A.No.4489 of 2022
in
C.S.No.360 of 2007

C.SARAVANAN, J.

This application has been filed to recast the issues in the suit by adding the issue whether the suit is maintainable in view of the declaration given by the plaintiff before the GST authorities.

2. On 30.06.2022, the following nine issues were framed by this Court based on the draft issues exchanged between the plaintiff and the defendant.

> "1. Whether the Narasu's Coffee Company acquired the coffee business in the year 1956 or only purchased the immovable assets of the erstwhile Narasu's?
>
> 2. Whether the memorandum of understanding dated 10.08.2006 was executed to enable a family settlement by bifurcation of business into: (i) coffee business and (ii) other food products business?
>
> 3. Whether the amount outstanding in the capital account of the erstwhile partners was paid as consideration for their

retirement from the partnership firm, Narasu's Coffee Company?

4. Whether partners who had exited from the partnership firm after receiving due consideration at the time of retirement can claim any right over the mark owned by the partnership firm, Narasu's Coffee Company?

5. Whether the Plaintiff has the exclusive right to use the word mark "Narasu's" with the device of a lady sipping coffee from a cup within a circle in respect of all food products?

6. Whether the use of the mark "Narasu's" and the device of a lady sipping coffee from a cup within a circle by the Defendants amounts to infringement of the registered trademark of the Plaintiff?

7. Whether the Defendants are passing off their goods/services as that of the Plaintiff by using the mark "Narasu's" and the device of a lady sipping coffee from a cup within a circle?

8. Whether the Defendants are infringing the Plaintiff's copyright in the artistic work in the device of a lady drinking coffee from a cup enclosed in a circle and the stylistic manner of

writing "Narasu's" on the wrapper and the colour scheme and get up thereof?

9. Whether the Plaintiff is entitled to the reliefs prayed for?"

3. The defendant had also requested this Court to frame the following issue as an additional issue

"Whether the suit is maintainable in view of the declaration given by the Plaintiff before the GST Authorities?"

4. Though the suit is of the year 2007, with the implementation of GST, the plaintiff appears to have made declaration in its packaging, whereby, it has given a disclaimer stating that "we hereby voluntarily forego our all types of actionable claim or enforceable right in respect of brand name printed on this bag". Though there is no trade name visible in the package, *prima facie* it appears that the case of the defendant is that incorporating the name of the plaintiff printed in the package itself is "Narasu's" in respect of which, the suit has been filed.

C.SARAVANAN, J.

arb

5. Considering the above, this Court is inclined to allow this application by including the following issue also along with the issues already framed by this Court on 30.06.2022.

"10. Whether the suit is maintainable in view of the declaration given by the Plaintiff before the GST Authorities?"

6. List the suit on 16.12.2022.

06.12.2022
(1/2)

arb

A.No.4489 of 2022
in
C.S.No.360 of 2007