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A.No.4853 of 2021
in
C.S.(Comm.Div.) No.16 of 2021

SENTHILKUMAR RAMAMOORTHY, J

The defendants in the suit are the applicants herein. The application is filed under Order II Rule 2 (3) of the Code of Civil Procedure seeking leave to make additional prayers against the respondent.

2. The suit was filed by the respondent herein seeking permanent injunctions, damages and ancillary orders in respect of alleged infringement and passing off of the plaintiff's trademark. The defendants filed a written statement with a counter claim. In the written statement, the defendants have also prayed for injunctive relief, delivery of infringing materials, rendition of accounts and for damages of Rs.1 crore.

3. The present application is filed on the ground that the applicants are unaware of the quantum of profits earned by the respondent, and that such quantum could not be ascertained by the applicants because they are not in possession of the relevant documents.

4. In support of the application, the applicants cite several judgments including the judgments in *Vurimi Pullarao v. Vemari Vyankata Radharani*



[(2020) 14 SCC 110] and M/s.Indo Swiss Trading Company v. M/s.Ghatal

Steam Navigation Company Limited [1996 SCC OnLine Cal 91].

5. The respondent contends that the present application is not maintainable. The respondent states that the applicants have made counter claims claiming all reliefs on the cause of action. In particular, the respondent states that both rendition of accounts with a decree for profits and damages of Rs.1 crore have been claimed. Therefore, it is submitted that Order II Rule 2(3) is inapplicable. In addition, it is submitted that such application is maintainable only with regard to a subsequent suit and not to amend the relief prayed for in the present suit.

6. As is evident from the text of Order II Rule 2(3) of the Code of Civil Procedure, the said provision prescribes that a person who is entitled to more than one relief in respect of the same cause of action should sue for all such relief and, in the event of default, relinquishes the right to sue for the omitted reliefs. In the case at hand, the applicants have sued for all reliefs that they may be entitled to on the relevant cause of action. Therefore, as correctly contended by the learned counsel for the respondent, this application is not maintainable under Order II Rule 2(3) of the Code of Civil Procedure.



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7. From the averments in paragraphs 6 and 7 of the affidavit in respect of the application, it is clear that the applicants propose to enhance the quantum of damages claimed. Such relief cannot be prayed for in an application under Order II Rule 2(3) of the Code of Civil Procedure, and is in the nature of an application to amend the plaint upon ascertaining the quantum of profits. Therefore, it is open to the applicants to file an application under Order VI Rule 17 of the Code of Civil Procedure, if so advised. It is needless to say that any such application would be tested on Order VI Rule 17 based on objections, if any, from the respondent. Accordingly, this application is dismissed.

List the suit on 28.03.2022.

14.03.2022

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