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A.No.5957 of 2022

Application No.5957 of 2022
in
C.S.(Comm.Div.)No.249 of 2022

ABDUL QUDDHOSE, J.

This application has been filed seeking to combine the cause of action. The suit has been filed for infringement of trademark, copyright and passing off.

2. The plaintiff had earlier filed an application seeking for interim injunction. The said application was dismissed by the learned Single Judge of this Court on the ground that the plaintiff has not been given protection to use the mark “Shivaji” as per the Trademarks Act, 1999, as it is covered under the Emblems and Names (Prevention of Improper Use) Act, 1950. Aggrieved by the said finding, Original Side Appeal (OSA) has also been filed by the plaintiff and the Division Bench of this Court has also dismissed the said OSA.

3. The learned counsel for the respondent/defendant opposes for allowing this application filed by the plaintiff seeking to combine the cause of action on the ground that the plaintiff has not been able to



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obtain an order of interim injunction before the learned Single Judge of this Court as well as before the Division Bench of this Court.

4. However, it is an admitted fact that the suit is still pending and no application seeking for rejection of plaint is also filed by the defendant in this suit. While that be so, when the plaintiff has filed the suit for infringement of trademark, copyright and passing off, and as seen from the averments contained in the affidavit filed in support of this application, sufficient cause has been made by the plaintiff for combining the cause of action, this Court is of the considered view that no prejudice would be caused to the respondent/defendant, if this application is allowed without prejudice to the rights and contentions of the respondent/defendant in the main suit with regard to the combining cause of action. Accordingly, this application is allowed as prayed for, without prejudice to the rights and contentions of the respondent/defendant in the main suit with regard to the combining cause of action.



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5. Both the counsels submit that the mediation has failed between the parties. Registry is directed to put up the report of the Mediation Centre on the next hearing date. Post the matter on 06.03.2024.

19.02.2024

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