

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.809 OF 2022
IN
SHORT CAUSE SUIT NO.214 OF 2018
WITH
CIVIL APPLICATION NO.17342 OF 2022**

The Himalayan Club ..Appellant/Applicant
Versus
Kanwar B. Singh & Ors. ..Respondents

Mr. Ashish Kamat a/w Shyam Kapadia, Jigisha Vadodaria & Jinelle Gogai
i/by Negandhi Shah & Himayatullah, for the Appellant/ Applicant.
Mr. Jacob Kadantot a/w Manmohan Amonkar, for the Respondent No.1.
Mr. Soli Cooper, Senior Advocate a/w Yohann Cooper, Vaibhav Singh &
Bryan Pillai i/by Shardul Amarchand Mangaldas & Co., for Respondent
Nos.2 & 3.

CORAM : NITIN W. SAMBRE, J.

**RESERVED ON : 12th DECEMBER, 2022
PRONOUNCED ON : 24th MARCH, 2023**

PC.

1. The challenge in the present appeal from order is to the order dated 3rd August, 2022 passed by City Civil Court, Greater Mumbai, thereby giving ruling on the preliminary issue holding that the suit of the appellant/plaintiff is not maintainable. The impugned order was passed on 3rd August, 2022 whereby the City Civil Court has held that it has no jurisdiction to try the suit and has returned the plaint for presentation before the appropriate forum/Court.

2. The facts necessary for deciding the present appeal are as under :-

Appellant/plaintiff initiated Short Cause Suit No.214 of 2018 on the file of City Civil Court, Mumbai claiming relief of declaration that the disputed Facebook Group is owned by and the property of the plaintiff and it has exclusive rights to control and manage the Facebook Group. A mandatory injunction is sought directing the defendants to hand over operation and control of the Facebook Group to the plaintiff and to do such other acts required to effect the handing over of Facebook Group to the plaintiff. A mandatory injunction is also sought against defendant Nos.2 to 4 directing them to remove the defendant No.1 as the creator of the group with other ancillary reliefs.

3. The appellant claims that it was founded on 17th February, 1928 which is a registered society and enjoys a wide membership with presence in various countries across the globe. It also claims that it maintains various publications and libraries and organizes several lectures and events etc. It is the case of the plaintiff that the defendant No.1 was an office bearer of the plaintiff who was assigned a task of helping it with the website, internet based chat groups and the social

media outreach. According to plaintiff, the Facebook Group “The Himalayan Club” having its website as “*www.facebook.com/groups/TheHimalayanClub*” (hereinafter shall be referred to as the “Facebook Group” for short) was created by the defendant No.1 on instructions and directions of the plaintiff as part of the role assigned to it and accordingly defendant No.1 was “E-Group Moderator” as he was one of the member of the Managing Committee of the plaintiff.

4. For the purpose of better handling of the followers/ members which runs in the lakhs, management of the group was divided into Administrator, other Administrator and Members etc.. According to plaintiff, the defendant No.1 who has created group for and on behalf of the plaintiff in the best interest of management of the said group appointed Administrators as were authorized pursuant to the delegation to that effect.

5. It is further claimed that the position of the defendant No.1 becomes “creator administrator”. Taking undue advantage of the said position, the defendant No.1 has started claiming that the plaintiff has no connection with the aforesaid Facebook Group and has tried to garner/usurp the control of the said Facebook Group, as he has

unilaterally removed various administrators that too without any such authority or direction from the plaintiff, the suit came to be initiated.

6. After the suit summons were served on the defendant No.1, he filed his written statement and raised an issue as to the jurisdiction of the Court, as it is claimed by the defendant that the Facebook Group Account is an intellectual property. Apart from above the preliminary objection, the respondent No.1/original defendant No.1 denied all the allegations made in the plaint. According to him, since the Facebook Group Account is an intellectual property in relation to which the dispute is raised before the City Civil Court in view of provisions of Clause (3A) of Section 2 of the Bombay City Civil Court Act, 1948, the Court has no jurisdiction to try and decide the suit.

7. Based on the aforesaid objection to the jurisdiction, a preliminary issue was framed as to whether the Court has jurisdiction to try the suit and vide order impugned the Court has held that the Facebook Group is a media platform for promotion of plaintiff club which became well known to its members. It is further held that since the defendant No.1 is claiming that the Facebook Group is private group, the dispute comes within the ambit of the trademark. The Trial Court further

held that since the dispute pertains to ownership of Facebook Group which is trademark defined as referred in Section 2(1)(m) of the Trade Marks Act, the said comes within the ambit of intellectual property and as such in view of Section 2(3A) of the Bombay City Civil Court Act, 1948, the Court has no jurisdiction.

8. Mr. Ashish Kamat, learned counsel appearing for the appellant would urge that the Court below has committed error apparent on the face of record giving a ruling that it lacks jurisdiction, as the dispute raised by the respondents/defendants pertains to intellectual property. So as to substantiate his contentions, Mr. Ashish Kamat would invite attention of this Court to the pleadings in the plaint, the objections raised by the respondent No.1 and the cryptic finding recorded by the Court below. He would urge that the order impugned is contrary to the very scheme of Order VII Rule 10 of the CPC. Learned counsel would further urge that the very provisions of Section 3 of the Act are not applicable to the facts of the case in hand. According to him, the dispute was never in relation to the trademark, as the trademark holder in case under the Trade Marks Act asserts the deceptive similarity. According to him, there is no trademark infringement or passing off in that eventuality. It is further required to be noted that the suit is based on the Facebook

Group being property of the appellant/plaintiff and misuse of the same by respondent No.1. In such an eventuality, the suit has to be held to be maintainable.

9. While countering aforesaid submissions, counsel for the respondent No.1 would support the order impugned. According to him, the ownership of the Facebook Group created by the defendant No.1 is admittedly creator of the same and rightly prompted him to raise preliminary objection on the maintainability of the suit. It is further claimed that the Court below having regard to the definition of “trademark”, intellectual property was justified in holding that the suit is barred under Section 2(3A) of the Bombay Civil Court Act, 1948. It is further claimed that the appellant/plaintiff can always present suit before the Court having competent jurisdiction and in that view of the matter, the appeal is liable to be dismissed.

10. Counsel for respondent Nos.2 and 3 would invite attention of this Court to its role as “Inter-Mediator”. Drawing support from the judgment of Apex Court in the matter of ***Google India Private Limited Vs. Visaka Industries*** reported in ***(2020) 4 SCC 162***, he would urge that the said respondents stand on a different footing in the capacity of facilitators

of exchange of information. According to him, the said respondents are not liable under the IT Act. He would urge that Section 79 of the IT Act can be sufficiently relied on.

11. I have appreciated the aforesaid submissions.

12. With the assistance of respective counsels, I have perused the allegations in the plaint so as to infer whether the pleadings in the plaint confers jurisdiction on the City Civil Court.

13. The nature of relief claimed in the plaint pertains to declaration of ownership of the Facebook Group, the directions to hand over operation and control of the Facebook Group and mandatory injunction to remove the defendant No.1 as creator administrator with other ancillary reliefs.

14. The aforesaid claim is based on the fact that the defendant No.1 was the office bearer of the plaintiff and was authorized by the plaintiff to create a Facebook Group for and on its behalf and to administer the same for and on behalf of the plaintiff.

15. The defendant has come out with a case as that of creator

and owner of the said Facebook Group. As such, there exists a dispute as to the ownership of the Facebook Group.

16. Apart from above, if we consider the provisions of the Copyright Act, particularly, Clause (d) of Section 2 which provides for interpretation of the word “author” within the meaning of the Copyright Act and Clause (z) which provides for “work of joint authorship”, it is further required to be noted that the said Copyright Act in its ambit under Section 17 provides for the “First owner of copyright”.

17. Apart from above, the Trade Marks Act, 1999 provides for registration and better protection of trademarks for goods and services and for the prevention of the use of fraudulent marks. The fact remains that the Facebook Group is no way claimed to be a registered trademark of the plaintiff of which the defendant No.1 allegedly infringed. Rather the plaintiff has sought declaration that it is owner of the Facebook Group and based on the same, ancillary reliefs are claimed. The claiming of the relief is also based on the pleadings that the defendant No.1 by misusing his position is trying to change the situation viz. ownership of the Facebook Group by taking undue advantage his position as that of “moderator” of the Facebook Group.

18. The Facebook Group which is claimed to be of the appellant is a website, internet based social media platform which provides for members to exchange views, ideas and to post experiences, messages, photographs etc.. As such, it cannot be said that the Facebook platform is a trademark or a copyright. The appellant is seeking recovery and restoration of the same.

19. If we consider the submissions of counsel for the respondents/original defendants in the backdrop of provisions of clause (m) of Sub-Section (1) of Section 2 of the Trademarks Act, 1999, which defines “mark”, the fact remains that the appellant is claiming to be a registered proprietor of the said mark “The Himalayan Club”. In this background, it cannot be said that the recovery and restoration of Facebook Group can be termed to be a dispute relating to trademark. Once the case of the appellant is based on the creation of Facebook Group under its instructions and authority, it cannot be said that the suit will fall in the category as has been observed.

20. In this background, the conclusion drawn by the Court below that the dispute involved in the suit pertains to the intellectual property and as such, the Court has no jurisdiction to entertain the suit, cannot be

accepted. The Court below has misguided itself thereby inferring that the ownership of Facebook Group amounts to trademark and as such, the dispute pertains to the intellectual property. In the background of aforesaid observation, this Court is of the view that the suit is simplicitor as that of declaration of ownership of the Facebook Group and based on the same, consequential relief of injunction is sought.

21. In the aforesaid background, giving cumulative effect to the pleadings in the plaint, it has to be held that the Court was having jurisdiction and is in error in recording a finding that the suit pertains to the claim of ownership of trademark and as such, is a suit pertaining to an intellectual property.

22. In the aforesaid background, the Court below has committed an error in invoking provisions of Clause (3A) of Section 2 of the Bombay City Civil Court Act, 1948.

23. As such, the impugned order dated 3rd August, 2022 is hereby quashed and set aside. The preliminary issue is answered in the negative and it is held that the City Civil Court has jurisdiction to try and decide the suit.

24. The appeal from order as such stands allowed in above terms.

25. In view of disposal of appeal, pending civil application also stands disposed of.

[NITIN W. SAMBRE, J.]