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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th May, 2023

+ CS(COMM) 292/2023, I.A. 9023-9026/2023

JUST SPRAY MARKETING PRIVATE LIMITED & ANR.

..... Plaintiffs

Through: Mr. V.K. Puri, Mr. Deepak Dhyani
and Mr. Varshesh Khurana,
Advocates.

versus

**DEVENDRA KUMAR SACHDEVA TRADING AS M/S AISAN
AGENCIES**

..... Defendant

Through: Mr. Gurpreet Singh Sethi and
Mr. Yogesh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

1. Having suffered a defeat in the initial suit, the Plaintiffs have come to Court with the present suit, which is based on the same cause of action and seeks nearly identical reliefs. This time again, Plaintiffs claim prior user rights and pray for restraining the Defendant from infringing and passing off their

trademarks / artistic work, “KOBE,  ” [hereinafter “**Subject Trademarks**”], while seeking damages, rendition of accounts and delivery up, among other reliefs.

2. Except for the mark ‘’, Plaintiffs have no statutory rights in

the afore-noted marks. On the other hand, Defendant is the registered proprietor of the word mark 'KOBE' bearing No. 1971064 in Class 2 since 26th May, 2010. Nonetheless, Plaintiffs assert that they are the prior user of the Subject Trademarks and on that basis allege that the trademarks "KOBE"/



" " being used by the Defendant [*hereinafter "Impugned Trademarks"*] in respect of identical goods (spray paint, paint colours, varnishes/preservatives against rust, etc.) are identical/ deceptively similar to afore-noted Subject Trademarks. Thus, Plaintiffs allege passing off and infringement.

3. Undisputedly, the Impugned Trademarks and the products associated with them are virtually identical to the Subject Trademarks (except the mark 'Kobbe'). However, despite the visual, phonetic and structurally similarities, the instant suit is not maintainable. To understand the Court's analysis and reasoning, it is essential to delve into the factual background leading to the filing of the instant suit:-

3.1. Plaintiff No. 1 earlier filed a suit [CS (COMM) 1866/2019¹] before the District Judge (Commercial)-01, Central, Tis Hazari Courts. The said suit was filed for a permanent and mandatory injunction restraining Defendant from



passing off subject trademark "KOBE"/ " ", dilution and rendition of accounts, among other reliefs. In the said suit, Plaintiff No. 1 asserted its trademark rights in the Impugned Trademarks as having been adopted by its

¹ Titled *M/s Just Spray Marketing Pvt. Ltd. v. Sh. Devendra Kumar Sachdeva*.

predecessor Sh. Vijay Kumar Aggarwal, Plaintiff No. 2 (formerly trading as M/s Hindustan Traders), the authorised representative of Plaintiff No. 1, and sought the following reliefs (as recorded in the judgment dated 21st December, 2022):-

“a. An order of permanent prohibitory injunction restraining the defendant, his principal officers, franchise, any agent, assignees, family members, licensees and anyone acting for and on his behalf from manufacturing, selling, offering for sale, advertising or promoting including by way of internet or physically the impugned goods i.e. paint spray, paint colours, varnishes, preservatives against rust including in class 2 and other allied goods / Identical / similar goods under the Impugned trademark KOBE or any other mark which is identical / deceptively and confusingly similar to the



plaintiff's trademark KOBE and along with identical / similar colour combination scheme / packaging / getup/ artistic work that may cause the passing off the defendant's impugned goods as that of the plaintiff.

b. A decree of mandatory Injunction against the defendant, his principal officers, franchise, any agent assignees, family members, licensees and anyone acting for to delivery up of all the infringing advertisements, promotional materials bearing the impugned trademarks KOBE and all account books related to selling, distribution and advertising with impugned trademark.

c. An order for destruction of all blocks, dies, packaging material, packaging strips, wrappers, labels, plastic packaging boxes, handbags, etc. bearing impugned trademark KOBE of the defendants or any other mark Identical with or deceptively and confusingly similar with trademark KOBE and



of the plaintiff in the presence of plaintiff's representative.

d. A decree for recovery of damages against the defendant to amount of profits on its rendition of account along with Interest @ 18% per annum Illegally earned by the defendant by selling the Impugned goods under the

Impugned trademark as those of the plaintiff's trademark”

3.2. The issues in the afore-said suit were framed *vide* order dated 18th November, 2021, as follows:-

- “1. Whether the plaintiff is entitled to decree for prohibitory injunction restraining the defendant or his servants, agents or person claiming under him from manufacturing, selling, offering for sale, advertising or promoting, including by way of internet or physically the impugned goods i.e., “Paint Spray, Paint Colours, varnishes, preservatives against rust including in class 02” and other allied goods / identical / similar goods under the impugned trademark “KOBE” or any other mark which is identical / deceptively and confusingly similar to the plaintiff’s trademark? OPP.*
- 2. Whether the plaintiff is entitled to delivery up o all the infringing advertisements, promotional materials bearing the plaintiff’s trademark “KOBE”? OPP.*
- 3. Whether the plaintiff is entitled to decree for rendition of accounts of profits earned by the defendant by infringing its trademark? OPP.*
- 4. Who is entitled to the costs, against whom and in what quantum? OP Parties.*
- 5. Whether the present suit is not filed by a competent person in view of the preliminary objection No. 2 of the written statement? OPD.*
- 6. Relief.”*

[Emphasis Supplied]

3.3. The said suit went to trial and both parties led evidence. On the first issue, pertaining the use of the Impugned Marks, Plaintiff No. 1 attempted to establish itself to be the prior user. On the basis of oral testimonies of the witnesses and documentary evidence produced, the District Judge gave his findings in the judgement dated 21st December, 2022 as follows:

“38. On analyzing the testimony of PW1, I found that though in his evidence affidavit he has deposed that plaintiff was using the trade mark Kobe since year 2006 but in his cross examination he stated that he does not remember when first time the plaintiff company has applied for registration of trademark KOBE with the Registrar of Trademarks and voluntarily stated that he can tell the same after seeing the document but he was not able to locate the document on the judicial file from which he could tell when the plaintiff company applied for registration of trademark. He further deposed that the plaintiff company is using the trademark KOBE from the year 2010. He stated that he does not know when the plaintiff company was incorporated

but vol. deposed that he joined the plaintiff company in the year 2006, whereas according to plaint and his evidence affidavit Ex. PW1/A plaintiff company was formed in year 2011. He further deposed that M/s. Hindustan Traders was closed in the year 2010 but as per plaint, and his evidence affidavit Ex. PW1/A, M/s. Hindustan Traders was ceased to work in the year 2013. Further, if plaintiff was formed in the year 2011 how he can work in the same in the year 2006. He further stated that defendant is using the aforesaid trademark since last 10-12 years whereas according to plaint, plaintiff formed in year 2018 during search of market that defendant is engaged in the business of manufacturing /selling paint spray etc. Hence, from his cross examination it is evident that there is lot of contradiction in his evidence from plaint and even his evidence affidavit and it appears that plaint and his evidence affidavit were not drafted at his instance and he signed on the same in mechanical manner without reading the same. Hence in these circumstances I do not find his testimony reliable.

39. Further, plaintiff through the testimony of PW1 mainly relied upon two documents i.e. invoices Ex. PW1/7A to Ex. PW1/7K and photocopy of advertisement allegedly published in newspapers Ex. PW1/9 but in my view both these documents has not been proved as per Indian Evidence Act.

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41. Now reverting back to the case invoices Ex. PW1/7A to Ex. PW1/7K has been relied by plaintiff. Defendant has objected to the exhibition of said invoices on the ground that PW1 is neither the author of said documents nor they have been issued by him. PW1 in his examination in chief has not deposed that these invoices were prepared by him or in his presence or that he has sold the goods mention in the said invoices. He admitted in the cross examination that Ex. PW1/7A to Ex. PW1/7K does not bear his signatures. He does not have any VAT returns showing the tax invoices Ex. PW1/7A to Ex. PW1/7K were being declared before the sales tax authorities by Hindustan Traders. He cannot say which software is being used by Hindustan Traders or Just Spray Marketing. He admitted that on Ex. PW1/7A to Ex. PW1/7K, there is no stamp of acknowledgement of goods received by the consignee. Hence, after considering the testimony of PW1, I held that since PW1 is neither the maker of the aforesaid documents nor has signed the same nor has deposed that he himself sold these goods to consignee therefore objection of the defendant regarding proving these documents is valid and hold that these documents are not proved as per the Indian Evidence Act. Further, neither any witness to whom goods through aforesaid invoices has been examined nor any witness from VAT / GST department has been called to prove that goods sold through said invoices to the sellers were shown in the return file by the plaintiff therefore, I hold that plaintiff has failed to prove Ex. PW1/7A to Ex. PW1/7K as per Indian Evidence Act, hence same

cannot be relied upon.

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45. On the other hand, the defendant through the testimony of DW1 has proved that the defendant has applied for registration of trademark EXDW1/1 KOBE in class 2 on 26.5.2010 and same was registered on 5.12.2011 and is also able to prove that the plaintiff has applied for registration of trademark KOBE vide application No. 2075517 which was objected by the defendant and further plaintiff has applied for trademark



KOBE and vide application No. 2397914 in class 2 which was refused. In his cross examination he has categorically deposed that he is using the Trade Mark KOBE since year 2005 though he failed to produce any such document but there is nothing in the cross examination of defendant No. 1 that he is not using the trade mark since 26.05 2010 when he applied for registration of said trade mark. Defendant through the testimony of DW1 is also able to prove that defendant has huge sale figure which was Rs. 8,01,037/- in the year 2013-14 and Rs. 2,15,60,767/- in the year 2017-18. Plaintiff in his cross examination itself has also admitted that defendant is doing business since last 10-12 year. The defendant has denied the suggestion that he purchased the goods from the Hindustan Traders in year 2007 vide invoice mark DW1/X1. Hence nothing much has come out in cross examination of DW1 to disbelieve his testimony. Hence defendant though the testimony of DW1 is able to prove that defendant was using trade mark KOBE atleast from 26.05.2010. Admittedly till now application file by plaintiff for rectification of registration of Trade mark in favour of defendant has not been allowed. DW2 has corroborated the testimony of DW1 as through his evidence led through affidavit EXDW2/A he deposed that he done audit of defendant firm since year 2010-11 and also proved the ITR and statement of account of defendant firm as DW1/5 (colly).

[Emphasis Supplied]

3.4. In light of the above, the District Judge decided the first issue in the favour of Defendant and against Plaintiff No. 1, as under:-

“46. From the abovesaid testimony of DWs, it is proved that the defendant is the registered owner of trademark KOBE since 26.05.2010 and using the trademark since 26.5.2010 whereas plaintiff has failed to prove through the testimony of PW1 and documents that it was using the trademark KOBE prior to use of trademark by the defendant hence, the plaintiff through the testimony of PW1 has failed to prove that the plaintiff was using the trade mark prior to 26.05.2010 thus was the prior user of the said trademark and thus,

no action of passing of its goods by trademark KOBE by defendant is made out. In view of the aforesaid discussion, I held that the plaintiff has failed to prove that the predecessor of plaintiff i.e. M/s. Hindustan Traders, a proprietorship concern of Sh. Vijay Kumar Aggarwal,



was using the trademark KOBE and Kobe Acrylic Lacquer since the year 2006 and was using the trade mark KOBE prior to defendant hence plaintiff is not entitled to decree restraining the defendant from using the trademark KOBE for his goods. Hence, I decide the issue No. 1 against the plaintiff.”

3.5. Plaintiff No. 1, thus, could not prove prior use of the mark “KOBE”



and the device mark i.e., “”. The District Judge’s decision dated 21st December, 2022 was assailed before the Division Bench of this Court. However, the said challenge was withdrawn and the appeal was dismissed on 29th March, 2023,² with observations as under: -

“After some arguments, learned counsel for the appellant-plaintiff wishes to withdraw the present appeal and all pending applications with liberty to file a fresh suit against the respondents-defendants on a new cause of action, as according to the appellant-plaintiff, the respondents-defendants is still continuing to pass off its goods as plaintiff’s goods.

The Supreme Court in M/S Bengal Waterproof Limited vs. M/S Bombay Waterproof Manufacturing Company & Anr., (1997) 1 SCC 99 has held that the issues of infringement and passing off are continuous and recurring causes of action. Consequently, the appellant-plaintiff is permitted to file a fresh suit against the respondents-defendants on a new cause of action, if any.

Accordingly, the present appeal along with pending applications is disposed of as withdrawn. The right and contentions of all the parties are left open. Needless to state that the Trial Court shall decide the fresh suit on its own merit.”

² RFA(COMM) 40/2023, order dated 29th March, 2023.

3.6. Relying upon the observations made in the above order, Plaintiffs have filed the present suit seeking following reliefs:

“a) Pass an order/decreed of permanent and mandatory injunction restraining the Defendant, their partners, their assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering for sale, advertising in print and electronic media, advertising on the internet, directly or indirectly dealing in any product by using infringing mark 'KOBÉ',



, and its formative trademarks or any other trade mark/ trade name or logo/device, which is identical to and/or deceptively similar to the Plaintiffs'

Kobbey

registered trade mark , amounting to infringement of the Plaintiffs' registered trademark;

b) Pass an order/decreed of permanent and mandatory injunction restraining the Defendant, their partners, their assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering for sale, advertising in print and electronic media, advertising on the internet, directly or indirectly dealing in any product by using infringing label/artistic



work 'KOBÉ', or any other label/device, which is identical to and/or deceptively similar to the Plaintiffs' predecessor copyright work 'KOBÉ'/



amounting to infringement of the Plaintiffs' predecessor registered copyright work;

c) Pass an order/decreed of permanent and mandatory injunction restraining the Defendant, their partners/ associates, assignees in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering for sale, advertising in print and electronic media, advertising on the internet, directly or indirectly dealing in any product by using impugned mark/trade



dress viz. KOBÉ', or any other trade mark or logo/ device, which is identical to and/or deceptively similar to the Plaintiff's well known trade

mark, trade dress, get up, lay out and placement of distinctive features as used



in the trade mark/label 'KOBAY' and its trade dress which amounting to action of passing off, misrepresentation, unfair competition and dilution.

d) Pass an order/decreed of delivery up of all the counterfeited products bearing the impugned trade mark/ trade dress including packing materials, dies, blocks, boxes, advertising and publicity material, stationary, account books etc., to an authorized representative of the Plaintiff for the purposes of destruction and erasure;

e) Pass an order/decreed of rendition of accounts of illegal profits earned by the Defendant on account of the use of the impugned trade mark, trade dress and copyright work;

f) Pass an order/decreed of damages to the tune of Rs.2,00,05,000/- or any additional amount in favor of the Plaintiff and against the Defendant on account of loss/harm caused to the Plaintiff's business, trademark/trade dress/copyright work, goodwill and reputation by illegally and unlawfully selling the counterfeited products under the impugned trademark/trade dress by the Defendant;

g) Pass an order directing the defendant to withdraw their impugned trademark application no. 1971064.

h) Pass an award costs of the present proceedings in favor of the Plaintiff and against the Defendant;

i) Pass any other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in interest of justice."

4. Mr. V.K. Puri, counsel for Plaintiffs, strenuously argues that the Division Bench has given liberty to file the present suit and therefore, the same should be heard and summons be issued to the Defendant. He also relies upon Supreme Court's judgment in **Bengal Waterproof Limited v. Bombay Waterproof Manufacturing Company and Ors.**,³ which is also noted in the Division Bench order. He argues that notwithstanding the findings in the previous lawsuit, the Plaintiffs have the right to institute the present suit. Mr.

³ (1997) 1 SCC 99.

Puri emphasizes that on account of the Defendant's ongoing sale of counterfeit goods bearing the disputed trademarks, the cause of action is persistent and recurring, thus providing a fresh basis for the present lawsuit. In order to reinforce this point, he refers to the cause of action as averred in the plaint:-

"43. That the cause of action in the present case arose for the first time in May 2018, when the Plaintiff obtained knowledge that the Defendant are selling/ manufacturing/ marketing the impugned goods under the impugned trademark 'KOBE'. The second cause of action arose when the Plaintiff conducted a search on the website of trademark registry and got to know about the Defendant's impugned trademark "KOBE". The third cause of action arose on 28/05/2018 when the Plaintiff filed a rectification petition against the Defendant's impugned trademark application no. 1971064 before the trademark registry, Delhi. The fourth cause of action arose on 05-09-2022, when the Defendant was cross-examined and given a statement on oath before the Ld. District Judge, Tis Hazari Courts, Delhi that he is importing 'KOBE' brand goods from the year 2005 itself'. Fifth Cause of action arose in January, 2023, when the Plaintiff again found that the Defendant is still selling counterfeited goods of acrylic paints items under the impugned



trademark 'KOBE'/. Sixth cause of action arose in March 2023, when the Defendant has filed a rectification petition against the registered trademark of Plaintiff bearing TM Application no. 3041169. Seventh cause of action arose when the Hon'ble Division Bench of this Hon'ble court has given liberty to Appellant/Plaintiff to file a fresh suit against the Defendant on fresh/new cause of action. It further arose on each and every instance of sale made by the Defendant under the impugned trademark 'KOBE' which caused confusion among the customers and traders between the goods/services of the Plaintiff and Defendant. The cause of action is a continuous one and continues to subsist until and order of injunction is granted by this Hon'ble Court."

[Emphasis Supplied]

5. Mr. Puri lays stress on the averments narrating the fifth and subsequent causes of action and argues that each instance of Defendant's use of Impugned Marks constitutes a fresh cause of action. He states that invoices which were not part of the earlier suit, have now been filed, which clearly

demonstrate the use of impugned marks by Defendant between 2019 to 2022. He also tries to differentiate the earlier suit by stating that Plaintiffs had not asserted their rights *qua* the trademark ‘’.

6. Mr. Gurpreet Singh Sethi, counsel for Defendant, who appears on advance notice, states that the present suit cannot be entertained in view of the conclusive findings in the earlier suit, which have attained finality with the withdrawal of the appeal. He further points out that in appeal, Plaintiffs had filed an application under Order 41 Rule 23 of CPC, 1908 seeking remand of the earlier suit for *de novo* trial, which was declined. In any event, the appeal stands withdrawn and the right to challenge the order of the District Judge stands foreclosed. He states that in absence of any fresh cause of action, the present suit cannot be entertained.

7. In the opinion of the Court, the Division Bench order is being misinterpreted by the Plaintiffs. A fresh suit was permitted to be filed on account of a ‘new cause of action, if any’. Thus, the first and foremost question before this Court is whether there is indeed a new cause of action. Defendant’s use of Impugned Marks was precisely the cause of action for filing the earlier suit. Plaintiff No. 1 asserted proprietary over the said marks on the basis of claim of prior use. Both parties led evidence on this issue. Plaintiff No. 1 could not prove its case and thus, was denied an injunction restraining the Defendant from using the said marks. The District Judge in paragraphs 38, 39, 41, 45 and 46 of the judgment in the earlier suit, extracted above, categorically concluded that Plaintiff No. 1 had failed to establish prior use as is evident from the averments. This finding of fact has not been upset in appeal and continues to bind the parties.

8. Plaintiffs has pleaded a fresh cause of action in paragraph 43 of the plaint, extracted above. These assertions are premised on Defendant's continuous use of the Impugned Marks. In the opinion of the Court, continuous use of the marks in-question, in the facts of the instant case noted above do not give rise to a fresh or new cause of action. As noted above, Defendant is the registered proprietor of the mark "KOBE" and has been using the same since 2010. Plaintiff No. 1 assailed Defendant's proprietary rights on the basis of their prior use, but despite opportunity to prove their case in trial, they failed. Defendant's use and rights in the Impugned Marks has been upheld in the judgment passed in the earlier suit. Since the earlier suit was decided on merits, Defendant cannot be vexed twice for the same relief, on the same cause of action. The plea that continuous use of the Impugned Marks gives rise to a fresh cause of action is plainly untenable and misconceived.

9. The Plaintiffs' reliance on the judgment in *Bengal Waterproof* (*supra*) is entirely misplaced as it bears no relevance to the specifics of the present case. It is important to note that this judgment essentially pertains to Order 2 Rule 2 of the CPC, 1908. In the first lawsuit, Plaintiff's alleged infringement of their registered trade mark "DUCK BACK" by the Defendant trading under the trade mark "DACK BACK". It was found that reliefs sought in the plaint were not proper and could not be granted, rendering it non-maintainable. However, in the second suit, the Plaintiff pursued different reliefs and also alleged passing off. In light of these facts, the Supreme Court, when examining the issue of maintainability of the second suit under Order 2 Rule 2(3) of the CPC, 1908, concluded that it was indeed maintainable. This determination was made based on the following observations:-

"It is difficult to agree how in such a case when in historical past earlier suit

was disposed of as technically not maintainable in absence of proper reliefs, for all times to come in future defendant of such a suit should be armed with a licence to go on committing fresh acts of infringement and passing off with impunity without being subjected to any legal action against such future acts”

[Emphasis Supplied]

10. The Supreme Court held that the bar of Order 2 Rule 2(3) of the CPC, 1908 cannot be invoked in cases of continuous or recurring causes of action. It is crucial to note that the facts in the instant case are distinguishable. The judgment rendered in the prior lawsuit filed by Plaintiff No. 1 was not merely a dismissal on the grounds of maintainability but encompassed factual findings that directly and substantially relate to the present suit. Therefore, considering the findings of fact rendered in the earlier judgment, the present suit is not maintainable and barred under the doctrine of *res judicata* which is grounded in the need for finality and judicial efficiency. Permitting the Plaintiffs to bring forth the present suit, despite the previous judgment on merits, based on the same subject matter and cause of action, would undermine this essential principle and open the floodgates of endless litigation. It is well-established that *res judicata* operates not only as a bar to re-litigating the same cause of action but also extends to matters that were directly and substantially in issue and finally determined in the previous suit. In this case, the findings in the earlier suit directly pertain to the very same issues raised in the present suit, making it clear that *res judicata* would be applicable. The Plaintiffs have tried to draw distinction from the earlier suit by reframing the relief sought in the instant suit but the foundation remains the same as the earlier suit which is evidenced from the prayer clause in both suits, which have been extracted above. Plaintiffs have also claimed relief



against passing off of its device mark ‘’ bearing No. 4183238, which currently stands ‘opposed. Said mark comprises of the same artwork as the



subject mark ‘’ bearing the words “Acrylic Lacquer”. No fresh cause of action arises *qua* the said device mark. All other rights asserted in the present

suit, except in relation to the trademark ‘’, were subject matter of the earlier suit. The purpose of the doctrine of *res judicata* would be defeated if the Plaintiffs were allowed to bypass the same based on an interpretation of Order 2 Rule 2(3) of CPC, 1908 alone, disregarding the broader principles of finality and conclusive determination of rights. Therefore, there is no distinct or separate cause of action for the instant suit.

11. Mr. Puri also argued extensively that, in the previous suit, the counsel representing Plaintiff No. 1 was not adequately instructed by their authorized representative, resulting in the failure to satisfactorily establish the plea of prior use before the District Judge. Additionally, Mr. Puri pointed out inconsistencies between the Defendant’s written statement and the evidence presented in the earlier suit. However, the Court opines that these submissions do not give rise to a new or fresh cause of action to maintain the present suit. The issues and grounds raised by Mr. Puri in the instant suit relate to the pleadings and evidence recorded in a trial that has concluded with the final decision of the District Judge. These findings can only be challenged in appellate proceedings, which fall outside the jurisdiction of this Court. If Plaintiff No. 1 is dissatisfied with the District Judge’s decision, the remedy does not lie in filing a subsequent suit by alleging new causes of action, based

on Defendant's continued sales under the disputed marks. The Plaintiffs, by alleging errors in the prior suit, are grasping at straws in an attempt to undermine the finality rendered by the District Judge's decision. The said decision, in the opinion of the Court, is the end of the road for the Plaintiff, leaving no further room for litigation on the same cause of action.

12. For the reasons stated above, the present suit cannot be entertained in its current form. Before parting, it is noteworthy that in the present suit, the Plaintiffs have also asserted rights in the trademark "*Kobbey*" which was not the subject matter of the earlier suit. However, the plaint as framed on the cause of action relating to "*Kobbey*" is plainly a misjoinder of cause of action and the suit must also fail for this defect insofar as the said mark is concerned. It must also be noted that in paragraph 43 of the plaint in the instant suit, no cause of action is found *vis-à-vis* the trademark "*Kobbey*". In this regard, Mr. Puri was given the option to apply for withdrawal of suit, in which even the Court could consider giving liberty to the Plaintiffs institute a fresh suit based on rights exclusively focusing on the trademark "*Kobbey*". However, Mr. Puri declined this suggestion. Nonetheless, if the Plaintiffs choose to file a suit solely based on trademark rights associated with the mark "*Kobbey*", the suit will be evaluated independently based on its own merits, and this Court has not expressed any opinion on the matter. It is also made clear that this Court has not expressed any opinion regarding maintainability of such a suit and all rights and contentions, including the bar under Order 2 Rule 2, Code of Civil Procedure, 1908, are left open.

13. With leave as aforesaid, the present suit is dismissed along with

pending applications, if any.

SANJEEV NARULA, J

MAY 10, 2023

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(Corrected and released on 27th May, 2023)

