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O.S.A.(CAD)No.103 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

O.S.A.(CAD)No.103 of 2024
and
C.M.P.No.19948 of 2024
in
O.S.A.(CAD)No.103 of 2024

Ananda Vikatan Publishers (P) Ltd.,
Represented by its Authorized Signatory
Editor / Publisher Mr.Kalai Selvan Theiste
No.757, Anna Salai
Chennai-600 002.

.. Appellant

Vs.

1. News Tamil 24 x 7
Owned and Controlled by
S.Plus Media Ltd.,
Represented by its Director
Mr.Sakilan Padmanabhan
No.145, Rukmani Lakshmipathi Road
Pudupet, Chennai-600 008.

2. S Plus Media Ltd.,
Represented by its Director
Mr.Sakilan Padmanabhan
No.145, Rukmani Lakshmipathi Road
Pudupet, Chennai-600 008.

..

Respondents



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Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Madras High Court Letters Patent, praying to set aside the fair and decreetal order dated 05.07.2024 passed dismissing O.A.No.200 of 2024 in C.S.(Comm.Div.)No.58 of 2024.

For Appellant : Mr.Perumbulavil Radhakrishnan
For Respondents : Mr.Richardson Wilson

ORDER

(Order of the Court was made by **M.Sundar, J.**)

This common consent order will now dispose of the captioned 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity} and captioned 'Civil Miscellaneous Petition' {hereinafter 'CMP' for the sake of brevity} thereat.

2. Owing to the nature of the matter and consensus arrived at we are of the view that short facts (shorn of elaboration) will suffice.

3. Factual matrix in a nutshell is that sole appellant {Ananda Vikatan Publishers (P) Ltd.,} before us is the sole plaintiff before the Commercial Division, R1 {News Tamil 24 x 7} and R2 {S Plus Media



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Ltd.,} before us are D1 and D2 respectively before the Commercial Division; that sole appellant / plaintiff presented a plaint dated 22.12.2023 in the Commercial Division with prayers for permanent injunctions qua passing off a mark / work 'KAZHUGU' and as regards infringement of copyright in a mark / work 'MISTER KAZHUGU'; that it will suffice to say that the plaintiff is in print and visual media and defendants (respondents before us) are in visual media; that in this plaint, besides two permanent injunctions there are usual prayers for costs and residuary limb which seeks further or other orders as deemed fit and proper by the Court; that post service, the two defendants entered appearance through counsel, D2 filed written statement dated 18.04.2024 and D1 has filed written statement adopting pleadings / written statement of D2 dated 18.04.2024; that we are informed that pleadings were thus completed on 18.04.2024 itself; that along with plaint, the plaintiff had taken out an application in O.A.No.200 of 2024 with a prayer for interim injunction (pending suit) restraining defendants from passing off qua mark / work Kazhugu or any other similar / identical name; that defendants, who are respondents in injunction application filed counter affidavit, pleadings were completed in interlocutory injunction application and after full contest, the Commercial Division dismissed the injunction



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application in and by an 'order dated 05.07.2024' {hereinafter 'impugned order' for the sake of clarity, brevity and convenience} and directed the main suit to be listed on 25.07.2024 for admission and denial of documents; that from the official website of this Court, we find that the main suit was not listed on 25.07.2024 but it was listed on 31.07.2024 and on that day, the official website says that the suit will stand over to 14.08.2024 for framing issues; that it was not listed on 14.08.2024 but it was listed on 23.08.2024 and the suit now stands over to 20.09.2024; that we are informed that admission and denial of documents part of suit drill in the *lis* has been completed / concluded and on 20.09.2024 and issues have to be framed; that captioned OSA has been filed in this Court on 28.08.2024; that captioned OSA has been filed by sole plaintiff as lone appellant (as already alluded to supra) aggrieved by / assailing the impugned order of dismissal of injunction application.

4. Captioned matter was in the Admission Board today and Mr.Perumbulavil Radhakrishnan, learned counsel on record for appellant and petitioner in CMP is before us.



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5. In the light of the submissions made and the nature of prayer, we refrain from saying anything on whether the suit is predicated qua a mark vide Trademarks Act, 1999 or a work vide the Copyrights Act, 1957, with this clarificatory remark, we set out to scan and reproduce the plaintiff's and defendants' work / mark. Scanned reproduction of plaintiff's and defendants' work / mark (as in the pleadings placed before us) are as follows:

Plaintiff's work / mark:





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Defendants' work / mark:

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6. To be noted, scanned reproduction is in black and white but we are informed that there are colour schemes for both.

7. Learned counsel for appellant / plaintiff pointed out that two competing marks / works have not been looked into much less have they been compared in making the impugned order and therefore, the impugned order is flawed is learned counsel's say.

8. On a careful perusal of impugned order, we find that two marks / works have not been compared but the impugned order has been made dismissing the injunction application.

9. We find that the above point is good enough for issue of notice.



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10. Issue notice.

11. Mr.Richardson Wilson, learned counsel for caveator (to be noted, R1/D1 has lodged caveat) who is before this Court submitted that he accepts notice for R1 and R2 (D2).

12. Now that all the parties are represented by their respective counsel, with the consent of both sides, main OSA is taken up and consent order is being made.

13. Before we make the consent order, we deem it appropriate to write that Mr.Richardson Wilson raised a point that defendants have popped up Section 12-A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity, convenience and clarity] {Pre-Institution Mediation and Settlement} point as plaintiff has admittedly filed the suit without resorting to Pre-Institution Mediation and Settlement. It is the case of the plaintiff that there was enormous urgency, urgent interim relief was sought, the suit was filed immediately on coming to know about the adoption of mark / work by defendants but



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it was listed after some time. We leave open all questions including issues in this regard for Commercial Division to adjudicate. Suffice to say that defendants have taken out an application for rejection of plaint in A.No.3847 of 2024 in C.S(Comm.Div.)No.58 of 2024 and it has to be heard out first. This is more so, in the light of ***Patil Automation*** principle {***Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC 1028***} read with ***Yamini Manohar*** principle [***Yamini Manohar Vs. T.K.D.Keerthi*** reported in ***2023 SCC OnLine SC 1382***]. The respondents really did not have much to say with regard to two competing marks / works not being adverted to much less not being compared by Hon'ble Commercial Division in making the impugned order.

14. In the light of the trajectory the main suit has taken (as captured supra), learned counsel on both sides took a very fair stand that it is desirable to have the main suit expedited. Therefore, we are making a two-limbed order, details of which will be set out infra, wherein in one limb we would be expediting the main suit and by the other limb we would be remanding the interlocutory application back to the Commercial



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Division.

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15. The following consent order is made:

(a) The main suit will now be listed before Hon'ble Commercial Division on 20.09.2024 as per schedule. Learned counsel on both sides undertake to file draft issues assisting the Hon'ble Commercial Division and ensure that issues are framed on the same day or latest by 04.10.2024;

(b) Thiru.M.Nandan, District Judge (Retd.) No.171, MIG, 4th Main Road, TNHB, Nolambur, Phase-2, Mogappair, West Garden, Chennai-600 037, Mobile No.9444112414 is appointed as Commissioner to record evidence i.e., documentary and oral evidence of plaintiff as well as defendants by sitting either in Madras High Court Arbitration Centre under the aegis of this Court [MHAC] or in 'Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court' [hereinafter 'TNMCC' for the sake of brevity];



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(c) Learned Commissioner will not have any

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(d) The sitting will commence on 15.10.2024 and will be completed in six weeks i.e., by 30.11.2024;

(e) The Director of MHAC and TNMCC are requested to do the needful and facilitate sittings when approached by parties or by learned Commissioner;

(f) The total remuneration of entire six weeks i.e., for the entire exercise for learned Commissioner shall be Rs.2 Lakhs to be borne in equal moieties. Rs.1 Lakh shall be paid by plaintiff and another Rs.1 Lakh shall be paid by two defendants together;

(g) The costs and expenses for sitting of Commissioner i.e., Hall charges, Secretarial Assistance charges (if any) etc., will not be included in the aforementioned remuneration of Rs.2 Lakhs and that will be borne in equal moieties by both sides;

(h) The Commissioner will not have adjudicatory powers, if there are any objections with regard to oral and / or documentary evidence, the same shall be recorded and it



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is for the Commercial Division to take a call on the objections when the main suit is heard out;

(i) After 30.11.2024, the main suit will be listed before Hon'ble Commercial Division on 05.12.2024 which will have the main suit heard out, written arguments, filing of oral arguments etc., and return its verdict as expeditiously as the Board of Commercial Division permits;

(j) As regards the impugned order i.e., order dated 05.07.2024 in O.A.No.200 of 2024 in C.S.(Comm.Div.) No.58 of 2024, the same is set aside and the matter is remitted back to Hon'ble Commercial Division for a fresh hearing. All questions are left open for this purpose and though obvious, we make it clear that we have not expressed any view or opinion on merits and setting aside is to facilitate *de novo* adjudication. We make it clear that rejection of plaint application being A.No.3847 of 2024 shall be heard out first as the traditional practice is, whenever return / rejection of plaint application/s under Order VII Rule 10 or Rule 11 of 'Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake



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of brevity] is taken out before embarking upon adjudication on merits, the exercise of considering the injunction application *de novo* will be post deciding rejection of plaint application and obviously, *de novo* adjudication of the injunction application will be subject to the outcome of rejection of plaint application;

(k) Though obvious, we make it clear that it is also left open to Hon'ble Commercial Division to arrive at some via media order in injunction application and / or await the main suit verdict depending on the trajectory the matter takes before Hon'ble Commercial Division.

Captioned OSA is disposed of in the aforesaid manner vide a consent order with the aforementioned observations and directives. Consequently, captioned CMP thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
10.09.2024

Index:Yes
Neutral Citation: Yes
Speaking order
mk



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The Sub-Assistant Registrar
Original Side
High Court, Madras.



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M.SUNDAR.J.,
and
R.SAKTHIVEL, J.,
mk

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