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A.No.2469 of 2023
in
C.S.(Comm. Div.) D.R.No.55725 of 2023
P.T. ASHA, J.

This is an application for grant of leave to sue the defendant. The plaintiff has filed the suit in question seeking various reliefs against the defendant in respect of their trademark “TWIN BIRDS” with a registered Trademark No.360862 in Class-25.

2. It is the case of the plaintiff that the defendant has created a trademark in the name of “FLY BIRDS” which is deceptively similar to their trademark and that they have been marketing the products which is identical to that of the plaintiff. The plaintiff would submit that they have a substantial market in the city of Madras and they came across the defendant’s branch at Purasawalkam and T.Nagar. The plaintiff would submit that they are known for their leggings which carries their trademark of “TWIN BIRDS”. The plaintiff has its principal place of business at Tirupur and they also carry on business at Chennai, where their products are available not only in their exclusive stores but also in their exclusive franchise stores apart from the retail outlets. Now the products of the defendant are also being sold here. Therefore, the cause of



action has arisen within the jurisdiction of this Court. Therefore, they would seek leave for suing the defendant before this Court.

3. A counter has been filed by the defendant inter alia contending that the plaintiff has only recently entered the market in Chennai and both the plaintiff as well as the defendant have their place of business at Tirupur. The defendant would further submit that the brand “TWIN BIRDS” is manufactured and marketed by M/s.Network Clothing Company Pvt.Ltd., who is not a party to the present suit. They would submit that the plaintiff has chosen the jurisdiction of this Court which amounts to forum shopping since the substantial cause of action and the materials relating to the transactions of goods are all available at Tirupur.

4. That apart, the defendant had also submitted that they have been operating their business from Tirupur and marketing their goods all over Tamil Nadu for the last 7 years. The plaintiff had issued a legal notice in the year 2022 which was appropriately responded to and after a lapse of a year, the present suit has come to be instituted. It is also their case that it is only after the issue of the notice that the plaintiff has expanded their business in Chennai. Therefore, the application has to be dismissed.



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5. The learned Senior Counsel appearing on behalf of the plaintiff would submit that even according to the defendant a part cause of action has arisen in Chennai and being the *dominus litus* it is for the plaintiff to choose their forum. The learned Senior counsel would stoutly defend the allegation that the plaintiff are indulging in forum shopping since it is his contention that a substantial business has been established in Chennai and therefore, the defendant's products are causing confusion in the minds of the public. Therefore, the plaintiff has come forward with the present suit.

6. The learned counsel for the defendant would rely upon an unreported judgment of this Court in *Application No.2100 of 2023 – M/s.Mmunna Garments Vs. M/s.AQJ Apparels Pvt. Ltd.*, wherein the learned Judge had declined to grant leave basing his decision on the judgment of the Full Bench in *M/s.Duro Flex Pvt. Ltd Vs. Durofex Sitings System 150* reported in *2014 (5) LW 673*. wherein the Court had at length considered the principles of “Forum Conveniens”. He would rely upon the observations of the learned Judge that the Court has to take into consideration the balance of Conveniens of all parties and the suitability



of the forum to entertain the suit. That is also a case where both the parties having their registered office at Tirupur within the territorial limits of the District Court, Tirupur and the learned Judge had deemed it fit not to grant leave only based on an isolated sale by the defendant. He would also submit that the suit is bad for non-joinder of necessary parties.

7. Heard the counsels on either side.

8. A perusal of the case on hand would show that the products of the defendant are being sold in two different places in the city of Chennai namely at Purasawalkam and at T.Nagar where the purchase has been made from stores selling garments and therefore, it cannot be treated as an isolated sale particularly when the shop where the products are purchased has stocked the products of the defendant.

9. It is trite to state that it is a bundle of facts that ultimately determine as to whether the cause of action has arisen to allege that there has been a trademark infringement. It is seen that both the plaintiff as well as the defendant are doing business within the jurisdiction of this Court. The defendant has not denied the two documents which are



referred to by the plaintiff in their suit. In fact the defendant would only submit that they do not have an outlet of sale in Chennai but however does not deny the marketing of their products in Chennai.

10. Therefore, the objection to the leave being granted is not sustainable and is rejected and with reference to the argument that this suit is bad for non-joinder of necessary parties, this is a plea that can be taken at the time of filing of the written statement. Therefore, the Application No.2469 of 2023 is allowed and leave is granted.

04.07.2023

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