



C.M.A.(MD)No.429 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.429 of 2009

and

M.P(MD)No.1 of 2009

R.Veerawamy

.. Appellant / Respondent /
Defendant

Vs.

R.Kanagaraj

.. Respondent /Petitioner/
Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Section 104 of the Civil Procedure Code, against the order of a temporary injunction granted in favour of the respondent against the appellant restraining him from in any manner infringing the respondent's trade label New Colour Toy registered under the trade mark No.976591 till the disposal of the suit, dated 22.04.2009 in I.A.No.142 of 2008 in O.S.No.26 of 2008 on



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the file of the learned Principal District Judge, Srivilliputhur.

For Appellant : Mr.V.Sasikumar

For Respondent : No appearance

JUDGMENT

It is the matter arising out of the interim order passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur regarding the infringement of trade mark, a suit for infringement of trade mark and passing off registered mark of the plaintiff was filed against the defendant who is the appellant herein. In the said suit, the trial Court granted interim injunction. Being aggrieved, the present Civil Miscellaneous Appeal is filed and interim stay was granted in this appeal on 21.05.2009. By efflux of time, it is not brought to the notice of this Court that the plaintiff himself has lost the registration on 10.08.2011 by virtue of the order passed by the Industrial Dispute. This was challenged by the plaintiff before the Hon'ble Supreme Court and the Hon'ble Supreme Court also declined to entertain his appeal. Thus after the dismissal of SLA on 03.02.2012, the plaintiff/respondent herein has lost locus to maintain the suit.



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2. The learned counsel for the appellant has circulated the order of the IPAB passed on 10.08.2011 as well as the order passed by the Supreme Court in SLA(C).5844/2012 dated 03.02.2012.

3. In the light of the above fact, this Court is of the opinion that the plaintiff, in view of the cancellation of the registration, has *prima facie* lost his right to sustain the suit for infringement of trade mark. However, the cause of action and right to sue against the appellant/defendant herein for infringement survives. Any event the interim order granted by the trial Court may not be sustained.

4. Accordingly, this Civil Miscellaneous Appeal is disposed of with a direction to the trial Court to convert the suit as a commercial dispute and take up the matter for trial as per the time frame fixed under the Commercial Courts Act, 2015, and dispose the main suit. No Costs. Consequently, connected miscellaneous petition is closed.

08.02.2023

Index : Yes/No
Internet : Yes
PJJ



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DR.G.JAYACHANDRAN, J.

PJL

To
The Principal District Judge,
Srivilliputhur.

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