

A.No.2221 of 2017
in C.S. No.25 of 2017

DR.G.JAYACHANDRAN,J.

Suit for declaration and permanent injunction by sole plaintiff against sole defendant. Suit Summons served on the defendant on 24.04.2018. The defendant entered appearance through a Counsel, however not filed any written statement.

2. On 26.08.2021, this Court directed the learned Master to record evidence on 02.09.2021, since the learned counsel who was representing the defendant had reported that the defendant has instructed them to withdraw the vakalat.

3. After passing this order, the learned counsel representing the defendant brought to the notice of this Court that memo for withdrawing the vakalat filed and also an application to reject the plaint is pending. Therefore, an opportunity may be given to the defendant to engage a new counsel and proceed with the suit. Hence, the matter is posted today under the caption “for being mentioned”.

4.The erstwhile counsel for the defendant appeared and appraised the status of the case and the intention of the defendant. The learned counsel also submitted that the memo for withdrawal of her vakalat also filed in the Registry on 27.08.2021. Her statement is taken on record. Through this memo, the defendant's intention to disengage the service of the present counsel is made clear.

5. As far as Application No.2221 on 2017 filed for the rejection of plaint on the ground that the plaint does not contain a single averment questioning the title of the defendant and without a prayer for declaration of title, the plaintiff cannot seek for an injunction with a common prayer as if it is a suit for Copyright within the jurisdiction of this Court. If the suit is not under the Copyright Act, the plaintiff ought to have obtain leave to sue as per clause 12 of the Letters Patent Act and Order III of the Original Side Rules. Having failed to obtain leave to sue, the plaint is bound to be rejected, more so, when the contract between the parties as per the Agreement filed as Document 8 and 9 clearly excludes the jurisdiction of the other Courts and vests with the Court in Mumbai.

6. The plaintiff has filed his counter in this application. The learned counsel for the plaintiff submitted that leave to sue was obtained on 28.11.2016. As per Section 62 of Copyright Act, the place where the plaintiff carry on business is an additional jurisdiction for the party to file their suit. As far as the plea that bare injunction without declaration will not fall within the jurisdiction of this Court, the learned counsel for the plaintiff submitted that when the plaintiff is the absolute owner of the subject Copyright by virtue of Agreements, which are the plaint documents 1 to 6 and the Deed of transfer, Assignment Agreement, which are the plaint documents 7 to 9, there is no necessity for seeking a declaration, unless there is a cloud over the title. However, in abundant caution, the plaintiff has also sought for a relief of declaration along with the relief of permanent injunction. Therefore, the said plea is unsustainable.

7. This court after perusing the records and the plea raised by the defendant in his application to reject the plaint finds that on 28.11.2016, Justice M.M.Sundresh (as he then was) has granted leave to sue the defendant, who is carrying on business outside the jurisdiction of

this Court. The operative portion of the order granting leave reads as below:

“2. Applicant is the plaintiff in the suit filed for declaration seeking to declare the plaintiff as the absolute copyright owner of the suit pictures. Learned counsel appearing for the applicant submits that the agreements inter se parties have been executed within the territorial jurisdiction of this Court. Leave has been sought for on the ground that the respondent is situated outside the territorial jurisdiction of this Court.

3. Considering the submissions made by the learned counsel for the applicant and the averments made in the plaint, leave is granted.”

8. The other grounds raised to reject the plaint are also not contrary to the documents and pleadings. It appears that for the sake of delay, this application been filed and kept pending for nearly four years. When the matter was taken up for further proceedings, the defendant has conveniently wanted to change the earlier counsel and appoint a new counsel, for that, this Court had granted sufficient time. From 09.07.2021, the case stands adjourned for that purpose, however, the defendant has not engaged a new counsel. Therefore, this Court finds that there is no purpose in waiting for the defendant, who in a casual

manner had approached this Court, filing an application bereft of merit and also taking his own time to engage a counsel after disengaging the earlier counsel. Being a dispute under the Commercial Courts Act, Application No.2221 of 2017 to reject the plaint is dismissed for bereft of merits with sole intention to delay.

9. Taking into consideration that expeditious trial is the spirit of this Act, the plaintiff witness shall appear before the learned Additional Master I for recording evidence on **02.09.2021** as ordered by this Court on 26.08.2021. After completion of recording evidence, post the matter before this Court.



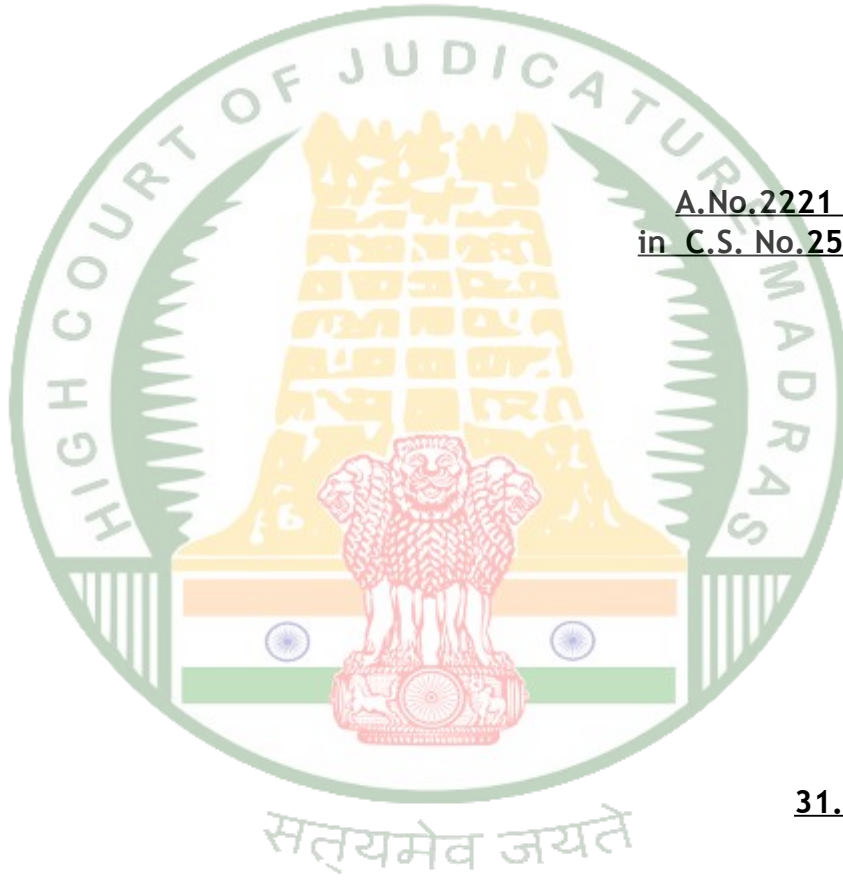
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