



A.No.1616 of 2022

in

C.S. (Comm. Div.) No.31 of 2021

SENTHILKUMAR RAMAMOORTHY, J

This application is filed for permission to mark the affidavit dated 22.11.2021 of Rema R Pillai. The applicant states that the dispute pertains to the identity of the executant of an agreement dated 05.12.2000. Ms.Rema R Pillai is one of the attesting witnesses to the said document. It is further stated that she is of an advanced age and resides at Kerala.

2. The respondent/first defendant opposes this application on the ground that the affidavit cannot be taken on record unless the deponent thereof is examined as a witness.

3. There is merit in the objection of the first defendant that an affidavit cannot be relied upon unless the contesting party has the opportunity to cross-examine the deponent of such affidavit on the contents of the affidavit. Accordingly, this application is allowed subject to the condition that the deponent of the affidavit shall be made available for cross-examination by the first defendant and any other contesting party. In addition, the defendants are permitted to raise objections *inter alia* on the grounds of relevance and proof.



SENTHILKUMAR RAMAMOORTHY, J

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The defendants are also permitted to file an affidavit of admission/denial in respect of this document on or before 08.06.2022

List on 08.06.2022.

20.04.2022

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A.No.1616 of 2022

in

C.S. (Comm. Div.) No.31 of 2021

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This suit is filed seeking injunctive relief, rendition of accounts and damages in

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respect of alleged infringement in the copyright over the cinematographic film 'Aravalli'.

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Both the first defendant and second and third defendants have filed applications under Order 13 A of the Civil Procedure Code is applicable to commercial dispute seeking a summary judgment. The said applications are filed on a common basis. In specific, the applicants assert the admitted position is that the movie 'Aravalli' was released in the year 1957. As per Section 26 of the Copyright Act 1957, the term of copyright in cinematographic film subsets for a period of 60 years commencing from the start of the calendar year following the order in which the work is prepared. Consequently, it is asserted that the copyright in the movie concerned subsisted only until the year 2018. As a corollary, the respective applicants assert that there is no real prospect of the plaintiff succeeding on the suit claim. The defendant is unable to controvert the assertion of the respective applicants.

On examining Section 26 of the Copyright Act 1957, the assertion of the respective applicants that the term of the copyright in a cinematographic film is for a period of 60 years beginning from the calendar year following the order in which the film was released is liable to be accepted. Given the admitted factual position that the film was released in the year 1957, the term of



copyright should be computed from 01.01.1958. On such basis, the term of copyright expired in the year 2018. As a consequence, the plaintiff cannot claim ownership over the copyright. The basis of the suit is the alleged ownership of the copyright over the relevant cinematographic film. Once the sub spectrum collapses, the plaintiff has no real prospect of successful prosecuting the suit. Under Order 13A, an application for summary judgment is to be tested on two grounds, namely, whether the plaintiff has no real prospect of succeeding on the claim and whether there is any other compelling reason to direct parties to adduce oral evidence. In this case, the requirements of Rule 3 Order 13A are fully satisfied. Consequently, the respective applicant is entitled to succeed. Therefore, C.S.(Comm.Div) No.103 of 2021 is disposed of summarily by dismissing the said suit on the ground that the plaintiff does not have a subsisting copyright and is therefore not entitled to any of the relief prayed thereof. There will be no order as to costs.

When the matter came up for hearing, on perusal of the pleadings and other materials on record, the following issues are framed for consideration:

- (1) Whether the plaintiff is the proprietor of the mark DS word and device?
- (2) Whether the defendant's use of the pouch LS amounts to infringement of the plaintiff's copyright?
- (3) Whether the defendant has sold any product under the



impugned mark LS and if so, whether the defendant has obtained license to manufacture snuff powder for the public sale?

(4) Whether the defendant used the trade mark LS amounts to infringement of the plaintiff's trade mark?

(5) Whether the defendant passing off their goods as that of the plaintiff using the trademark and copyright of the plaintiff?

(6) Whether the plaintiff has fabricated the product pouch/sachet bearing the impugned trademark LS for the purpose of filing the present suit against the defendant?

(7) Whether the plaintiff is entitled for the relief of permanent injunction against the defendant?

(8) Whether the plaintiff is entitled to rendition of accounts and other consequential relief?

(9) To what other relief the plaintiff is entitled to?

Call the matter on 02.08.2021 for case management hearing.

08.07.2021

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Dr.G.JAYACHANDRAN,J.

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C.S.No.305 of 2020

08.07.2021