



Reserved on: 06.06.2024

Pronounced on: 28.06.2024

A.No. 870 of 2024 & A. No.2443 of 2024

in

C.S. (Comm Div). No. 30 of 2024

P.B.BALAJI, J.

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A.No.870 of 2024, the Application under Order II, Rule II of Code of Civil Procedure, 1908 (in short 'CPC') seeking leave to initiate and seek for further claims against the respondents/defendants as and when the Applicants/Plaintiffs are made aware of any further illegal activities of the respondents/defendants.

2. Pending the said Application, A. No.2443 of 2024 has been filed seeking amendment of the prayer in A.No.870 of 2024 in C.S.(Comm.Div) No.30 of 2024.

3. From a reading of the affidavit filed in support of the Applications in A. No.870 of 2024 and A. No.2443 of 2024, I find that the Applicants have stated that they are not aware of all actions and illicit activities of the respondents/defendants and only based on the present available facts, documents and information, the Applicants have filed the suit and therefore,



they require leave under Order II Rule II CPC, so that any future action initiated by them could not be held to be barred under Order II Rule II CPC.

4. In A.No.2443 of 2024, the Applicants have stated that they intend to amend the prayer in A.No.870 of 2024, to include a new paragraph and also prayer regarding wrongful termination of the Applicants 1 & 2.

5. I have heard the learned counsel Mr.M.S.Bharath, for the Applicants and Mr.R.Vidhya Shankar, learned counsel for the respondents.

6. Mr.M.S.Bharath, learned counsel for the Applicants would take me through the documents and state that that Applicants 1 & 2 were unceremoniously thrown out from the Directorship and in order to get urgent relief, the suit has been filed and there is every likelihood of further information become available which would therefore warrant leave of this Court.

7. Per contra, Mr.R.Vidhya Shankar, learned counsel would submit



that the plaint itself is liable to be rejected on several grounds, for which a separate Application is taken out and also been separately argued. He would further state that granting leave as sought for would not arise, as according to him, the Applicants 1 & 2 are not entitled to maintain any legal proceedings in the name of the third plaintiff. He would further state that the very prayer sought for in A.No.870 of 2024 would indicate that the Applicants seek to initiate proceedings as and when they are made aware of any future illegal actions and therefore no leave is required, as it would any way amount to fresh cause of action.

8. With regard to the amendment in A. No.2443 of 2024, he would submit that no reason is assigned as to why the prayer concerning wrongful termination was not prayed in the present suit, especially, when they have specifically pleaded in the plaint at Paragraph No.44. He would further state that the suit itself was filed after the termination of the Applicants from Directorship and therefore, the plaintiffs having filed the suit, cannot get over the omission would not seeking such relief by now filing an Application for amendment invoking Order II Rule II Application.

9. I have carefully considered the rival submissions advanced by the



learned counsel on either side.

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10. Admittedly, except for the relief of damages, the suit has been filed only seeking to protect the intellectual property rights of the third plaintiff Company. The plaint clearly narrates the circumstances under which the plaintiffs 1 & 2 were removed from Directorship and how they were terminated arbitrary and unilaterally. The Applicants/Plaintiffs ought to have challenged the termination at the time of filing of the suit itself. However, they have not obtained any leave of this Court before or at the time of instituting the Application. Today, by way of such Application for amendment, they cannot set the clock back and get over their omission to seek appropriate reliefs which were available to them even at that point of time. I find force in the submission of the learned counsel for the respondents in this regard. However, at the same time, insofar as further illegal activities of the respondents/defendants, becoming aware to the applicants/plaintiffs, they seek leave. This relates to fresh cause of action only and no leave is required for such purpose.



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11. Therefore, clarifying this, I find no merits in the Application seeking leave and also the amendment Application. Accordingly, these Applications are dismissed.

28.06.2024

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P.B.BALAJI, J.

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Pre-delivery ORDER in

A.No. 870 of 2024 & A. No.2443 of 2024
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(3/4)

28.06.2024