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P.VELMURUGAN. J.

The sole defendant has filed the present application to reject the plaintiff.

2. The learned counsel for the applicant/defendant submitted that the plaintiff has no cause of action and has no right to use the trade mark and that the plaintiff has not complied with the mandatory provisions of Section 12A of the Commercial Courts Act. Therefore, the plaintiff is barred by law. Hence, the plaintiff is liable to be rejected.

3. The learned counsel for the respondent/plaintiff submitted that as far as the compliance of mandatory provisions under Section 12A of the Commercial Courts Act is concerned, the plaintiff has clearly pleaded in paragraph Nos.11 and 29 of the the plaintiff for seeking "urgent interim reliefs". When the plaintiff came to know that the defendant has applied for registration of the impugned mark, immediately he filed a notice of opposition against the defendant's application. In the said opposition, the defendant also filed counter. Since the explanation given in the counter was not acceptable, he filed the present suit immediately before this Court.



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He further submitted that there is an exceptional class when a suit is filed seeking urgent interim reliefs. Hence, the mandatory provisions under Section 12A of the Commercial Courts Act need not be complied with. Therefore, the contention of the learned counsel for the applicant/defendant is not sustainable.

4. As far as the cause of action is concerned, the plaintiff has clearly set out the reasons in his plaint that the plaintiff is the owner of the impugned trade mark. In the month of August 2023, the plaintiff gained the knowledge of infringement of plaintiff's trade mark by the defendant and he filed the suit in the month of November 2023 (after the applicant/defendant filed their counter in the month of September 2023 in the notice of opposition). However, the suit was numbered only in the month of December and that the date of filing only has to be taken into consideration. Further, while dealing with the application under Order VII Rule 11 CPC, the averments made in the plaint has to be taken into consideration and not the defence taken by the defendant.

5. As far as the infringement of the trade mark is concerned, the



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plaintiff already purchased the impugned trade mark in the year 2014 from his previous owner and on the date of filing of the suit, the trade mark stood in the name of the plaintiff. Therefore, the plaintiff is the absolute owner of the trade mark. Therefore, this application is liable to be dismissed.

6. Heard and perused the materials available on record.

7. This application is filed under Order VII Rule 11 CPC for rejection of the plaint.

8. A perusal of the plaint averments shows that the plaintiff has made out the Section 12 A of the Commercial Courts Act in Paragraph No.11 of the plaint. The plaintiff has also set out the cause of action in Paragraph No.32 of the plaint and he has also annexed the document No.11 (Registration Certificate) along with the plaint which shows that the plaintiff is registered owner of the impugned trade mark. Therefore, this Court finds that the respondent/plaintiff has made out the plaint.

9. Already, this Court by considering the *prima facie* case, has passed an order in the interlocutory application.

10. At the time of deciding the application under Order VII Rule 11



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CPC, the Court has to see the averments made in the plaint and not the defence taken by the defendant. What ever the defence taken by the applicant/defendant, can be decided only after trial and not at this stage. The applicant/defendant has not made out any ground to set out the Order VII Rule 11 CPC.

11. A perusal of the affidavit filed by the applicant and the counter affidavit filed by the respondent/plaintiff and the averments made in the plaint, this Court finds that the plaint is not barred by law.

12. Therefore, this application is dismissed.

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