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A.No.3831 of 2021

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in C.S.No.344 of 2017

C.SARAVANAN, J.

This application has been filed under Order XIII(A) Rule 1 and 2 of CPC as made applicable to the provisions of the Commercial Courts Act, 2015 and Order XV Rule 2(1) and 2(2) of CPC. The defendant has filed this application for a summary disposal of the suit on the ground that the defendant is also a registered Proprietor of a trademark and therefore suit is not maintainable. The facts on record as of now indicate that the applicant / defendant had filed a trademark application on 04.12.2014 bearing No.2855463 in clause 41 for Educational Institutions, Academic Education, Teaching, Training and All being included. The above application that was filed by the applicant / defendant was for a label and not for a word mark simplicior. It is a composite mark consisting of a word “CIT” printed with a styled font depicting a butterfly flying over the Letter “I” in word “CIT” and tag line “Transforming Lives” below the aforesaid word “CIT” in band.



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2. The main argument advanced on behalf of the applicant / defendant

today before this Court is that the applicant / defendant is entitled for protection in terms of Section 28(3) of the Trademarks Act, 1999 and therefore the suit has to be dismissed in the light of the amended provisions of CPC as made applicable to commercial disputes under the provisions of the Commercial Courts Act, 2015 under Order XIII(A)(3)(a) and (b) of CPC. That apart it is submitted that the plaintiff's mark is for the word CIT, which is a abbreviation for the words “Coimbatore Institute of Technology” etc., while that the applicant / defendant mark is different visually and therefore the suit is liable to be dismissed in terms of amended provisions CPC as made applicable to commence dispute under the Commercial Courts Act, 2015.

3. The application is resisted by the respondent / plaintiff on the ground that the argument that the respondent's mark is an abbreviation of the words “Coimbatore Institute of Technology” cannot be countenanced as the definition of the word 'mark' in Section 2(m) of the Trademarks Act, 1999 includes name and the definition of the word 'name' in abbreviation of



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name in Section 2(o) of the Trademarks Act, 1999 includes. That apart, abbreviation of name it is submitted that the application that was filed by the applicant / defendant was in suppression of fact as the respondent / plaintiff has been in the educational field for a period of 53 years and that an interim order was also obtained by the respondent / plaintiff which was also acted upon by the applicant / defendant and now merely because a trademark registration has been wrongly issued to the applicant / defendant on 14.03.2019, it would not entitle the applicant / defendant for a summary disposal of a suit as was argued by the learned counsel for the applicant / defendant.

4. It is further submitted that it was incumbent on the part of the applicant / defendant to have informed the Trademark Registry about the pendency of the suit though the respondent / plaintiff ought to be filed application for opposing registration of the impugned trademark, when the aforesaid mark was advertised in the Trademark General No.1873 on 29.10.2018 after the institution of the suit. It is further submitted that respondent / plaintiff has also filed proceedings for rectification of the



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Registry under Section 47 of the Trademarks Act, 1999 and therefore, the application for summary disposal of the suit is liable to be rejected.

5. I have considered arguments by learned counsel for the applicant / defendant and the respondent / plaintiff the facts on record and the facts as was projected by learned counsel for the respondent / plaintiff and the applicant / defendant indicate that both the applicant and defendant are in the same field. They are running Educational Institutions including Engineering Colleges. The respondent / plaintiff is situated in Coimbatore and the word CIT was adopted as a abbreviation of the words Coimbatore Institution of Technology which has been also registered in T.M.No.2149953 in clause 41 with effect from 25.05.2011. Apart from the above, the respondent / plaintiff has also obtained separate registrations for the abbreviation in T.M.No.2149954 in clause 41 with effect from 25.05.2011. Similarly logo with the words “Coimbatore Institution of Technology” in T.M.No.2149956 in clause 41 with effect from 25.05.2011 and T.M.No.2149957 in clause 41 with effect from 25.05.2011 have been registered.



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6. Considering the fact that the registration has been secured by the applicant / defendant in respect of which the respondent / plaintiff has earlier secured an interim order and has also filed an application for rectification of registration granted to applicant / defendant, it would not be appropriate to dispose the suit summarily as has been attempted to the persuaded by the applicant / respondent. The adoption of the offends mark whether or honest or concurrent remains to be established after trial. Since, the respondent / plaintiff has also filed an application for rectification of the registration granted to the applicant / defendant, I am inclined to dismiss this application.

7. In view of the above, this Court is of the view that the suit is dismissed summarily by invoking the power by Order XIII(A) Rule 1 and 2 CPC Read With Order XIV(2)(1) and (2)(b) of CPC.

8. In the result, the above application is dismissed.

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