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A.No.3265 of 2022

A.No.3265 of 2022
in
C.S.No.330 of 2018

C.SARAVANAN, J.

This application has been filed under Order VII Rule 11 of CPC to reject the plaint.

2. This application has been filed by the first defendant in the above suit. Earlier, an interim order came to be passed by this Court on 17.05.2018. This interim order was made absolute on 13.08.2018.

3. Aggrieved by the aforesaid order, the first defendant filed O.S.A.No.7 of 2019. After detailed consideration of the arguments advanced by the applicant and the first respondent/plaintiff, herein, the Hon'ble Division Bench of this Court in **Sorting Hat Technologies Private Limited Vs. Fermant Education** in O.S.A.No.7 of 2019, passed an order on 08.11.2019 and allowed the appeal of the applicant with the following observations:



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“21. In our view the 1st respondent/plaintiff may have copyright over the literary content posted/hosted by them in their website and every instance of copying by the appellant may amount to infringement of the copyright of the 1st respondent/plaintiff. However, for the purpose of the legal proceedings, it was incumbent on the part of the 1st - 2nd respondents/plaintiffs to file documents and material object to substantiate the same.

22. In this case, the 1st - 2nd respondents/plaintiffs have not filed a copy of the alleged copyrighted content over which they claim copyright. It was for 1st - 2nd respondents/plaintiffs to specify the copyrighted content in the plaint and also file the same as a suit document along with a copy of content of the same in a compact disc/pen drive as a material object.

23. Otherwise, an omnibus relief to the 1st - 2nd respondents/plaintiffs will put constraint on the court as well to test any violation of its order for any wilful disobedience of its order, should the 1st - 2nd respondents/plaintiffs initiate such proceeding against the appellant.

24. Mere exchange of email correspondence between them showing admission on the part of the appellant by itself is not sufficient particularly when even as per the 1st respondent / plaintiff contents are updated and uploaded on day to day basis periodically.

25. Therefore, in our view the learned Single Judge erred while passing the impugned order by dismissing the Application Nos.4609 & 4699 of 2018 while deciding to continue the omnibus interim relief in favour of the respondent/plaintiff. We therefore set aside the same and remit the case back to the learned



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Single Judge.

26. We leave it free for the 1st - 2nd respondents/plaintiffs to file a complete transcript of the web content as on date of suit along with an appropriate application seeking leave of the trial court in the above suit within a period of two weeks from the date of receipt of a copy of this order to file document.

27. In case, the 1st - 2nd respondents plaintiff are able to demonstrate before the Learned Single Judge that the appellant had indeed copied and/or violated their copyright from the content to be filed, the trial court of the Learned Single Judge, may pass such further appropriate order, as may be considered just and proper.

28. We therefore dispose the present appeal with the above observations and request the Learned Single Judge also to dispose the suit within the specified time frame in the case management applicable to the commercial disputes under the Commercial Disputes Act, 2015. No cost.”

4. Meanwhile, the applicant herein, the first defendant in the suit in C.S.No.330 of 2018, was set *ex-parte* by this Court on 16.10.2019, in view of the amended provisions of CPC, as made applicable to Commercial Courts Act, 2015. The aforesaid order dated 16.10.2019, has not been disturbed till date. At that stage, the suit summons on the defendant Nos.2, 3, 4, 7 to 12 and 14 had not been served and therefore, fresh



summons was ordered.

5. After the summons was served on the rest of the defendants referred to above, the 14th defendant entered appearance and has filed a written statement. Armed with the order passed by the Hon'ble Division Bench of this Court in the case of **Sorting Hat Technologies Private Limited Vs. Fermat Education** in O.S.A.No.7 of 2019, dated 08.11.2019, the present application has been filed by the first applicant/first defendant.

6. The applicant/plaintiff has not taken any steps for altering the order passed on 16.10.2019, setting the applicant/defendant herein *ex-parte*. Meanwhile, the applicant has filed O.A.No.603 of 2018 for the following relief:

“(a) this application should be not treated as Urgent?”

“(b) this Hon'ble Court should not be pleased to grant an ad-interim, temporary injunction, restraining the Respondent/Plaintiff Nos.1 and 2, by themselves, their Directors, partners, principal officers, successors-in-business, affiliates, assigns, servants, agents, legal heirs or any one claiming through them directly or indirectly or enabling others from in any manner whatsoever, publishing/circulating or causing the publication or circulation of anything against the Applicant/Defendant No.1 or anyone claiming through them or associated with them, including but not



limited to the article under the caption “What is the progress in the 2IIM Unacademy plagiarism issue?’, available at the URL: <http://www.quora.com/What-is-the-progress-in-the-2IIM-Unacademy-plagiarism-issue/answer/Rajesh-Balasubramanian-8?share=c0e594b0&srid=uLR4>, either relating to the matters concerning the Suit or otherwise, in press, social media; both print media and electronic media, including but not limited to third party social media websites, pending disposal of the suit?.”

7. In the above application, this Court has passed the following order on 18.07.2022:

“This application is presented by the first defendant to set aside the order dated 16.10.2019 by which the first defendant was set ex parte. By order dated 20.04.2022, the delay in filing the application to set aside the order dated 16.10.2019 was allowed subject to the modification of the said application. Learned counsel for the plaintiffs submits that she has no objection to this application being allowed on condition that the first defendant should not be permitted to file a written statement in as much as the time limit in respect thereof expired.

2. Upon examining the affidavit in support of this application and being satisfied that sufficient cause is established, this application is allowed.”

8. It is in this background, the present application was taken up for hearing. The case of the applicant/first defendant is that in the suit the respondent/plaintiff has not disclosed any cause of action against the



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applicant/first defendant and therefore, the plaint is liable to be rejected, in terms of Order VII Rule 11 of C.P.C. In this connection, a specific reference is made to the passages which has been extracted above from the decision of the Hon'ble Division Bench of this Court in the case of **Sorting Hat Technologies Private Limited Vs. Fermat Education** in O.S.A.No.7 of 2019, dated 08.11.2019.

9. The case has not progressed though there is a specific direction by the Hon'ble Division Bench to complete the trial, as expeditiously as possible, as has been stated in paragraph 28 of the order, the content of which has been extracted above.

10. The application is defended by the counsel for the first respondent/plaintiff stating that the plaint discloses the cause of action and therefore, the suit cannot be scuttled by a party, who has been set *ex-parte* on 16.10.2019.

11. It is also submitted that the first respondent/plaintiff has also filed application in A.No.1110 of 2022, and also filed document in 2 CAT IIM



along with the order of the Hon'ble Division Bench of this Court, which has been allowed.

12. It is submitted that though the present application was filed on 19.02.2020, no steps were taken by the applicant/first defendant, who has been set *ex-parte* on 16.10.2019, to number the present application for enquiry. Hence, it is prayed that the application be dismissed with exemplary cost.

13. I have considered the arguments advanced by the learned counsel for the applicant/first defendant who has been set *ex-parte* on 16.10.2019. I have also heard the learned counsel for the respondent/plaintiff. I have also heard the 14th defendant who is respondent No.15 in this application. I have also perused the plaint filed by the plaintiff in support of the above suit. A specific reference is made to paragraph 24 of the above suit, which reads as follows:

“24. It is submitted that there is only bald, vague, and unsubstantiated pleading in the Plaint that the copyrighted content viz. Literary works and sound recordings, were created by the 2nd Plaintiff. It is submitted that the documents filed along with the Plaint does not establish the ownership of the 2nd Plaintiff over the alleged copyrighted content viz.



Literary works and sound recordings. It is submitted that the documents filed by the Plaintiffs do not state the author, date of first publications and the present owner of the copyright. Further, without prejudice, it is submitted that the Plaintiffs have failed to adduce any material to assert copyright claim over sound recording/video and have only produced certain literary work without any certification/assertion as to first authorship. Assuming without admitting that the Plaintiffs have in fact established copyright over certain literary work, a bare perusal of the Plaint documents would amply suggest that the Plaintiffs have been unable to show any infringement of their “literary work” in any of the documents produced. Thus, on this count alone, the Plaint fails miserably and deserves to be dismissed with costs. It is therefore submitted that the 2nd Plaintiff does not have any cause of action to institute the present Suit. It is further submitted that the Plaintiffs do not satisfy the requirement of Order 1 Rule 1 of C.P.C. to file to suit jointly. It is submitted that therefore the Suit is liable to be dismissed.”

14. The basis for the cause of action is therein in Paragraph Nos.9 & 10 of the plaint. Paragraph Nos.9 & 10, of the said suit reads as follows:

“9. It is submitted that there is neither any averment nor even a whisper regarding the grievance that the Plaintiffs have against the Answering Defendant, much less an allegation of copyright infringement, in the Plaint. It is submitted that a bare perusal of the Plaint indicates that the Plaintiffs are involved in providing coaching sessions to aspirants trying to qualify in the



CAT examinations meant for admissions into MBA programmes across various institutions in India. However, the lecture videos that are uploaded by the Answering Defendant on the 1st Defendant platform are intended to cater to persons aspiring to qualify in the SSC examination and Bank PO examination. It is submitted that the courses taught and the students catered, by the Plaintiffs and Answering Defendant are different.

10. It is submitted that the Complaint and the documents filed by the Plaintiffs do not disclose any cause of action as against the Answering Defendant and is therefore, liable to be dismissed in limine. It is submitted that Plaintiffs have to demonstrate before this Hon'ble Court that (i) they are the copyright owner of the literary works; (ii) Answering Defendant has created a literary work; and (iii) that particular literary work of the Answering Defendant infringes upon the copyrighted literary work of the Plaintiffs. It is submitted that the burden of proof is on the Plaintiffs to show a comparison of the literary work of the Plaintiffs and that of the Answering Defendant and establish that they are infringing. It is however submitted that the Plaintiffs have failed to do so, and the Complaint lacks the minimum Pleading required to claim injunctive reliefs for copyright infringement. It is therefore submitted that the captioned Suit is liable to be dismissed on this ground also."

15. Whether the plaintiff has indeed made out the case for violation of copyrights and whether the plaintiff is entitled for the mandatory relief sought for is another thing.



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16. The plaint as it reads coupled with the documents which have now been filed in support of the pleadings makes it clear that the plaintiff has made out a case for the suit to be numbered and for being heard after due trial. The proceedings initiated before the Court cannot therefore be short circuited or scuttled merely because of few observations made by the Hon'ble Division Bench in the appeal filed by the applicant/first defendant in **Sorting Hat Technologies Private Limited Vs. Fermat Education** in O.S.A.No.7 of 2019, dated 08.11.2019.

17. Under these circumstances, the application filed for rejecting the plaint by the first defendant who has been set *ex-parte* on 16.10.2019 is liable to be dismissed. Though, the first defendant has been set *ex-parte*, the right to participate in trial and to make oral submissions at the time of arguments based on the evidence that may be elicited by the respondent/plaintiff and the defence of the 14th and 15th defendant cannot be curtailed. Such rights are preserved.

18. With the above observations the application stands dismissed. No



costs.

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