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RESERVED ON : 15.02.2022

PRONOUNCED ON : 02.06.2023

C.SARAVANAN, J.

This application has been filed by the first and second defendants under Order VII Rule 11 of C.P.C. to reject the plaint filed by the respondents herein (plaintiffs in the above suit)

2. The above suit was filed by the respondents (plaintiffs) herein for the following reliefs:-

- (a)Permanent Injunction, restraining the Defendants 1 to 4, by themselves, their directors, successors-in-business, servants, employees, agents, representatives, and all other persons claiming under them from in any manner carrying on business, trading, providing services directly or indirectly by using Trade name/Trading style M/s Kalis Sparkling Water Put Ltd., M/s Kali Aerated Water Works Put Ltd., M/s Kalimark Hotels and Resort Pvt. Ltd., M/s Kalimark Flavours Pvt Ltd. or in any business or services by using the word Kali, Kalimark,Bovonto or any other similar trade name / trading style in any other manner whatsoever;
- (b)Permanent Injunction, restraining the Defendants



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1 to 4, by themselves their Directors, partners, men, distributors, stockiest, agents, servants, retailers, wholesalers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in goods, aerated water / soft drinks, Syrups, Fruit Drinks, Fruit Juice and other preparations for making beverages identical or for any other goods deceptively similar under the Trademarks Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, Club Soda, Solo, Captain or any other Trade Mark resembling to the trademarks belong to the Nine parties to the Mutual Agreement dated 12.03.1993 or any other Mark which is identical or deceptively similar to the Plaintiffs Trade Mark or in any other manner whatsoever;

(c)Permanent Injunction, restraining the Defendants 1 to 4, by themselves their Directors, partners, men, distributors, stockiest, agents, servants, retailers, wholesalers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in goods, aerated water/ soft drinks, Syrups, Fruit Drinks, Fruit Juice and other preparations for making beverages identical or for any other goods by infringing the copyright over the artistic work, identical colour scheme, layout, get-up and lettering style, trade dress in the labels Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, Club Soda, Solo, Captain by use of the same or any mark deceptively similar to that of the artistic work belong to the Nine parties to the Mutual Agreement dated



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12.03.1993 or by use of identical or deceptively similar trading style and/or artistic work in any other manner whatsoever;

- (d) Permanent Injunction restraining the Defendants 1 to 4, by themselves or their men, distributors, stockists, retailers, servants, agents, franchises, successors-in-interest, licensees, assignees, representatives or any other person claiming under them from in any manner Passing off or enabling others to Pass off Defendants 1 to 4 goods, aerated water / soft drinks, Syrups, Fruit Drinks, Fruit Juice or any other goods under the trademarks Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, Club Soda, Solo, Captain or any other deceptively similar Trademark as that of the trademarks belong to the Nine parties to the Mutual Agreement dated 12.03.1993 and Plaintiffs or in any other manner whatsoever;
- (e) Permanent Injunction, restraining the Defendants 5 to 15, from starting any firm / company or any other entity or in any business or services by using the trade name / trade style Kali, Kalimark, Bovonto or any other name deceptively similar to the trade name M/s. Kali Aerated Water Works Pt Ltd or any other Trade Mark resembling to the trademarks belong to the Nine parties to the Mutual Agreement dated 12.03.1993 or any other Mark which is identical or deceptively similar to the Plaintiffs Trade Mark or in any other manner directly or indirectly whatsoever;
- (f) to declare the assignment deed dated 10.01.2014 registered as Doc. No.10 of 2014 in the office of the Sub - Registrar, Alandur executed by



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Defendants 5 to 12, 14, 16 to 19 infavour of the 2nd Defendant in respect of Schedule "A" mentioned Trademarks and consequently transferred infavour of the 2nd Defendant by the Registrar of Trademarks, Chennai is null and void;

- (g)to declare the supplementary assignment deed dated 20.01.2014 executed by the 8th Defendant infavour of the 2nd Defendant in respect of Schedule 'B' mentioned Trademarks and consequently transferred infavour of the 2nd Defendant by the Registrar of Trademarks, Chennai is null and void;
- (h)to declare the assignment deeds dated 18.09.2015 executed by the Defendants 5, 8 to 10 infavour of the 2nd Defendant in respect of Schedule 'C' mentioned Trademarks and consequently transferred infavour of the 2nd Defendant by the Registrar of Trademarks, Chennai is null and void;
- (i) to declare that the Defendants 5 to 10 have lost their right to use the trade name M/s. Kali Aerated Water Works Pvt. Ltd. and other associated trademarks Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, ClubSoda, Solo, Captain, etc., as per Clause (U) of the Mutual Agreement dated 12.03.1993;
- (j) directing the Defendants 1 to 15 to deliver, for destruction, to the Plaintiffs of their preparations, articles, literatures, advertisements, cartons, labels, papers, aerated water, soft drinks, glass bottles, fruit juice,cool drink bottles, pet bottles, paper bags, tetra bags, jute



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bags, wrappers, gunny bags, visiting cards, letterheads, and all other things bearing and containing the Trade name / Trading style M/s. Kalis Sparkling Water Pvt. Ltd., M/s. Kali Aerated Water Works Pvt. Ltd., M/s. Kalimark Hotels and Resort Pvt. Ltd., M/s. Kalimark Flavours Pvt. Ltd and trademarks Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, Club Soda, Solo, Captain, etc., to the authorised representative of the Plaintiffs for destruction;

- (k) to pass a preliminary decree in favor of the Plaintiffs directing the Defendants 1 to 15 to render accounts of profits made by them by use of the impugned Trade name / Trading style M/s. Kalis Sparkling Water Pvt. Ltd., M/s. Kali Aerated Water Works Pvt. Ltd., M/s. Kalimark Hotels and Resort Pvt. Ltd., M/s. Kalimark Flavours Pvt. Ltd and trademarks Kali, Kalimark, Kali Kola, Bovonto, Frutang, TRIO, Club Soda, Solo, Captain, etc., or other similar marks thereof and deceive thereof and a final decree be passed infavour of the Plaintiffs for the amount of profits found to have been earned by the Defendants, after the latter has rendered accounts;
- (l) directing the Defendants 1 to 19 to pay to the Plaintiffs the costs to the suits, and

3. In the suit, written statement has also been filed by the second defendant 05.11.2022. After filing of the written statement, the first and second defendants have now filed the above application to reject the plaint.



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4. In the affidavit filed in support of the present application, the applicants (the first and the second defendants) has stated that the fifteenth defendant was initially inducted as a Director of the first defendant and thereafter was made a Joint Director of second defendant company. It is submitted that the fifteenth defendant was never a shareholder either in the first or second defendant company. As on date it is a matter of record that the said fifteenth defendant had also resigned on 15.11.2022 which also recorded before the Registrar of Company as reflected in the records of ROC dated 14.02.2023.

5. Only by quoting induction of the fifteenth defendant and assignment of Trademarks to the second defendant as violation to Deed of the Mutual Agreement (DOMA) dated 12.03.1993, the second respondent/plaintiff along with defendants, initiated Arbitration proceedings on 04.08.2016 for certain declaratory reliefs and consequential compensation which was rejected on the premise as per the Arbitration Award dated 18.07.2018 that the dispute was not maintainable as per the terms of DOMA.



6. It is submitted that the plaintiffs did not choose to initiate appropriate legal action for redressal of their alleged grievances before this Court within the period of limitation. It is submitted that the present suit is hopelessly time barred. The first plaintiff though not a party before the Arbitration proceedings had joined the second plaintiff in the present suit to get over the limitation.

7. It is the case of the applicants in the present application that the Trademark dispute cannot be initiated by the second plaintiff independently as he is not a registered proprietor Trademark till this date and the first plaintiff had obtained registration of Trade Mark only in the year 2016 after having abandoning it in the year 2000. Hence only after registration of the Trade Mark on 27.10.2016, the second plaintiff joined with the first plaintiff to initiate the present suit.

8. It is submitted that under the Law of Limitation, any dispute to be raised by an aggrieved party ought to have been made within the period of limitation as per general provision relating to law of limitation, from the date of injury, prejudice and grievance occasioned.

9. It is submitted that the cause of action as pleaded in the plaint by the



respondents/plaintiffs does not reflect a grievance. In any event, it is not within the period of limitation as is contemplated under law. Hence, the present suit has to be rejected on the ground of inordinate and unexplained delay, latches on part of the plaintiffs on their alleged grievances, which admittedly occurred in the year 2010/2014 respectively.

10. It is submitted that though the cause of action pleaded in the plaint does not reflect the grievance of plaintiffs it is still not within the period of limitation as is contemplated under law. Hence the plaint is liable to be rejected on the ground of inordinate and unexplained delay, latches on part of the plaintiffs on their alleged grievances, which admittedly occurred in the year 2010/2014 respectively. It is further submitted that the second respondent/plaintiff received profit as a shareholder from and out of the first applicant/defendant company in 2013 and thereafter instigated the other family members to disrupt the functioning of the company and also initiated Arbitration proceedings.



11. Thereafter, in 2013, the second applicant (the second defendant company) was incorporated to carry on the trade of the family as licensor of the trademark as per the DOMA within the family members and signatories of DOMA. Through out the incorporation of both the companies, the plaintiffs herein had knowledge about the incorporation existence, function and assignment of trademark, but chose to remain silent all along and initiated the present suit now for multiple reliefs.

12. The learned counsel for the respondents/plaintiffs submits that the dispute arose only after incorporation of the second defendant Company. Immediately, the second plaintiff raised objection. Subsequently, when the second plaintiff came to know the unlawful assignment deeds in the year 2016, the Arbitration Proceedings was initiated whereby he questioned the assignments of the Trade Marks to the second defendant.

13. Hence, the acts of the Defendants were questioned in the year 2016. The use of the Mark by the Second Defendant was opposed. As DOMA contemplate resolution of dispute by way of Arbitration and conciliation, hence the proceeding was initiated and thus opposed the use of



the Trademark by the second defendant.

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14. It is submitted that the applicants (the first and second defendants herein) filed vexatious Application under Section 12-A of the Commercial Courts Act in Appln.No.4151 of 2022, to which the plaintiff filed in detailed counter as Mediation was referred by this Court by order dated 26.07.2022 and appointed Hon'ble Mr.Justice K.N.Basha retired Judge of this Hon'ble Court as a Mediator. However, Mediation did not resolve the dispute. Thus, the Mediator sent the failure report. Thereafter, the present Application was filed. Now come up with the present application only to drag and delay the proceedings.

15. The learned counsel for the respondents/plaintiffs submits that the first plaintiff Company has no right over the Trademark and the manufactured products are only to be sold to the co-owners of Trademark, under DOMA. There was no Trademark dispute with the first defendant Company as per their original agreement. Dispute arose after the second defendant company was incorporated and assignment of Trademarks were made in its favour of the second defendant company during the year 2014.



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16. The learned counsel further submitted that notice issued by the respondents dated 27.04.2016 and initiated Arbitration Proceedings. The first and second applicants were also impleaded as party to the proceedings and Assignment of Trademarks was also questioned. But due to the technical plea, the Arbitration Tribunal passed an award dated 18.07.2018 that the disputes between the parties to be only decided by “ Public Fora” . Further, the Directors of the second defendant Company incorporated third and fourth defendants' Companies in the year 2019 and 2020 respectively. They have also filed various Trademarks Applications for other goods under various Classes. Hence, the Composite Suit was filed impleading all the parties and reliefs were prayed.

17. The learned counsel further submitted that as the dispute between the brothers and the Deed of Mutual Agreement (DOMA) provided a clause for Arbitration and Conciliation. Hence the proceeding was initiated and opposed the use of the Trademark by the second defendant.

18. I have heard the learned senior counsel for the applicants (first



and second defendants) and the learned counsel for the respondents
(plaintiffs)

19. The question of rejecting a plaint under Order VII Rule 11 of C.P.C. is confined only to clause (a) and (d) of Order VII Rule 11 of C.P.C. in view of Rule 3(1) of Order XLIX of C.P.C. which reads as under:-

Application of rules :- The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

(1) rule 10 and rule 11, clauses (b) and (c) of Order VII;

20. It is the case of the applicants (first and second defendants) that the suit is hopelessly time barred in as much as the cause of action had arisen in 2014 when the second applicant/defendant was incorporated on 06.12.2013 under the Companies Act, 2013 and when there was an assignment of marks by rest of the family members of P.V.S.K.Palaniappa Nadar .



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21. The facts on record indicate that a legal notice dated 27.04.2016 was issued by the second plaintiff, twentieth and the twenty first defendant to the fifth defendants to tenth defendants, pursuant to which, arbitration proceedings came to be initiated under the arbitration clause in the Deed of Memorandum of Agreement dated 12.03.1993 between the family members and the signatory.

22. Arbitration proceedings ultimately culminated in passing of an award dated 18.07.2018. As per the award dated 18.07.2018 in the Arbitration proceeding, the parties were directed to work out remedy in a public forum. It is pursuant to the above, the present suit has been filed before this Court on 19.04.2022 by the respondents/plaintiffs 1 and 2 for the above relief . The present suit could have been immediately thereafter or within three years. However, during the interregnum, there was a large scale disruption due to out-break of Covid-19 Pandemic during March 2020.

23. Therefore, rejection of plaint on account of limitation cannot be countenanced. The law is also well settled. The Courts have also repeatedly



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held that limitation is a mixed question of facts and law. It cannot be decided at an interlocutory stage. Court is merely required to look into averments in the plaint as to whether it discloses cause of action.

24. The Court is also not expected to look into evidence produced by the defendants or averments in the written statement of the defendant. The Court is also not required to look into sufficiency of cause of action. Therefore, there is no merits in the present application although elaborate submissions were made on either side touching on the merits of the case. The Court is not required to look into the merits of case which is to be decided only after Trial and detailed arguments.

25. In my view, this application filed for rejecting the plaint is liable to be rejected and accordingly rejected.

02.06.2023

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C.SARAVANAN,J.

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Pre-delivery Order in A.No.25 of 2023
in C.S.(Comm.Div)No.118 of 2022

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