



WEB COPY



A.No.2894
in C.S.No.866 of 2002

A.No.2894 of 2023
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C.S.No.866 of 2002

S.SOUNTHAR, J.

The instant application has been filed by the applicant/3rd Party seeking impleadment of the applicant as 2nd defendant in the suit.

2. The respondents 1 to 4 herein are filed suit against the 5th respondent herein seeking decree restraining the 5th respondent from passing off its services/goods as that of the respondents 1 to 4/plaintiffs.

3. In the affidavit filed in support of this application, it is averred by the applicant that pending suit, the applicant got assignment from the 5th respondent Trade Mark 'ANNAPURNA' and therefore, the applicant prayed for it's impleadment in the suit as 2nd defendant.

4. Subsequently, the learned counsel for the applicant filed a memo seeking leave of the Court to treat the application for impleading as one filed for substitution of the applicant in the place of sole defendant namely 5th respondent.



5. The contesting respondents 1 to 4/plaintiffs filed a counter opposing the impleading application. It is stated by the contesting respondents that the applicant is pendente lite assignee of the suit trade mark and therefore, any decree and judgment to be passed against the assignor namely the 5th respondent is binding on him. In these circumstances, there is no need to implead the applicant as one of the defendants in the suit.

6. The learned counsel by taking this Court to Clause 2-3 of the Trade Mark Assignment Deed entered with the 5th respondent submitted that as per the terms of Assignment Deed, the applicant undertook to substitute itself as a party in place of assignor. Therefore, this application shall be treated as the one for the substitution.

7. As mentioned earlier, the applicant got assignment of the suit trade mark from the 5th respondent pending suit. Hence, controversy regarding passing off has to be decided in his presence. Therefore, the applicant is necessary and proper party for adjudication of controversy in the suit. However, the applicant is not a plaintiff in the suit. Therefore, it is not open to them to seek substitution. The respondents 1 to 4 in their capacity as plaintiffs in the suit are the *dominus litis*. Therefore, it is for the plaintiffs to seek deletion or substitution in the place of the



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defendant. It is not open to the applicant/third party to seek deletion of the defendant and its substitution in the place of defendant. Therefore, the request made by the learned counsel for the applicant seeking substitution of the applicant in the place of 5th respondent is rejected.

8. Accordingly, the application for impleadment is allowed.

9. The plaintiff to carry out amendment and supply amended copies of plaint within three weeks.

20.06.2023
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