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A.Nos.3402 and 3403 of 2021

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in

C.S.No.540 of 2014

R.SUBRAMANIAN, J.

It is stated by the 2nd respondent that it had stopped business in India and it is no longer carrying on business in India. On that ground the suit against the 2nd respondent was dismissed on 06.09.2021. The plaintiff has brought in these two applications viz., A.No.3402 of 2021 is to recall the order dated 06.09.2021, dismissing the suit as against the 2nd respondent on the ground that the 2nd respondent is operating in another name and A.No.3403 of 2021 is one for impleading the 3rd respondent, who according to the plaintiff, has now taken over the business of the 2nd respondent.

2. Two independent counters have been filed by the 2nd defendant as well as the proposed party. It is the contention of the 2nd defendant that the name of eBay India Private Limited was changed as Mintkart India Private Limited and that has been taken over by the Flipkart Limited which is another e-commerce site. It is also stated that Mintkart has closed their transactions through ebay.in and it is non-



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transactional website. Therefore, the prayer for re-opening the suit as against the 2nd defendant is mis-conceived.

3. As far as the proposed party is concerned, it is claimed that its focus in India is to enable export or enable cross border trade by Indian sellers. Whether it is export or cross border sale, if the person is able to put up his goods on the e-commerce site for sale either in India or outside and by such putting up there is an infringement of the mark of the plaintiff, the plaintiff is entitled to complain. There is no denial in the counter affidavit to the claim that the 3rd respondent eBay Inc. facilitates Indian traders to put up their goods for sale on the website. It is the complaint of the applicant that the persons who infringe his mark put up their products for sale on the website of the proposed party.

4. Mr.PH.Aravindh Pandian, learned Senior Counsel appearing for the 3rd respondent/ proposed party would submit that the 3rd respondent has got a verified rights owner policy, by which the actual owner can make objection to such sales and those products will be removed. But, such removal will also cost the verified owners.



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5. This is like a person who open the door for the thief and claiming charges for preventing him from stealing. I find that existence of such policy will not be a ground to allow the so called e-commerce websites to facilitate sale of spurious products and compel the owners to pay for stopping sale of such spurious products.

6. Mr.PH.Aravindh Pandian, learned Senior Counsel would also draw my attention to the fact that the plaintiff himself has complained on eight occasions about the sale of spurious products by the 3rd respondent.

7. This itself would show that the 3rd respondent has been continuously permitting spurious people to sell plaintiff's products. This fact itself is sufficient to hold that the plaintiff has made out a *prima facie* case for impleading the 3rd respondent as a party defendant in the suit.



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8. Hence, A.No.3403 of 2021 is **allowed**. The 3rd respondent is impleaded as the 3rd defendant in the suit. A.No.3402 of 2021 will stand **dismissed**. In view of the averment contained in the affidavit that the 2nd defendant website is non-transactional website, I do not think the order dismissing the suit as against the 2nd defendant needs to be recalled. Hence, A.No.3402 of 2021 will stand dismissed.

22.01.2024

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