



A.No.2496 of 2024 in C.S. (Comm. Div.) No.39 of 2024

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P.VELMURUGAN,J.

This above suit is filed for permanent injunction to restrain the defendant from infringing the plaintiff's registered trademark "Gold Winner", from passing off and from violating the plaintiff's copyright; for preliminary decree directing the defendant to render true account of profits made by the defendant by using the said offending label of "Gold Wins"; for declaration declaring the plaintiff's registered trademark "Gold Winner" as well-known and for costs of the suit.

2. The defendant has filed the present application to reject the plaint in the above suit on the ground of non disclosure of cause of action and also barred by law, specifically under Section 11 of CPC.

3. The learned counsel for the applicant/defendant submitted that the respondent/plaintiff had earlier filed a similar suit in C.S. (Comm.Div.) No.258 of 2019 before this Court seeking very same relief as mentioned in the present suit. In the said suit, the applicant/defendant had filed an undertaking affidavit stating that they have changed the colour scheme,



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Trade Dress in packing materials/pouches for their products and the same was intimated to the plaintiff by way of reply dated 20.03.2019 and based on which, the said suit was decreed on 31.07.2019. Subsequently, the respondent/plaintiff has filed the present suit without any cause of action and he has not disclosed any cause of action to maintain the suit. When the earlier suit filed by the respondent/plaintiff was decreed based on the undertaking given by the applicant/defendant and if at all, the respondent/plaintiff is aggrieved, he has to either file an application to reopen the previous suit or he has to file an execution petition and that he cannot once again file a suit. Therefore, the present suit is barred by resjudicata. Hence, the plaint has to be rejected on the ground of non disclosure of cause of action and also barred by law under Section 11 of CPC.

4.The learned counsel for the respondent/plaintiff submitted that the respondent/plaintiff has disclosed the cause of action in the present suit in Paragraph No.53 of the plaint. Admittedly, in the earlier suit, there was a compromise between the parties as the applicant/defendant had given an undertaking that they will not infringe the trademark of the respondent/plaintiff and based on the affidavit of undertaking, the earlier suit



was decreed in the year 2019. Subsequently, in the month of January 2024, the applicant/defendant has once again infringed the plaintiff's trademark and therefore, the present suit is filed. The present suit is no way connected with the earlier suit and the plaintiff has got a fresh cause of action for filing the present suit.

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

6. It is settled proposition of law that while deciding the application under Order VII Rule 11 Civil Procedure Code, the Court has to see the averments made in the plaint and not the defence taken by the defendant. A entire reading of the plaint shows that the respondent/plaintiff has disclosed the cause of action. The earlier suit has been decreed based on the undertaking given by the applicant/defendant and it is nothing to do with the present suit. The respondent/plaintiff has clearly stated that in the month of January 2024, the applicant/defendant has once again started to infringe his trademark.

7. As stated above, while deciding the application under Order VII Rule 11 of Civil Procedure Court, the Court has to see only the averments



made in the plaint and not the written submission or the defence taken by the defendant. In this case, this Court finds that the respondent/plaintiff has disclosed the cause of action in the plaint and it is not barred by any law.

8. Therefore, this application is liable to be dismissed. It is for the applicant/defendant to take all his defence in the present suit which can be decided only after trial and not at this stage.

9. Accordingly, this application is dismissed.

10. It is seen that the defendant has not filed the written statement in the suit, within 30 days from the date of service of summons. However, he has filed the present application to reject the plaint. Since, the application came to be dismissed today (07.06.2024), the defendant is directed to file the written statement along with an application to condone the delay clearly stating the reasons as to why the written statement was not filed within 30 days.

11. List the suit on 25.06.2024.

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