

OCD-1

ORDER SHEET

CS 114 of 2023

IA No.GA 1 of 2023, GA 2 of 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

KANISHK SINHA
VS.
DR SAUMITRA MOHAN & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 28th June, 2023.

Mr. Kanishk Sinha, proposed plaintiff appears in person.

The Court : This is the second time when the plaint has appeared in the list for presentation and admission. On 20th June, 2023 when the plaint was sought to be presented for admission this Court was not prima facie satisfied with grounds cited for the dispensation of formalities under Section 12A of the Commercial Courts Act, 2015 as sought for by the proposed plaintiff for instituting the suit in the Commercial Division of this Court. This is the third suit which the proposed plaintiff intends to institute. There is already a suit pending in this Court in connection with alleged infringement of plaintiff's patent over

eco-friendly battery operated electric vehicles wherein certain interim orders have been passed. Alleging non-compliance of the orders passed in the plaintiff's suit before this Court, the proposed plaintiff has for certain reliefs filed a suit before the District Court at Alipore. In this suit, the proposed plaintiff alleges that despite there being orders of injunction the registering authorities have granted registration of the eco-friendly battery operated electric rickshaws of which the proposed plaintiff holds the patent. Certain interim orders have also been passed therein. The proposed plaintiff, therefore, intends to institute this suit against the Transport Department, Government of West Bengal and the Officers of the District Registering Authorities for alleged infringement of his patent rights. While granting registration to some eco-friendly battery operated rickshaws, the patent rights of the proposed plaintiff are already the subject matter of the first suit filed before this Court being CS 388 of 2014. In the suit before the District Court at Alipore being TS 27 of 2018 on 5th December, 2020 an order was passed to the following effect :

“I have carefully gone through the contention of the application. Since the plaintiff himself as prayed for modification of the order dated 24.02.2020 by directing the

respondent for registration of battery operated Eco-friendly E-rickshaws in favour of the assignees, in my considered opinion the respondent authorities would not be prejudiced if I allow this application.

In view of such the order dated 24.02.2020 is modified only to this extent that respondent authorities are at liberty to register battery operated Eco-friendly E-rickshaws in the name of the assignees whose particular are mentioned in annexure-P2 of the instant application. I make it clear the other portion of the order dated 24.02.2020 shall remain same as it was before. The application filed on 13.11.2019 is dismissed as not press. The application filed today is thus disposed of.”

The proposed plaintiff in this suit alleges that violating the orders passed by this Court in the previous suit, the Court at Alipore in TS 27 of 2018 as also writ petition filed by the plaintiff before this Court, the proposed defendants have granted registration to few vehicles on 18th May, 2023 and 22nd May, 2023 to whom the plaintiff's rights were not assigned. The proposed plaintiff says that he is entitled to be paid a sum of Rs.10,000/- per electric vehicle or any part thereof which are being registered in this process. The proposed plaintiff has

quantified damages and has sought for a decree for Rs.1000,00,00,000/-. The proposed plaintiff seeks also injunction, Receiver and attachment before judgment.

After going through the averments made in the plaint, I am unable to find any contemplation on the part of the proposed plaintiff in seeking urgent interim relief which permits the proposed plaintiff to seek for dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 to institute the suit. Although, in cases of infringement and passing off delay is often held to be not fatal for injunction and appointment of Commissioner in the event the proposed plaintiff is able to show reasonable steps being taken but in the proposed suit the infringement has allegedly occurred with the registration few months before the filing of the suit but the quantification of damages whittles down the contemplation of urgent interim relief. The proposed plaintiff has asked for Rs.10,000/- per vehicle which are registered but not assigned by the proposed plaintiff. The proposed plaintiff has also prayed for leave under Section 80(2) and Order II Rule 2 of the Code of Civil Procedure, 1908 (in short CPC). No case has also been made out in the plaint on a plain reading of the same to support a prayer for leave under Section 80(2) of CPC. Unless dispensation of

formalities under Section 12A of the Commercial Courts Act, 2015 or that under Section 80(2) of CPC is granted, the Court cannot assume jurisdiction to receive, entertain and determine the suit. The leave under Order II Rule II will fall for consideration once these hurdles are crossed.

The proposed plaintiff relies upon Section 108 of the Patents Act, 1970 to impress upon this Court that in a suit for infringement the Court may also grant order of injunction and at the option of the plaintiff either damages or an account of profits. There is no dispute as to the provision of this section but this relates to the merit of the suit and does not justify the dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015.

Leave under Section 12A of the Commercial Courts Act, 2015 as also under Section 80(2) of CPC is refused on the facts pleaded in the plaint. The plaint has been filed only in the computer department and has not entered the records of the Court except being allotted a number. The plaint will enter the records of the Court only on the same being admitted.

In the aforesaid facts and circumstances, the plaint is directed to be returned to the proposed plaintiff along with the court fees paid after completion of necessary formalities. The

number allotted to the suit after return of the plaint shall be deregistered. The proposed plaintiff will be entitled to use the same court fees to institute a suit as against the same parties, if permissible in law after completing the formalities necessary under Section 12A of the Commercial Courts Act, 2015 and under Section 80(2) of the CPC.

(ARINDAM MUKHERJEE, J.)

pa