant the license, even the applicant/1st defendant is entitled to be indemnified by the 2nd defendant. Hence, the applicant/1st defendant has invoked the provision under Order VIII A Rule 8 of C.P.C. and sought for the necessary relief in this application.

5.Heard the learned counsel for the applicant/1st defendant and the learned counsel appearing on behalf of the respondents/plaintiffs.

6.The 2nd defendant was appearing through a counsel right through. During the pendency of the suit, the 2nd defendant seems to have taken change of vakalat from the counsel and this was informed by the counsel to this Court. Accordingly, this Court directed the Registry to print the name of the 2nd defendant in the cause list. The name of the 2nd defendant has also been printed in the cause list. There is no appearance either in person or through counsel and hence this Court takes it that the 2nd defendant is not contesting this application.



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7. In the considered view of this Court, the applicant/1st defendant has gone by the ostensible authority of the 2nd defendant. In fact, in the entire written statement, the applicant had only placed reliance upon the license that was given by the 2nd defendant based on the authority that was claimed by the 2nd defendant. If ultimately, the 2nd defendant is held not to have any such authority to grant the license in favour of the applicant/1st defendant, that will result in the infringement of the copyright of the plaintiff. At that point of time, the applicant will be entitled to be indemnified by the 2nd defendant.

8. The Madras Amendment was brought in order VIII A providing for the third party procedure. Order VIIIA Rule 8 is extracted hereunder for proper appreciation:

8. Questions between co-defendants.--Where a defendant claims to be entitled to contribution from or indemnity against any other defendant to the suit, a notice may be issued and the same procedure shall be adopted for the determination of such questions between the defendants as would be issued and taken, if such last-mentioned defendant were Third Party; but nothing herein contained shall prejudice the rights of the plaintiffs against any defendant in the suit.



9. It is clear from the above provision that a co-defendant will be entitled to seek for contribution from or indemnity against any other defendant in the suit. This procedure was brought in to curtail multiplicity of the proceedings and not to drive the defendant to institute one more case against the co-defendant. The legislature thought that the dispute *inter se* the defendants can also be considered by the same Court. It is also made clear in this provision that the dispute as among the defendants will not in any way cause prejudice to the right of the plaintiffs against the claim made by them against any defendant in the suit. In other words, this *inter se* dispute between the 1st and 2nd defendants will not have any impact on the rights claimed by the plaintiff and the relief sought for in the present suit.

10. The notice was served on the 2nd defendant before this application was filed. The 2nd defendant who was appearing through counsel took change of vakalat and thereafter, nothing is heard from the 2nd defendant. Sufficient opportunity has also been given and the 2nd defendant has not availed the opportunity. Taking into consideration, the averments made in the affidavit filed in support of the application and the specific taken by the applicant/1st defendant in the written statement, this Court is inclined to allow this application.



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11. In view of the above discussion, this application is allowed as prayed for.

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23.11.2021

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N.ANAND VENKATESH,J.,

ssr

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in C.S.No.605 of 2019

25.11.2021

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