



A. No.3054 of 2023
in
C.S. (Comm. Div.) No.58 of 2023

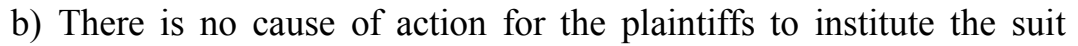
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ABDUL QUDDHOSE.J.,

The suit has been filed for the alleged infringement and for passing off of the plaintiffs' registered Trade Mark "Halwakadai.com". The plaintiffs are also aggrieved by the act of defendant, copying the plaintiffs' mark, logo, artistic work, colour scheme, design and theme for the defendant's business outlets. Both the plaintiffs and the defendant are carrying on similar business viz., selling of coffee, sweets and savories.

2. The defendant's right to file the written statement in the suit has already been forfeited since he did not file the written statement within the prescribed period as stipulated under the Commercial Courts Act, 2015. Having lost the right to file the written statement, this application has been filed by the defendant, seeking for rejection of plaint on the following grounds:

a) Non compliance of pre-suit mediation by the plaintiffs is in violation of Section 12A of the Commercial Courts Act, 2015;



3. A counter affidavit has been filed by the plaintiffs in the rejection of

plaint application, denying the contentions of the plaintiffs.

2/4



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5. The plaintiffs have also reiterated in the counter affidavit through their averments that they have not violated Section 12A Commercial Courts Act, 2015 since there became a necessity for them to seek for urgent interim relief from this Court. The defendant having lost their right to file written statement in the main suit, on account of the fact that he did not file the written statement within the prescribed period as per the Commercial Courts Act, 2015, is estopped from filing this application that too when he has agreed to go for mediation and based on his agreement, this Court had also by its order dated 11.08.2023, referred the dispute for mediation before the mediation center attached to this Court.

6. For the foregoing reasons, this Court is of the considered view that the question of entertaining this application at this belated stage after the defendant has forfeited his right to file the written statement and after the mediation having got failed, pursuant to the order passed by this Court referring the dispute to mediation before the mediation center attached to this Court, does not arise.



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ABDUL QUDDHOSE.J.,

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7. Accordingly, there is no merit in this application and this application is dismissed. However, liberty is granted to the defendant to cross examine the plaintiffs' witness and is also permitted to place his arguments in the main suit in the absence of the written statement.

11.11.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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(1/4)