

CS NO.109 OF 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

MR. ROHIT KUMAR JHA
VS.
MR. MANISH DAGA

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 16th June, 2023.

Appearance:
Mr. Shuvasish Sengupta, Adv.
Mr. Balarko Sen, Adv.
Mrs. Sachalita Sarkar, Adv.
For plaintiff

The Court : The suit has appeared in the list for being presented and admitted upon dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 as also leave under Order II Rule 2 of the Code of Civil Procedure, 1908.

The plaintiff (hereinafter referred to and meant as proposed plaintiff) alleges that its registered mark "SUROVI" and "SUROVI 55" are being infringed by the defendant (hereinafter referred to and meant as proposed defendant) by selling there products with the identification "SURVI 55". The proposed plaintiff, therefore, contemplates urgent interim relief and intends to institute the suit upon obtaining leave under Section 12A of Commercial Courts Act, 2015. However, in paragraph 19 of the plaint, it has been pleaded by the proposed plaintiff that the alleged infringement came to the notice of the proposed plaintiff in April 2022. Pursuant thereto, the proposed plaintiff issued a notice dated 16th

May, 2022 to one that “D.D. Metals” said to be manufacturing the containers with the mark “SURVI 55”. In reply thereto, the said D.D. Metals, as alleged by the proposed plaintiff, had disputed the exclusive right of the proposed plaintiff but admittedly usage of mark “SURVI 55”.

The proposed plaintiff, as pleaded in paragraph 24, had issued a cease and desist notice dated 13th July, 2022. It is also the case of the proposed plaintiff that despite receipt of such notice, the proposed defendant chose not to give any reply and had purportedly proceeded with selling the said products under the mark “SURVI 55”. In paragraph 26 it has, however been pleaded that immediately after receipt of the letter dated 13th July, 2022, the proposed defendant stopped manufacturing, selling and/or trading zarda and/or its allied products under the mark “SURVI 55”. It is also the case of the proposed plaintiff that recently in the month of May 2023, the proposed plaintiff came to learn that the proposed defendant once again started manufacturing, trading and selling zarda and/or allied products under the mark “SURVI 55”.

The pleadings in paragraphs 24 and 26 are self-contradictory. If the proposed defendant had even after receiving the notice dated 13th July, 2022 continued with the manufacturing and selling of its products then it could not have stopped manufacturing, selling and/or trading immediately after receipt of the said notice and started the same which came to the notice of the proposed plaintiff in May 2023.

The right to sue, therefore, in view of the pleading in paragraph 24 accrued immediately after 13th July, 2022. Then there is a delay of about one year in approaching the Court. The self contradictory pleadings coupled with the delay in approaching has created a doubt in the mind of the Court as to the proposed plaintiff's contemplation of urgent interim relief on the basis whereof leave under

Section 12A of the Commercial Courts Act, 2015 has been sought for.

The leave for dispensation with the formalities under Section 12A of the Commercial Courts Act, 2015, in the facts and circumstances as aforesaid, is refused.

The plaint which has not entered the records of this Court for the purpose of institution of the suit and has only been filed in the computer department pursuant to which a number has been allotted is directed to be returned to the proposed plaintiff along with the court fees. The number allotted to the plaint should be deregistered. The proposed plaintiff shall be entitled to use the same court fees for the purpose of instituting a suit on the self-same cause as against the same set of defendant, if permissible in law after complying with the pre-institution mediation as envisaged under Section 12A of the Commercial Courts Act, 2015.

(ARINDAM MUKHERJEE, J.)

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