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A.No.796 of 2024
in
C.S. (Comm.Div.) No. 32 of 2021

A.No. 796 of 2024
in
C.S. (Comm.Div.) No. 32 of 2021

P.VELMURUGAN, J.

This application has been filed to pass summary judgment and decree dismissing the suit in C.S.(Comm.Div.) No.32 of 2021.

2. The respondent/plaintiff had filed the above suit against the first defendant and four others for a declaration that the plaintiff is the owner of the copyright in respect of the literary work viz., translation of "PRAUDANUBHUTHI", translation of "SWAROOPA ANUSANDHANA ASHTAKAM" originally authored by Sri Adi Sankaracharya in Sanskrit and compilation of "ATMA VIDYA VILASAM" originally authored by Sri Sadhasiva Brahmendra Saraswati and for consequential relief of permanent injunction restraining the sale of the said books and for surrender of all the copies of unauthorised published books together with all the materials used for making infringing copies of the said literary works and also for a decree directing



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the first defendant to render true and proper accounts and further claiming damages of Rs.5,00,000/-.

3. Learned counsel for the applicant/first defendant submitted that though the respondent/plaintiff claims copyright in respect of the said literary work and the alleged infringement thereof, the same cannot be maintained before the Commercial Division of this Court, since there is no assignment of copyright in favour of the first defendant as per Section 19 of the Copyrights Act. He further submitted that the respondent/plaintiff cannot invoke jurisdiction of the Commercial Division of this Court for any alleged infringement of copyright as there is no cause of action made out by him, if at all any tortuous action, the plaintiff can only approach the competent Civil Court. Since the respondent/plaintiff himself had admittedly entrusted the publication work with the applicant/first defendant regarding the subject literary work and handed over the "ready to print digital copies" of the said work, therefore, the respondent/plaintiff does not allege any infringement of



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copyright and consequently the above suit is *ex-facie* not at all maintainable either in law or on facts.

4. Learned counsel for the respondent/plaintiff submitted that the plaintiff is the owner of the copyright in the above mentioned literary work. The first defendant had given the "ready to print digital copy" and printed the books and further assured that he would inform the plaintiff before publishing the books. However, the first defendant without informing the plaintiff published the book and is selling the works of the plaintiff online on the e-commerce platform of defendants 2 to 5. The first defendant has also failed to pay the royalty to the respondent/plaintiff. It is evident that the first defendant with deliberate *malafide* intention, committed breach of trust of the plaintiff and thereby, committed infringement of the copyright in the said literary work. The learned counsel further submitted that though the plaint discloses the cause of action, the facts alleged by the applicant/first defendant needs to be proved in the trial. The present application is filed



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with *malafide* intention to delay the suit and hence, this application deserves to be dismissed at the threshold.

5. Heard both sides and perused the materials available on record.

6. It is seen from the records that originally, the first defendant was set *ex-parte* by this Court on 15.11.2021, thereafter, he filed an application in A.No.4905 of 2021 seeking to set aside the order dated 15.11.2021 and the same was allowed on 08.03.2022 and thereafter, the first defendant filed the written statement. The suit is now at the stage of filing admission/denial of documents. At this stage, the applicant has come with the present application seeking for summary dismissal of the suit. On perusal of the plaint, it is seen that the plaint discloses cause of action for filing of the suit and this Court cannot decide the existence or otherwise of the cause of action at this stage and the same has to be decided only after trial. Therefore, this application is dismissed.



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7. Both the parties are directed to file affidavit of admission/denial of documents and also draft issues if any, on or before 07.06.2024 in the Registry.

List the suit on 10.06.2024.

15.04.2024

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