Reserved on: 06.06.2024	Pronounced on: 28.06.2024

A. No.1829 of 2024
in
CS (Comm.Division) 30 of 2024

P.B.BALAJI, J.

The Application in A. No.1829 of 2024 has been taken out for rejection of the plaint in CS (Comm Div.) No.30 of 2024.

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

3. Mr.R.Vidhya Shankar, taking me through the pleadings as well as various documents in the form of voluminous typed sets, would mainly contend and canvass the following grounds for rejection of the plaint.

3(i). The Authorised Representative who has instituted the suit on behalf of the plaintiffs' Company is not actually authorised and the learned counsel would highlight the thin line of difference between "representing the Company" and "instituting a Civil Suit";

3(ii). The suit is barred by Section 430 of the Companies Act, 2013. He would take me through the pleadings and attempt to make out a case that the plaintiffs have approached the Court only on the ground of oppression and mismanagement and that post 2013, the Tribunal has sky high powers, including power to grant relief that is the nature of which is sought in the present suit. Therefore, the learned counsel would submit that the suit is barred by law;

3(iii). Non compliance of 12-A of the Commercial Courts Act, 2015 (in short 'Act'). He would submit that the law is now settled with the dictum of the Hon'ble Supreme Court in *Yamini Manohar Vs. T K D Keerthi*'s case reported in *(2023) SCC Online SC 1382* and the same would certainly apply to intellectual property rights as well and admittedly, the plaintiffs have not complied with Section 12-A of the Act and therefore, the same would be fatal and would entail dismissal of the suit.

3(iv). Concealment of material facts and circumstances:- According to the learned counsel, the plaintiffs have concealed material facts and circumstances and especially, the plaintiffs having consented to amalgamation of the third plaintiff and first defendant, besides concealing facts relating to prior disclosure of balance sheets and valuation report. Therefore, on this ground also, the plaint is liable to be rejected.

3(v). Non-joinder of proper and necessary parties viz., the persons who are alleged to be in control of the third plaintiffs' Company, having not been impleaded would also be fatal to the case of the plaintiffs.

3(vi). Territorial jurisdiction:- according to the learned counsel for the Applicants/defendants, the entire cause of action arose only in Coimbatore and therefore, the suit instituted before this Court is without jurisdiction.

4. The Applicants would rely on the following decision:-

4.(i). In the case of *Sankara Narayanan K.N and another Vs. Shree Consultations and Services Private Limited and three others,* reported in *1994-1 L.W.602,* this Court held that individual Directors have such powers only as vested in them and question of Authority to institute the suit on behalf of the Company is not a technical matter and unless a power to institute a suit is specifically conferred on a particular Director, he has no Authority to institute the suit on behalf of the Company.

4.(ii).In the case of *M/s.Nibro Limited Vs. National Insurance Company Limited* reported in *1994-1-L.W.612*, a Division Bench of this Court held that when the plaintiff did not place on record any Resolution passed authorising the concerned person to institute the suit and the said so called authorised representative also not coming forward to make a statement that he was in a position to depose the facts of the case, it was held that such person had no authority to institute the suit.

4.(iii). In the case of *The ICP Investment (Mauritius) Limited Vs. Uppal Housing Private Limited and others,* reported in *2019 SCC Online Del 10604*, the Delhi High Court held that a derivative action to protect the interest of the Company would come within the ambit of Section 241 of the Companies Act, 2013 and would include within its scope oppression, mismanagement and derivative actions and further went on to hold that a Civil Suit is not maintainable.

4.(iv). In the case of *Valluvar Kuzhumam Private Limited Vs. APC Drilling & Construction Private Limited and others* in *CRP (NPD) No.2044 of 2022 dated 30.11.2022,* where this Court, elaborately dealing with derivative claims held that while action is taken in the interest of the Company by any shareholders, the Company should be arrayed as a defendant in a class action.

4.(v). *Yamini Manohar*'s case, (referred herein supra), where the Hon'ble Supreme Court referring the Judgment of *"Patil Automation Private Limited Vs. Rakheja Engineers Private Limited"* reported in 2022

SCC Online SC 1028 held that "*an absolute and unfettered right*" is not justified if the pre-institution Mediation under Section 12-A of Commercial Courts Act, 2015 is held to be mandatory, and the words *'contemplate any urgent interim relief'* occurring under Section 12(1) of the Commercial Courts Act, with reference to the suit should be read as conferring power on the Court to be satisfied by upholding the mandatory nature of compliance of Section 12-A itself.

5. In reply, Mr.M.S. Bharath, learned counsel for the respondents would submit that insofar as the non-joinder of proper and necessary parties, no authority to represents the 3rd plaintiff and concealment and suppression of material facts and circumstances and territorial jurisdiction, inviting my attention to Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') would submit that none of the above grounds would warrant rejection of the plaint and therefore, on these grounds the Application has no legs to stand.

6. With regard to non compliance of Section 12-A of the Commercial Courts Act, 2015, he would submit that there is no hard and fast rule that an

Application should be taken out seeking the leave of Commercial Court to exempt compliance of Section 12-A and the non-compliance of Section 12-A has to be tested in the light of facts and circumstances of each case. He would therefore contend that since there was an imminent and urgent threat to the valuable rights of the plaintiffs, the suit has been filed without complying the mandate of Section 12-A of the Commercial Courts Acts, 2015 and therefore, the action is justified and does not call for rejection of the plaint.

7.With regard to bar of law namely Section 430 of the Companies Act, 2013, he would submit that the reliefs in the suit are only concerning intellectual property rights of the third plaintiff and the Tribunal exercising rights under the Companies Act, 2013, does not have the power or jurisdiction to try intellectual property rights and related issues.

8. Mr.M.S.Bharath, learned counsel for the respondents, would place reliance on the following decisions:-

8(i) In the case of *Ramesh Chander Munjal and others Vs. Suraj Munjal and others,* reported in MANU/DE/1210/2022, where the Delhi

High Court, dealing with rejection of the plaint on the ground that the plaint is barred by Section 430 of the Companies Act, 2013 held that the relief sought for in the suit were beyond the scope of Sections 240 and 241 of Companies Act, 2013 and therefore held that it would not be a ground to reject the plaint.

8(ii) In the case of *Valluvar Kuzhumam Private Limited,* (referred herein supra), where this Court held that a general rule is that a Company is entitled to maintain an action aginst wrong doers and a shareholder's *locus standi* to file a suit during exceptional circumstances where the wrongdoers are in control of the Company is also not disapproved.

8(iii) *Dr.Suraj Munjal Vs. Dr.Ramesh Chander Munjal and Ors* reported in *MANU/SCOR/22509/2023*, where the Hon'ble Supreme Court dismissed the Special Leave Petition arising out of the order passed by the Delhi High Court that is the first case discussed herein above.

9. I have carefully analysed the rival submissions advanced by the learned counsel on either side, I have also gone through the documents relied on by the respective counsel and also the various judgments on which reliance is placed.

10. With regard to the issues pertaining to the non-joinder of proper and necessary parties, territorial jurisdiction and alleged concealment of material facts, all these questions are not grounds that can be canvassed or agitated in an Application for rejection of the plaint which is permissible only on the following grounds:

> " *11. (a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law;"*

Therefore, I do not see any necessity to dwell upon these issues in any greater details. The plaint is not liable to be rejected on the above grounds.

11. Coming to the maintainability of the suit, with regard to the authority of the plaintiffs 1 & 2 to represent the third plaintiff, admittedly the plaintiffs 1 & 2 were Directors of the third plaintiff Company before they were removed. However, on the date of institution of the suit, it cannot be disputed that they are admittedly shareholders of the third plaintiff Company. No doubt, in the cause title, the third plaintiff is said to be

represented as follows, *Pricol Gourmet Private Limited, Represented by Mr.Japtej Singh Ahluwalia, Shareholder/Authorised Representative*".

12. Admittedly, the shareholder cannot maintain an action on behalf of the Company. According to the plaintiffs 1 & 2, there was a Board Resolution, empowering to the plaintiffs 1 & 2 to represent the third plaintiff when they were Directors of the third plaintiff Company. However, according to the Applicant in the reject the plaint Application, though a Resolution was originally passed authorising the plaintiffs to represent the Company in legal proceedings, the said Resolution was superseded by Resolution No.2 dated 07.03.2024, in and whereby, the authorisation given to the plaintiffs 1 & 2 was revoked. Relying on the said supersession by subsequent Board Resolution, it was contended by the learned counsel for the Applicant that the plaintiffs 1 & 2, cannot represent the third plaintiff Company and therefore, the suit is liable to be failed.

13. Reliance is placed on a Board Resolution in this regard, which according to the Applicants, is revoked and superseded by another later Resolution. In an Application for rejection of the plaint, the Court is bound

to go only by the averments, pleadings, reply and not any extraneous material circumstances that the defendant may rely on. Here admittedly, the defendant who seeks to reject the plaint is relying on a document viz., a later Board Resolution which does not form part of the plaint. Even in such limited view of the matter, no reliance can be placed on a later Resolution in order to reject the plaint at this stage.

14. I find from the plaint that the suit has been filed for the following reliefs:-

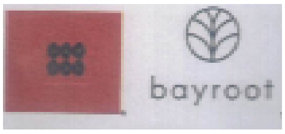
> " ***a.*** *A* ***permanent injunction*** *restraining Defendant No.2, its partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and anyone acting for or on their behalf directly or indirectly, as the case may be from using the artistic works in the labels*

> *or as the case may be from performing any actions which amount to the* ***infringement of copyright in original artistic works belonging to the plaintiff No.3***
>
> ***b.*** *A permanent* **injunction** *restraining the Defendant No.2, their partners their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, and in any other manner, directly or indirectly, dealing with any products, services in the name of*

DOUBLE ROTI, SOY SOI-ASIAN ESTSTREET, ORIGIN, DELISH- THE DESSERT STUDIO, BAYROOT, LITTLE SOI, CRUST AND CHEESE BY DOUBLE ROTI, EPICURE-BEPOKE BANQUETING & EVENTS, SOWL - BREW ROOM AND BAKEHOUSE, BURGER BROS, BANGKOK BAE, CHINESE WOX, MEX BOWL INC., PIZZERIA BY THE BAY, MEX BOWL INC., BANGARUSWAMY NAIDU BIRIYANI, MADURAI MILITARY HOTEL or any other mark and/or label which is identical/similar to the Plaintiff N.3's trademarks and such other marks and ***passing off*** *the goods/services of the Defendant as and for those of the Plaintiff No.3 in any manner whatsoever.*

c. *A permanent injunction restraining the Defendants, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from transferring all the domain names, websites, social media platforms, mobile application in relation to the brands Double Roti, Soy Soi-Asian Eststreet, Origin, Delish- The Dessert Studio, Bayroot, Little Soi, Crust and Cheese by Double Roti, Epicure-Bepoke Banqueting & Events, Sowl - Brew Room and Bakehouse, Burger Bros, Bangkok Bae, Chinese Wox, Mex Bowl Inc., Pizzeria by the Bay, Mex Bowl Inc., Bangaruswamy Naidu Biriyani, and Madurai Military Hotel to any party in any manner whatsever.*

d. *A* ***mandatory injunction*** *directing to Defendant No.2 to assign all the trademark Applications under Nos.5679336, 5679335, 5679334, 6115275, 6115274, 6115273, 5679340, 5679338, 5679337, 5679343, 5679342, 5679341, 5679346, 5679345, 5679344, 6115260, 6115259, 6115258, 6115316, 6115315, 6115314, 6115272, 6115262, 6115261, 6115308, 6113507, 6115306, 6115319, 6115318, 6115317 filed for the trademarks*



and Trademark registration under No.3951684 obtained for the trademark  *in the name of the Plaintiff No.3.*

e. *A* ***mandatory injunction*** *directing the defendant No.2 to transfer the Copyright Registrations obtained for the artistic works titled Bangkok*

Bae, BOWL SHAPED DEVICE AS ART WORK WITH STICKS ON TOP AND THE WORD Chinese Wox Bring Home the Taste of China IN STYLE ALTOGETHER IN RED COLOUR AND ART WORK OF SPHERE WITH C AND TRIANGLE SHAPED DEVICE AND PUNCH HOLES, CRUST AND CHEESE BY DOUBLE ROTI ALTOGETHER IN COLOUR of defendant No.2 to plaintiff No.3

f. A ***mandatory injunction*** *to Defendant No.1 to assign the Trademark Registration under No.2888013 for the mark*

in the name of the Plaintiff No.3.

g. *A* ***declaration*** *that Plaintiff No.3 is the original sole proprietor and the owner of the plaintiff's trademarks being Double Roti, Soy Soi-Asian Eststreet, Origin, Delish- The Dessert Studio, Bayroot, Little Soi, Crust and Cheese by Double Roti, Epicure-Bepoke Banqueting & Events, Sowl - Brew Room and Bakehouse, Burger Bros, Bangkok Bae, Chinese Wox, Mex Bowl Inc., Pizzeria by the Bay, Mex Bowl Inc., Bangaruswamy Naidu Biriyani, and Madurai Military Hotel.*

h. *A* ***declaration*** *that Plaintiff No.3 is the original, sole proprietor and the owner of the copyright in the artistic works in*

i. *A* ***declaration*** *that all or any license, assignment, permission, consent, authorisation or no objection, provided by the Defendant No.1 and Defendant No.2 in respect of the Plaintiff's trademarks being* *to any party as null and void.*

j. *A declaration that all or any license, assignment, permission, consent, authorisation or no objection, provided by the Defendant No.1 and Defendant No.2 in respect of the Plaintiff's artistic works being Double Roti, Soy Soi-Asian Eststreet, Origin, Delish- The Dessert Studio, Bayroot, Little Soi, Crust and Cheese by Double Roti, Epicure-Bepoke Banqueting & Events, Sowl - Brew Room and Bakehouse, Burger Bros, Bangkok Bae, Chinese Wox, Mex Bowl Inc., Pizzeria by the Bay, Mex Bowl Inc., Bangaruswamy Naidu Biriyani, and Madurai Military Hotel to any party as null and void.*

k. *The defendant be ordered to pay the Plaintiff No.s 1 & 2 a sum of INR1000,000/- (Rupees Ten Lakhs only) as damages for having attempting to usurp the ownership of the Plaintiff No.3's trademarks, pass off their goods and services as and that of the Plaintiff No.3 and for infringement of copyright in Plaintiff No.3's artistic works."*

15. Therefore, from reading of the above prayers sought for by the plaintiffs, excepting the prayer for damages to the tune of Rs.10,00,000/-, all the other reliefs are in the nature of seeking to protect the intellectual property rights of the third plaintiff.

16. Admittedly, none of the reliefs sought for pertain to any act of oppression or mismanagement. Therefore, mere references to certain acts of oppression and mismanagement in the plaint would not take away the jurisdiction of this Court in trying the suit. I am also not convinced of the argument of the learned counsel for the Applicant that under Sections 241

& 242 of the Companies Act, 2013, the Tribunal has sky high powers and the intellectual property rights also being an asset/property of the Company, the Company Law Tribunal is competent to try this issue.

17. At the risk of repetition, none of the relief sought for relate to any oppression and mismanagement to fall within the purview of Sections 241 & 242 of Companies Act, 2013 and it is only this Court which is competent to try the reliefs sought for in the suit.

18. Regarding derivative action and authority of plaintiffs 1 & 2 to file the suit, as already observed as shareholders, the plaintiffs 1 & 2 cannot maintain the suit and the reliefs prayed therein; However, as minority shareholders in a derivative action, they are entitled to seek protection of the intellectual property rights of the third plaintiff Company.

19. The question whether the third plaintiff is to be arrayed as plaintiff or only as a defendant is also canvassed before me. According to the learned counsel for the Applicant, Mr.R.Vidhya Shankar, the third plaintiff, Company ought to have been arrayed only as a defendant and not as a

plaintiff. However, Mr.M.S.Bharath, learned counsel for the respondent would submit that there is no legal impediment for the Company being a plaintiff, since in effect in a derivative action, the minor shareholders are actually seeking relief only in favour of the Company. As already discussed, on the strength of the plaint averments and allegations, it is seen that the plaintiffs 1 & 2 have filed the suit along with third plaintiff Company, which is represented by them, as one of them being its authorised signatory.

20. Insofar as the third plaintiff being represented by a former Director and shareholder, coupled with the question of whether the Company should be arrayed only as a defendant or whether it can also be a plaintiff, I am leaving this issue open to be decided at a later stage of the suit, especially since there is yet another subsequent material development that has taken place, namely third plaintiff being amalgamated with the first defendant by a Scheme before the NCLT. There is always an option for the plaintiffs 1 & 2 to seek change in the array of the parties by transposing of the 3rd plaintiff, if they deem fit and proper. However, this does not to give a right to the defendants to seek rejection of the plaint.

21. Coming to next and last issue raised by the defendants viz.., non compliance of Section 12-A, even the Hon'ble Supreme Court in *Yamini Manohar*'s case, (referred herein supra) held that the Commercial Court should examine the nature and subject matter of the suit, the cause of action and prayer for interim relief and ensure that such prayer for urgent interim relief is not a disguise or mask to wriggle out and get over Section 12-A of the Commercial Courts Act, 2015. The Hon'ble Supreme Court also held that mere non grant of interim relief at the ad interim stage will not justify dismissal of the suit under Order VII Rule 11 CPC. It is further held that the Court issuing notice and/or granting interim stay may indicate that the Court is inclined to entertain the plaint.

22. In the present case, admittedly this Court in and by an order dated 29.04.2024, did deem it fit to grant an interim order. Therefore, the mere fact of an interim order being granted in OP(TM) Nos.21 to 23 of 2024 & C.S.(Comm Div) No.30 of 2024 would clearly bring the action of the plaintiffs within the exception, thereby, not making the ground of failure to comply of 12-A of the Commercial Courts Act, 2015, being available to the defendants to raise it as an issue for rejecting the plaint.

23. In fine, I do not find any grounds made out for rejecting the plaint and accordingly, this Application is dismissed.

28.06.2024

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P.B.BALAJI, J,

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Pre-delivery ORDER in

A. No.1829 of 2024
in
CS (Comm.Division) 30 of 2024

28.06.2024