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A.No.3314 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2023

PRONOUNCED ON : 14.07.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.3314 of 2023
in
C.S.(Comm Div).No.153 of 2023

ITC Limited
Virginia House,
37, J.L. Nehru Road,
Kolkata – 700071
and also at
69 Pasumpon Muthuramalinga Thevar Road,
(Chamiers Road), Austin Nagar,
Nandanam, Chennai – 600 035

and also at
ITC Limited
Education & Stationary Products Business
ITC Centre, 4th and 5th Floor,
760 Anna Salai,
Chennai – 600002.

...Applicant

Vs.

Britannia Industries Ltd.,
Mr. Ravichandran Rajagopal
5/1A, Hungerford Street,
Kolkata – 700017
West Bengal, India

...Respondent



A.No.3314 of 2023

PRAYER: Judge's summon is filed under Order XIV Rule 8 of Original Side Rules read with Order 7 Rule 11 and Section 151 CPC to reject the plaint.

For Applicant : Mr. Vijay Narayanan
Senior Counsel

Mr. S.R.Rajagopal
Senior Counsel

Mr.Srinath Sridevan
Senior Counsel

for Mr.Arun C.Mohan.

For Respondent : Mr. P.S.Raman
Senior Counsel

for Mr. M.S.Bharath.

ORDER

The plaintiff who has approached this Court contemplating the grant of an urgent interim relief has been checkmated by the defendant, a giant in the consumer market; on a supposed plea that the suit as filed requires to be rejected on two grounds set out in the



petition which is detailed herein below:

(a) That the suit does not contemplate an urgent interim relief therefore failure to comply with the provisions of Section 12 A of the Commercial Courts Act of a pre-mediation settlement render the suit liable to be rejected; and

(b) The suit is not maintainable as it has neither been instituted by the plaintiff nor by an authorised person who has been specifically conferred with the power to institute the suit on behalf of the Company. This Contention is based on the following premise:

(i) The specific power dated 17.11.2020 granted to the agent is only to deal with activities of the Company which relate to the Regional Office within the overall parameters of the Company's policy and its day to day affairs. Since the suit did not pertain to the regional



office of the respondent at Chennai the suit as instituted is not maintainable.

(ii) The power to initiate and defend legal proceedings is given only in respect of the matters set out in the deed.

With these averments the application has been filed.

2. However, during the course of arguments the defendant / applicant has also questioned the Jurisdiction of the Court on the ground that the same has been filed only under Order IV Rule 1 CPC, Section 134 (2) of the Trade Marks Act and Section 62 (2) of the Copyright Act besides other Sections of these two Acts and therefore the suit being based on cause of action the institution of the suit without obtaining leave to sue is not maintainable.

3. Before dilating on the application and its contents the sequence of events from the institution of the suit till the filing of the application to reject the plaint has to necessarily be set out how a



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clever defendant can obstruct a plaintiff from his attempts to get an interim order and then use the provision of Section 12 A of the Act to its advantage. The interim applications were posted as a “*lunch motion*” case on 22.06.2023, without filing a caveat and even before the Court could take up the applications and order notice, the learned senior counsel for the defendant had taken notice and sought time to file their counter on 30.06.2023. The plaintiff was directed to serve the papers on the defendant and the matter was posted to 30.06.2023 for counter and defendants were directed to file their counter to the original applications by 28.06.2023. The papers are also stated to have been given immediately. On 30.06.2023, once again an adjournment was requested and the matter was listed finally on 07.07.2023 which was once again adjourned to 10.07.2023. The defendant / applicant had filed their counter in the interlocutory applications and simultaneously filed this application to reject the plaint on 30.06.2023. The above narrative is placed only to put in perspective the fact the even before the Court could apply its mind to the urgency in the application or the need for interim relief, the defendant had sought two adjournments for filing its counter and



has then come forward with the application. If the defendant were keen on a settlement, they could have, on the very first hearing, expressed their desire to have the matter sent to the State Legal Services Authority for mediating the dispute. Infact, nowhere in the application has the defendant expressed their desire for settlement. On the contrary, the attempt is to try to have the plaintiff's case dismissed at the threshold. The plaintiff has approached this Court with a case that the defendant who was all along wrapping a particular brand of biscuits in a different colour and get up, has now imitated the trade dress of the plaintiff's brand of biscuits.

4. The grounds on which the suit is challenged with the respective submissions are set out under distinctive heads below.

A. Failure to comply with the pre-mediation settlement contemplated under Section 12 A of the Act:

(i) Submissions:

5. The applicant / defendant's case is that the suit does not contemplate any urgency, since the plaintiff in his plaint would aver



knowledge of the impugned product in June 2023 in the plaint but the annexures filed along with the plaint would prove that the plaintiff was aware of the packaging in the 2nd week of May 2023 itself. It is their further contention that since the plaintiff had knowledge of the new trade dress atleast in the 2nd week of May and have moved this Court in the month of June 2023, there is no urgency as contemplated under Section 12 A of the Act. The plaintiff would refute these contentions by stating that the date in the annexure has been wrongly stated as 07.05.2023 which is evident from a perusal of the document itself and that an affidavit correcting the date as 07.06.2023 has been filed which would clearly demonstrate that the suit is filed without a delay.

(ii) Discussion:

6. These arguments have to be examined in the light of the Judgement in *Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited – 2022 (10) SCC 1*. In the aforesaid Judgement the Hon'ble Supreme Court has drawn the distinction between cases which have to observe the mandatory



rigour of Section 12 A pre-mediation settlement and those cases which do not have to go through the aforesaid settlement. The learned Judges have held that where the plaintiff makes out a case for an urgent interim relief then the mandatory pre-mediation settlement can be bye-passed. The plaintiff's case therefore has to be considered in this perspective as per the dicta of the Hon'ble Supreme Court. The plaintiff in para no.48 of the plaint has clearly set out that till 2022 the defendants product was being packaged in a red coloured wrapper. However, in June 2023 the plaintiff had come across the infringement by the defendant. The plaintiff came to know that the defendant has changed the colour scheme of its wrapper which now resembles the plaintiff's product both in colour, design and get up. In paragraph no.71 of the plaint, the plaintiff has set out the reason why they need an urgent interim relief. The plaintiff has also taken out interim applications in O.A.Nos.551 to 555 of 2023 for various interim reliefs. Further, the contention of the defendant that the plaintiff had knowledge about the infringement in the month of May 2023 and have instituted the suit in June 2023 has to necessarily be rejected as the reference to the



month of May 2023 in the documents is only a typographical error which has since been rectified. Therefore, the argument of the defendant that there is no urgency cannot be countenanced particularly when the plaintiff's case is that the infringement continues everyday and the same has been pleaded both in the plaint as well as the affidavit filed in support of the injunction applications. The aggressive manner in which the defendant has contested the reject the plaint application with hairsplitting arguments would clearly demonstrate that the defendant has no intention to enter in to a settlement. Therefore, the bar under 12 A fails. Therefore, the first ground seeking rejection of the plaint cannot be sustained.

B. Suit not instituted by a competent person:

(i) Submissions:

7. The defendant's case in this regard is that the person who has instituted the suit by signing / verifying the plaint, affidavit, vakalat etc is not authorised to file a suit for infringement, since the authority given to him is only restricted to the activities of the Regional Office. They would draw the attention of the Court to the



contents of the power of attorney to buttress this argument. Though no contention regarding the failure to file the affidavit contemplated under Rule 16 of the Civil Rules of Practice had been raised in the application, an argument on these lines were advanced. The defendant would contend that the mandatory provision has not been followed and therefore, the institution of the suit is bad. It was also their case that the institution does not comply with the requirement of Order XXIX Rule 1 of the Code of Civil Procedure. They would argue that the defect is not a curable defect. In support of the aforesaid arguments, the defendants would rely upon the following Judgements:

(i) **2010 SCC Online Mad 6539** – Schmenger GMBH and Company Leder Vs., Saddler Shoes Private Limited.

(ii) **AIR 1991 Del 25** – Nibro Limited Vs. National Insurance Co., Ltd.,

(iii) Unreported Judgement in **C.R.P.(PD).No.1584 of 2012** – K.Malliga and others Vs. Pangaja Malar.



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8. The learned senior counsel appearing on behalf of the plaintiff / respondent would submit that the infringement of the products of the plaintiff would definitely be a part of the activities of the Regional Office and further even assuming it does not, then Clause 1.1 (m) of the power deed empowers the Power Agent to make applications to authorities touching up matters relating to either Central or State laws that may be applicable from time to time and a challenge based on trade marks would definitely fall within this authority given to the Power Agent. He would further submit that this defect is curable and would rely upon the Judgement reported in *2006 (1) SCC 75 - Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another.* The Hon'ble Supreme Court has held that the defect in the authority of the person signing will not invalidate the proceedings. He would place reliance on para nos.15 and 16 thereon.

(ii) Discussion:

9. The arguments on the part of the defendant that the signatory of the plaint, vakalat and affidavit is not competent to



institute the suit fails for the simple reason that an infringement of the product noticed within the city of Chennai would definitely fall within the authority given to the said Ravichandran Rajagopal who also happens to be a responsible officer i.e., Regional Commercial and Finance Manager of the Regional Office, Chennai. Therefore, the said Ravichandran Rajagopal has been clothed with authority by the Board Resolution and Power deed dated 15.10.2020 to institute the instant suit. Further, the Hon'ble Supreme Court in the Judgement reported as ***United Bank of India Vs. Naresh Kumar and other – 1996 (6) SCC 660***, would state as follows in paragraph no.10:

"It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure,



therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be



expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by it's officer"

10. Therefore, it is clearly evident that the institution of the suit by the said Ravichandran Rajagopal can be ratified at any time by the Board. The defendants have not stated that the said



Ravichandran Rajagopal is not an officer of the plaintiff company.

Therefore, applying the principles laid down by the Hon'ble Supreme Court in the case of *United Bank of India* supra this contention of the defendant / applicant has also to fail

C. Lack of Jurisdiction:

(i) Submissions:

11. As already set out, this is a plea taken during the course of the arguments. The arguments of the defendant / applicant in this regard can be broken down as follows:

(i) The suit has been instituted invoking the provisions of Section 134 (2) of the Trade Marks Act and Section 62 (2) of the Copy Right Act and since the plaintiff does not have any office within the jurisdiction of this Court, the plaint has to be rejected. In this regard attention of the Court is drawn to the short cause title in the plaint where the address of the plaintiff is given as Kolkata. They would also submit that the statement in paragraph no.79 of the plaint that “the plaintiff is carrying on business within the jurisdiction of this Hon'ble Court” is a false statement and an



attempt to clothe this Court with jurisdiction since the plaintiff has no place of business within the jurisdiction of this Court. It is their contention that the plaintiff's place of business is in Ambattur outside the jurisdiction of this Court.

(ii) Even assuming that the plaintiff has laid the suit on the basis of cause of action, only a part of the cause of action has arisen within the jurisdiction of this Court and the suit filed without seeking leave of the Court as contemplated under Clause 12 of the Letters Patent is also a ground to reject the plaint. An argument was also made that the plaintiff cannot rely on Clause 12 since the plaint has not been filed under Clause 12 of the Letters Patent and therefore the jurisdiction of Courts detailed in Clause 12 of the Letters Patent cannot be invoked by the plaintiff.

12. The learned counsel for the plaintiff would counter these contentions by stating that while considering an application for rejecting the plaint, this Court should be guided only by the averments in the plaint and the documents filed along with the plaint. In this regard, he would rely on paragraph nos.4, 76, 77 and



79 of the plaint where the plaintiff has set out in detail the fact that the defendant is carrying on business within the Jurisdiction of this Court. In short, the learned counsel would submit that this Court has jurisdiction since the defendant is carrying on business within the jurisdiction of this Court.

13. In support of his arguments he would rely on a Judgement of a Single Judge of this Court reported in *2005 (4) LW 503 – Officine Lovato Vs. Ajay Kumar Aggarwal and another*, confirmed by the Division Bench of this Court reported in *2005 (4) LW 303 - Ajay Kumar Aggarwal and another Vs. Officine Lovato*, where this Court has held that the introduction of Section 134 (2) of the Trade Marks Act is only an additional option of a jurisdiction given to the plaintiff which does not effect the existing rights to sue already available to the plaintiff.

(ii) Discussion:

14. As rightly pointed out by the learned counsel for the plaintiff while considering an application to reject the plaint this



Court is only guided by the averments in the plaint. The Hon'ble Supreme Court in the Judgement reported in **2008 (12) SCC 661 – *Kamala and others Vs. K.T.Eshwara Sa and others*** has observed that while considering a petition filed under Order VII Rule 1 CPC the Court should be guided only by the averments in the plaint and the documents filed along with the plaint.

15. In this regard useful reference can be made to some of the averments contained in the plaint which are extracted herein below:

“4.The Defendant is ITC Ltd. having address at, Virginia House, 37 Jawaharlal Nehru Road Kolkata, also at Number 69, Pasumpon Muthuramalinga Thevar Rd, Austin Nagar, Nandanam, Chennai, Tamil Nadu, also at ITC Limited, Education & Stationery Products Business, ITC Centre, 5th Floor, 760 Anna Salai, Chennai 600 002.

70.The Defendant ITC Limited, appears to be engaged in marketing of the Impugned Product.



The Defendant No. 1 has its office at Virginia House, 37 Jawaharlal Nehru Road Kolkata, West Bengal - 700071 and its office at Number 69, Pasumpon Muthuramalinga Thevar Rd, Austin Nagar, Nandanam, Chennai, Tamil Nadu. The impugned products of the Defendant are available for sale in Chennai, within the jurisdiction of this Hon'ble Court. Copies of the invoice indicating the sale of the infringing products are filed herewith in the present proceedings. The impugned products of the Defendant are also advertised on YouTube, extracts of which are filed herewith in the present proceedings.

79.This Hon'ble Court has the necessary territorial jurisdiction to entertain and try the present action by virtue of Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, as the suit is inter alia for infringement of registered trademark, trade dress



and Copyright of the Plaintiff, being the registered proprietor of the trademark and as well as its copyright on the artistic work; the plaintiff's is carrying on business within the jurisdiction of this Hon'ble Court. The Defendant is situated in Chennai and the infringing products are available for sale within the jurisdiction of this Hon'ble Court.

A perusal of these averments would clearly show that the plaintiff has also invoked the jurisdiction of this Court by virtue of the defendant carrying on business within the Jurisdiction of this Court which falls within the 3rd category provided under Clause 12 of the Letters Patent.

16. Further, in the Judgement reported in **2005 (4) LW 503 – *Officine Lovato Vs. Ajay Kumar Aggarwal and another***, a single Judge of this Court has observed as follows:

“The change brought about under section 134(2) of the new Act is only giving an additional option to the



party complaining of infringement of trademark to go before a court within whose jurisdiction he carries on business and such a change does not affect the existing rights available under the old Act namely, under section 105 of the old Act, which is imparie materia with section 134(1) of the new Act. All the case laws referred to above are rendered in the context of section 105 of the old Act. Therefore I have no difficulty at all in holding that the situs of the trade mark (stated to be infringed), being situated in the appropriate office of the Trade Marks Registry at Chennai, would give a cause of action for the plaintiff to come before this court.”

In the instant case “*situs of the Trade mark*” has to be substituted with “*where the defendant is carrying on business*”.

17. This order was confirmed by the Division Bench reported **2005 (4) LW 303 - Ajay Kumar Aggarwal and another Vs. Officine Lovato**. The Hon'ble Division Bench has observed as



follows:

“10. The above Act has been repealed by the [Trade Marks Act, 1999](#) and most of the provisions have been re-enacted in the present Act. So far as [Section 134\(2\)](#) is concerned, there was no such corresponding provision under the Trade and Merchandise Marks Act, 1958. The object of incorporating [Section 134\(2\)](#) of the Trade Marks Act, 1999, is to bring such provision in line with the similar provisions contained in the [Copyright Act, 1957](#). The provision contained in [Section 134\(2\)](#) of the Trade Marks Act, 1999, and [Section 62\(2\)](#) of the Copyright Act, 1957, contain additional provision relating to jurisdiction regarding filing of suit. These provisions supplement the ordinary provisions relating to filing of suit and do not supplant such provisions. Reading together all these provisions along with the provisions contained in the Code of Civil Procedure makes it clear that the suit can be filed in a place where the cause of



action or part of cause of action has arisen or even where the defendant resides. In addition to the normal provisions contained in the Code of Civil Procedure, the provisions in [Section 134\(2\)](#) of the Trade Marks Act, 1999 and [Section 62\(2\)](#) of the Copyright Act, 1957 contemplate that the suits can also be filed where the person instituting the suit actually and voluntarily resides or carries on business or personally works for gain.”

Therefore from the above discussion it is clearly evident that this Court has the jurisdiction to entertain the suit by reason of the defendant carrying on business within the jurisdiction of this Court.

18. The argument of the defendant that since the suit is not filed under Clause 12 of the Letters Patent, this Court has no jurisdiction has to be repelled on the ground that the original side rules of this Court has been formulated only on the basis of the Letters Patent which has conferred jurisdiction on this High Court. Clause 11 confers the local limits of the ordinary original



jurisdiction of the High Court and Clause 12 confers the Court with original jurisdiction as to the suits. The suit is filed under Order IV Rule 1 of the Original Side Rules which emanates from the Letters Patent. In the Judgement reported in **2016 (1) CTC 257 – S.Vatsala Vs. K.S.Mohan and others**, this Court has held as follows:

“It has also become necessary to point out that the Letters Patent is a special charter conferring jurisdiction on Chartered High Courts based on which the Original Side Rules are formulated and as such, when there is a special enactment such as the Letters Patent, which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is totally unnecessary and in fact, futile to refer to another legislation, which may not be applicable, to determine the jurisdiction of the Chartered High Court.”

19. Therefore, the non-mentioning of the provision Clause 12 of the Letters Patent is not fatal to the case of the plaintiff and



neither does it put any fetter on this Court's Jurisdiction to consider whether the defendant comes within the Jurisdiction of this Court either in the form of residence / carrying on business / works personally for gain. The person who has filed the affidavit in support of the application for rejecting the plaint has described himself as Branch Manager and has set out his address as follows:

“Christopher Jegam, S/o. Mr.Maria Eugene Leo Jegam, aged about 34 years working for gain at 4th floor, 760, Anna Salai, Chennai – 600 002”.

20. Therefore, it is crystal clear that the defendant's are carrying on business within the jurisdiction of this Court. This coupled with the averments contained in the paragraphs of the plaint extracted supra clearly brings out the plaintiff has pleaded that the defendant is carrying on business within the Jurisdiction of this Court. Therefore, taking note of the fact that the suit is one filed in the original side of this Chartered High Court, which has been conferred with the power under Letters Patent, the argument of the defendant that the suit is not maintainable as it has not been filed



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invoking the provisions of Clause 12 is not maintainable and has to necessarily be rejected.

21. In fine, the application seeking rejection of the plaint has to be dismissed and is accordingly dismissed.

22. Post O.A.Nos. 551 to 555 of 2023 and A.No.3147 of 2023 in C.S(Comm. Div).No.153 of 2023 on 17.07.2023.

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Index : Yes/No
Internet : Yes/No
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Pre-Delivery Judgment in
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