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C.M.P.Nos.17834 & 17837 of 2023

and

A.S.No.574 of 2024

SATHI KUMAR SUKUMARA KURUP,J.

The learned Counsel for the Appellant submitted that the Petitioner/Appellant was the Plaintiff in O.S.No.198 of 2019. As per the contention of the learned Counsel for the Petitioner/Appellant, the Plaintiff had registered the design of forklift vehicle which is basically Tractor modified with an attachment of forklift to be used by the Industries as well as Farmers and other business purposes instead of Tractor used only by Farmers. The Plaintiff came to know that the second Defendant had approached the first Defendant for the same attachment for his Tractor. Therefore, for violation of designs which he had registered with the appropriate authority as per the Designs Act, 2000, he had filed the Suit before the learned Principal District Judge which is a competent Court as per the Designs Act, 2000. After filing of the Suit, the learned Principal District Judge had transferred the Suit to the learned Sub Judge, Ponneri as the subject matter involved was within the territorial jurisdiction of Court at Ponneri.



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2. The learned Counsel for the Appellant further submitted that the District Court itself ought to have disposed off the case as it involved dispute regarding the Designs Act. The learned Additional Sub Judge, after full trial, by Judgment dated 07.11.2023 in O.S.No.190 of 2023 dismissed the claim of the Plaintiff. Aggrieved by the same, the Plaintiff had preferred this Appeal.

3. The learned Counsel for the Petitioner/Appellant invited the attention of this Court to the averments in the Plaint in O.S.No.190 of 2023 particularly, with regard to the cause of action and relief sought by the Plaintiff. Also, he invited the attention of this Court to the Provisions of Sections 22 and 38 of the Designs Act which reads as follows:

Section 22- Piracy of registered design – (1) During the existence of copyright in any design it shall not be lawful for any person -

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in



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any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

Section 38 – Certificate of Controller to be evidence.

A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

4. He also invited the attention of this Court to the Provisions of Sections

6 and 7 of the Commercial Courts Act which reads as follows:

Section 6 – Jurisdiction of Commercial Court

The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—*All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:*



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Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

5. The learned Counsel for the Petitioner/Appellant invited the attention of this Court to the discussion of evidence and the finding of the learned Additional Sub Judge, Ponneri in Paragraph Nos.4 and 5 at page 93 and also to the documents filed by the Plaintiff as Ex.A-1 to Ex.A-5. Ex.A-1 is the registration for the design developed by the Plaintiff. It is the submission of the learned Counsel for the Appellant/Petitioner that the learned Judge failed to appreciate the fact in the light of the Designs Act and in the light of the documents furnished by him. Therefore, he seeks to set aside the order of the learned Additional District Judge, Ponneri in O.S.No.190 of 2023 dated 07.11.2023. Pending Appeal, he seeks injunction in CMP.Nos.17834 and 17837 of 2023.



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6. Issue notice to the Respondents 1 and 2 returnable in four weeks.

Private notice is also permitted.

7. There shall be an order of interim injunction until further orders.

Call after four weeks.

22.08.2024

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dh

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