



Order dated 05.04.2024 in
Application No.1664 of 2024
in C.S.(Comm.Div).5 of 2024

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Application No.1664 of 2024 in C.S.(Comm.Div).5 of 2024

P.VELMURUGAN, J

At the outset, the prayer made in the Plaint, numbered as C.S.(Comm.Div).No.5 of 2024 is filed under Order IV Rule of the Original Side Rules of this Court, read with Order VII Rule 1 and Section 26 of the Code of Civil Procedure, read with Sections 27, 28, 29 and 134 of the Trade Marks Act, 1999, read with Section 7 of the Commercial Courts Act, 2015, to pass judgment and decree, is as follows:

(i) A permanent injunction restraining the defendants, their Proprietors/Partners/Directors/Successors, servants, agents, representatives, stockist, dealers and distributors, wholesalers and retailers and any one claim under or through the defendants from infringing the plaintiff's registered Trade Marks having "NFC" namely that adds Life, Zerowud NFC, Indowud NFC under Registration No.3896289, 4330546 and 5134276 all in Class 19 or any mark identical to or deceptively similar thereto;

(ii) A permanent injunction restraining the defendants, their Proprietors/Partners/Directors/Successors, servants, agents, representatives, stockist, dealers & distributors, wholesales & retailers and any one claim under or through the defendants from passing-off and/or enabling others to pass off their goods as and for the plaintiff's goods by use of Trade Mark NFC Sheet, NFC Door or any other confusingly similar mark.

(iii) the defendants be ordered to pay the plaintiff, a sum of Rs.3,00,000/- jointly and severally as damages;

(iv) the defendants be ordered to surrender to the plaintiff for destruction



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all the goods, advertisement materials, packing materials, labels, plates and dyes and films and other allied corporate goods and materials bearing the offending marks or any mark similar to the plaintiff's Trade Marks bearing NFC;

(v) A preliminary decree be passed in favour of the plaintiff, directing the defendants to severally render true and faithful account of profits earned by them by use of offending Trade Marks NFC Sheet, NFC Door or any other NFC extension and WUD for their goods and a final decree be passed in favour of the plaintiffs for payment of the amounts of profits found to have been made by the defendants based on rendition of accounts; and

(vi) for costs and expenses of the suit.

2. Pending the suit, Application No.1664 of 2024 in C.S.(Comm.Div).No.5 of 2024 is filed by the first defendant to reject the plaint.

3. This Court perused the counter affidavit filed the plaintiffs in A.No.1664 of 2024 and the facts stated therien.

4. Though the suit is filed for passing-off and infringement of the Trade Marks of the plaintiff "NFC", the defendant(s) had filed the application seeking to reject the plaint under Order 7 Rule 11(d) CPC for non-compliance of Section 12-A of the Commercial Courts Act, 2015. Admittedly, the suit is filed without invoking Section 12-A of Act of 2015 and the plaintiff(s) had filed the suit straight-away.



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5. Though the learned counsel for the respondents/plaintiffs submitted that since the filing of suit is for urgent relief, the suit is not barred under Section 12-A of the Act of 2015.

6. As already stated, admittedly, the suit is filed for passing-off and infringement of the Trade Mark "NFC". It is not disputed that the respondents/plaintiffs sent legal notice to the defendant(s) on 19.09.2023 prior to the filing of the suit before the Registry (which is evident from the seal) of this Court on 09.01.2024. The defendant(s) had also sent reply on 01.10.2023 to the said notice of the plaintiff(s), stating that the applicants/plaintiffs unequivocally maintained that they are the rightful Proprietor of the Trade Mark "Natural Fibre Composite" (NFC). It is specifically stated by the plaintiff in paragraph 6 of the counter affidavit filed in the plaint-rejection-application, as follows:

"6. Therefore, before filing the suit, I sent a legal notice dt.19.09.2023 to the Applicants prior to filing of the suit. The Applicant sent a reply notice dt.01.10.2023 in which it is stated as follows:

. Our client M/s.Prabitha Polymers, unequivocally maintain that they are the rightful proprietors of the trade marks "NATURAL FIBRE COMPOSITE" and "NFC". These trade marks were painstakingly secured through a legal and rigorous registration process. Our client firmly believes that their use of these marks, in connection with their innovative product, NFC Board, is in full compliance



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with applicable laws and is not a transgression of any intellectual property rights held by your client. All this while, your marks remain under process and have till date not acquired any final registration in your favour in order to claim absolute rights over the mark. Therefore it would be a matter of immense debate as well as challenge to assert your rights by way of this legal notice, which my client is not bound by for the time being.

. Non-Admission of Liability: We want to emphasise that any discussions, negotiations, or settlements reached should not be construed as admissions of liability or wrong doing by either party. Instead, they should be seen as a sincere effort to foster understanding and cooperation while safeguarding the interests of both organisations."

7. The defendants' use of the Trade Mark in connection with their innovative product NFC both in full compliance of the applicable law and is not a transgression of any intellectual property right held by the plaintiffs. Even the defendants have stated in the reply that for compliance of Section 12-A of the Commercial Courts Act, 2015 for pre-litigation mediation. However, the plaintiffs did not opt for the same and subsequently, the suit was filed, which is evident from the date specified in the bottom of the plaint.

8. It is seen from the document list of the plaint that reply was sent by the first defendant to the plaintiffs as early as on 01.10.2023. The suit was filed only on 20.11.2023 after 50 days from the date of receipt of the reply notice.



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9. As per the decision of the Honourable Supreme Court reported in 2023 SCC Online SC 1382 (Yamini Manohar Vs. T.K.D.Keerthi), relied on by the learned counsel appearing for the plaintiffs, particularly, in paragraph 9 of the said decision of the Apex Court, it was observed by the Supreme Court as follows:

"9. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff."

10. The words "contemplates any urgent relief" under Section 12-A of the Commercial Courts Act, should be proved to the satisfaction of the Court, whereas in the case on hand, the plaintiffs have not established any urgency in the relief(s) and that too, in the reply notice dated 01.10.2023, the defendant(s) is claiming their right and also expressed the willingness to refer the matter for pre-litigation mediation. If at all the plaintiffs have to obtain any interim urgent relief, the plaintiffs ought to have filed the suit immediately on receipt of the reply notice of the defendant(s), dated 01.10.2023, but in this case, it is evident



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from the seal of the Registry of this Court that the suit was filed only on 09.01.2024. Thus, it is crystal clear that the defendants have established that the plaintiffs are interested in filing the suit, without even first invoking Section 12-A of the Commercial Courts Act, 2015.

11. In the above context, Section 12-A(1) of the Commercial Courts Act, 2015 (Chapter III.A) relating to "Pre-Institution mediation and settlement", had to be looked into, which reads as follows:

'Section 12-A : Pre-litigation Mediation and Settlement: (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

....."

12. Therefore, the contentions of the learned counsel for the plaintiffs, are not acceptable. Though in the month of September 2023, according to the plaintiffs, there was infringement, the same is evident from the legal notice sent by the plaintiffs to the first defendant on 19.09.2023 and the said notice dated 19.09.2023 was received and reply was sent by the first defendant to the plaintiff only on 01.10.2023. Therefore, the plaintiffs were waiting till 20.11.2023, which is evident from the bottom of the averments made in the



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plaint showing that "Dated at Chennai on this 20th day of November, 2023" and ultimately, the suit was taken on file by the Registry of this Court only on 09.01.2024 (which is evident from the seal of this Court on the plaint). Hence, the suit is barred under Order 7 Rule 11(d) CPC. In this regard, it is worthwhile to notice that Rule 11(d) of the said Order 7 of the Code of Civil Procedure (i.e. CPC) states that the plaint shall be rejected if the suit appears from the statement in the plaint to be barred by any law.

13. It is mandatory that prior to the filing of the suit, the plaintiffs have to comply with Section 12-A(1) of the Commercial Courts Act, 2015 (extracted above). There is exemption clause in Section 12-A(1) that a suit, which does not contemplate any urgent interim relief under this Act (i.e. Commercial Courts Act, 2015), shall not be instituted, unless the plaintiff(s) exhausts the remedy of pre-litigation mediation.

14. Thus, it is clear that there is exemption clause that if the suit contemplates any urgent interim relief, the pre-litigation mediation may be dispensed with, which is clear from Section 12-A(1) quoted above. In the present case, the plaintiffs have not even established the "urgency interim relief" clause.



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15. The decision of the Apex Court relied on by the learned counsel for the plaintiffs, reported in 1997 (1) SCC 99 (Bengal Waterproof Limited Vs. Bombay Waterproof Mfg. Co.), is not applicable to the facts of the present case on hand.

16. The following decisions relied on by the learned counsel for the defendants, are applicable to the case on hand to reject the plaint in this case:-

(i) 2022 (10) SCC 1 (Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd);

(ii) 2023 SCC OnLine Del 7276 (Delhi High Court) (Dr.Reddys Laboratories Limited Vs. Smart Laboratories Pvt. Ltd);

(iii) Neutral Citation No.2023 : AHC-LKO:33217 (Indian Oil Corporation Ltd. Mumbai having Division Office, Lko Thiru.G.M.Engineering Department Vs. Commercial Court-Ii, Lko, and another, and

(iv) 2023 SCC OnLine SC 1382 (Yamini Manohar Vs. T.K.D.Keerthi).

17. This Court had carefully gone to the entire facts as averred in the plaint and in the affidavit filed in support of the application seeking to reject the plaint. This Court does not find that the respondents/plaintiffs are entitled to invoke and get the exemption clause under Section 12-A(1) of the Commercial



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Courts Act.

18. For the foregoing reasons, A.No.1664 of 2024 seeking to reject the
plaint, is allowed, thereby the suit shall stand rejected. There shall be no order as
to costs.

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