



A.No.6001 of 2024 in C.S. (Comm.Div.) No.203 of 2024

ABDUL QUDDHOSE,J.

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Sri Narasus Cofee Co. Pvt. Ltd.,

represented by its Managing Director P.Sivanantham .. Applicant/Defendant

VS

1.S.Sudhakar

2.S.Dhinakar

3.M/s.T.M.Karuppiah Nadar Sons,

rep. by its Partner S.Sudhakar

4.M/s.Shri Lakshmi Agro Foods,

rep. by its Partner S.Sudhakar

5.Shri Lakshmi Agro Foods Pvt. Ltd.,

rep. by its Managing Director S.Sudhakar

.. Respondents/Plaintiffs

This application has been filed by the applicant/defendant under Order VII Rule 11 of C.P.C. seeking for rejection of plaint on the following grounds:

a)There is no cause of action for the respondents/plaintiffs to sue the applicant/defendant;

b)The respondents/plaintiffs have not complied with the statutory requirement as stipulated under Section 12A of the Commercial Courts Act by instituting pre-suit Mediation.



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2.The applicant/defendant in this application has averred that the respondents/plaintiffs are very well aware that they are in the market since 1993 by using the subject Trade Mark 'UDHAYAM'. Therefore, the question of filing the suit at this stage does not arise as there is no cause of action for the respondents/plaintiffs to sue the applicant/defendant at this point of time.

3.Learned counsel for the applicant/defendant drew the attention of this Court to the plaint averments and would submit that the respondents/plaintiffs, have clandestinely through clever drafting of the plaint, made attempts to sue the applicant/defendant before this Court. In particular, she drew the attention of this Court to the plaint, wherein the respondents/plaintiffs have pleaded that the applicant/defendant is in the market selling the alleged infringed Trade Mark 'UDHAYAM' since 1993 itself, but, whereas in another paragraph of the plaint, they have pleaded that the applicant/defendant has stopped using the infringing Trade Mark subsequently and only recently, they have introduced a new product by using the respondents'/plaintiffs' Trade Mark 'UDHAIYAM', which is deceptively similar to that of the applicant's/defendant's Trade Mark 'UDHAYAM'. Learned counsel for the applicant/defendant would submit that the applicant/defendant is in the market for several years and that they have been using the very same Trade Mark, but, despite the same, the suit has been filed by the



respondents/plaintiffs against them as if the applicant/defendant has infringed and has committed an act of passing off of the respondents'/plaintiffs' Trade Mark 'UDHAIYAM'.

4. On the other hand, the respondents/plaintiffs have pleaded in the plaint, more particularly, in paragraph Nos.9, 10 and 21, which reads as follows:

'9. The plaintiffs state that the defendant herein and its predecessors are primarily involved in the business of manufacturing and marketing of various kinds and varieties of coffee under the trademark "Narasu's" for now over several years. Few years back, from market sources, the plaintiffs learnt that the defendant herein had started using the mark "Udhayam" and "உதயம்" in respect of one of the several varieties of filter coffee manufactured and marketed by it. The said use of the mark "Udhayam" or "உதயம்" by the defendant was identical/deceptively similar to the plaintiffs' trademark "UDHAIYAM" and "உதயம்", and clearly an infringement of the plaintiffs' trademarks. In order to protect its valuable intellectual property, the plaintiffs' began taking necessary steps by undertaking enquiry to institute necessary prosecution against the defendant. In the course of such preliminary enquiry undertaken then, it was learnt that the defendant was then clandestinely and recently attempting to sell one of its several varieties of coffee under the label - impugned "Narasu's Udhayam" mark but however the same variety of coffee was neither marketed



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by the defendant extensively nor well received amongst the public. Even as the plaintiffs were contemplating to take action against the defendant in respect of the use of the impugned "Narasu's Udhayam" mark or any other mark which is identical/deceptively similar to the plaintiffs trademark UDHAIYAM and "உதயம்", the plaintiffs noticed that the defendant had discontinued the use of the objectionable "Narasu's Udhayam" mark. Accordingly, the plaintiffs did not pursue the matter in trust believing that the commencement of the use of the impugned "Narasu's Udhayam" mark and the mark "Udhayam" and "உதயம்" by the defendant would have been a mistake, and that in realisation of the exclusive intellectual property right enjoyed by the plaintiffs over the trademark "Udhaiyam" and "உதயம்", the promoters of the defendant promptly and rightly discontinued the wrongful use of the impugned "Narasu's Udhayam" mark.

10. After several years, recently, the plaintiffs were again informed that the defendant had recommenced selling products under the mark "Udhayam" and "உதயம்". An enquiry undertaken has now revealed that the defendant has not only recommenced using the mark "Udhayam" and "உதயம்" under as "Narasu's Udhayam" mark in respect of one of its 9 varieties of filter coffee/15 varieties of coffee in general, but has also clandestinely adopted and started using the mark "Udhayam" alongside its trademark "Narasu's" in respect of curd and paneer manufactured and marketed by the defendant. Copies of the bills dated 18.09.2024 and 21.09.2024



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evidencing the sale of the products under the infringing mark "Narasus Udhayam" by the defendant though their branch offices in Chennai at Indiranagar and Mylapore respectively are filed herewith collectively as Plaint Document No. 8. A further investigation undertaken by the plaintiffs has also revealed the apparent dishonesty on the part of the defendant in having recommenced the use of the mark "Udhayam" and "உதயம்" in respect of its products as evident from the defendant own website as under:

(i) The mark "Udhayam" and "உதயம்" which was used along with the defendant's trademark "Narasu's" as "Narasu's Udhayam" mark several years back, was clandestinely re-introduced by the defendant in respect of the one of the 9 varieties of filter coffee and 15 varieties of coffee in general manufactured and marketed by it;

(ii) The defendant was indulging in false representation to the general public by mentioning "(R)" as a superscript to the word "Udhayam" and "உதயம்" on the impugned "Narasu's Udhayam" mark inter-alia in contravention of Secs.17 and 107 of the Trademarks Act, 1999;

(iii) Barring the aforesaid use of "Udhayam" and "உதயம்" alongside "Narasu's" on the label of one of the several varieties of coffee, the mark "Udhayam" or "உதயம்" was not used by the



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defendant in respect of any of the other products manufactured and marketed by it;

(iv) The defendant was manufacturing and marketing only ghee and dairy Whitener as milk products under the trademark "Narasu's". However, the manufacturing and marketing of Curd and Paneer was a new and recent venture of the defendant not even mentioned on its website, and the use of the mark "Udhayam" alongside "Narasu's" was clandestine;

Printout of the webpages from the defendants website <https://narususcoffee.in> enlisting the products of the defendants are filed herewith as Complaint Document No. 9 collectively.

21. The cause of action for the present suit has arisen at Old Washermenpet - Chennai within the territorial jurisdiction of this Hon'ble Court where the plaintiffs are residing and are carrying on their business activity under their mark and label UDHAIYAM and "உதயம்" and further as detailed above; In 1940, when and since the mark UDHAIYAM and "உதயம்" was honestly conceived, adopted and continuously used by the plaintiffs in respect of various food products; Several years back, when the plaintiffs' first gained knowledge of the clandestine use of the mark "Narasu's Udhayam" by the defendant in respect of a variety of Coffee which was soon discontinued; recently in September 2024, when the defendant has recommenced the use of the mark "Narasu's Udhayam" in respect of one of its varieties of coffee and has clandestinely commenced using the mark "Narasu's Udhayam" in respect of curd and paneer; in



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September 2024, when the plaintiffs gained knowledge of the registration surreptitiously secured by the defendant in respect of one of its logo in ex-facie violation of the plaintiffs exclusive right over its trademark and when the plaintiffs have filed rectification petition seeking rectification of the said trademark; and when the defendant has continued with their infringing activity and subsequently die in diem.'

5.Learned counsel for the respondents/plaintiffs, after drawing attention to the aforementioned paragraphs in the plaint, would submit that only recently, the respondents/plaintiffs came to know that though the applicant/defendant had stopped using the respondents'/plaintiffs' Trade Mark, they had recommenced using the same Trade Mark and has also introduced a new product of 'curd' and 'paneer' by adopting the Trade Mark 'UDHAYAM' which is deceptively similar to that of the respondents'/plaintiffs' Trade Mark 'UDHAIYAM'. He would submit that it is settled law that while deciding an application under Order VII Rule 11 of C.P.C., this Court will have to look into only the averments for the purpose of deciding as to whether there is any cause of action for the respondents/plaintiffs to sue the applicant/defendant. He would submit that since as per the plaint averments, cause of action has been made out against the applicant/defendant, the present application is not maintainable.



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6. Insofar as the second ground raised by the applicant/defendant seeking for rejection of plaint, namely, that the respondents/plaintiffs did not institute pre-suit mediation is concerned, learned counsel for the respondents/plaintiffs once again drew the attention of this Court to paragraph Nos.9 and 10 of the plaint and would submit that the respondents/plaintiffs only recently in the month of September 2024, became aware that the applicant/defendant has introduced new products under the infringing mark in respect of 'curd' and 'paneer'. Only due to the said fact that earlier interim orders are required to protect the interest of the respondents/plaintiffs, there became a necessity to file a suit, without pre-suit mediation as contemplated under Section 12A of the Commercial Courts Act.

7. Learned counsel for the applicant/defendant would contend that since the mandatory statutory requirement of Section 12A of the Commercial Courts Act, namely institution of pre-suit mediation has not been complied with by the respondents/plaintiffs, the plaint has to be rejected. For the said contention, the learned counsel for the applicant/defendant drew the attention of this Court to paragraph Nos.9, 10 and 21 in the plaint and would submit that since the respondents/plaintiffs were aware of the usage of the Trade Mark 'UDHAYAM' by the applicant/defendant even earlier, necessarily, filing the suit without instituting pre-suit mediation is not mandatory. She also drew the attention of this Court to



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the judgment of the Hon'ble Supreme Court, rendered under Section 12A of the Commercial Courts Act in the case of **Yamini Manohar vs. T.K.D.Keerthi reported in 2024 (5) SCC 815** and in particular, she relied upon paragraph Nos.10, 11 and 12 of the said judgment. According to her, the proposition laid down by the Hon'ble Supreme Court in the above referred decision, squarely applies to the facts of this application, filed by the applicant/defendant. Therefore, she would submit that since the respondents/plaintiffs have not satisfied the mandatory requirement stipulated under Section 12A of the Commercial Courts Act, the plaint will have to be rejected as prayed for in this application.

8.Learned counsel for the applicant/defendant also drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **T.Arivandandam vs. T.V.Satyapal and another reported in 1977 (4) SCC 467** and would submit that if clever drafting of the plaint has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing. According to her, the respondents/plaintiffs have cleverly drafted the plaint to falsely make out a cause of action against the applicant/defendant in the suit and therefore, the plaint will have to be rejected as prayed for in this application.

Discussion:



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9. It is settled law that while deciding an application under Order VII Rule 11 of C.P.C. this Court can only look into the plaint averments. If the averments satisfy that a cause of action has been made out to sue the applicant/defendant, Order VII Rule 11 of C.P.C. application cannot be entertained.

10. In the instant case, as seen from paragraph Nos. 9, 10 and 21 of the plaint, adequate averments have been made by the respondents/plaintiffs to sue the applicant/defendant in respect of the cause of action for which the suit has been filed. The respondents/plaintiffs have also given adequate reasons as to why the suit has been filed at this point of time. According to them, even though the applicant/defendant has been using the infringed Trade Mark earlier, they had stopped using the same and had only recommenced the usage of the same only recently in September 2024. According to the respondents/plaintiffs, new products have been introduced by the applicant/defendant using the deceptively similar Trade Mark as that of the respondents/plaintiffs only in the month of September 2024. Though the learned counsel for the applicant/defendant would contend that the respondents/plaintiffs have drafted the plaint cleverly for the purpose of falsely filing the suit against the applicant/defendant, this Court, after giving due consideration to paragraph Nos. 9, 10 and 21 of the plaint, is of the considered view that the said contention of the learned counsel for the applicant/defendant has to be rejected as this Court at this stage with the available materials cannot come



to the conclusion that there is no cause of action for the respondents/ plaintiffs to sue the applicant/defendant.

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11.As the plaint averments, found in paragraph Nos.9, 10 and 21 certainly makes out a case against the applicant/defendant. Whether the respondents/ plaintiffs have made out a case against the applicant/defendant or not cannot be decided at this stage as adequate averments have been made by the respondents/ plaintiffs in the plaint for filing the suit against the applicant/defendant in the plaint.

12.The decision relied upon by the learned counsel for the applicant/ defendant namely, **T.Arivandandam vs. T.V.Satyapal and another reported in 1977 (4) SCC 467**, was a case, where the Hon'ble Supreme Court had given a finding that there was clever drafting of plaint only after recording of evidence in the suit. Therefore, the said decision has no applicability to the case of the applicant/defendant at this stage when the trial is yet to commence. Therefore, the first ground raised by the applicant/defendant, namely that there was no cause of action to sue the applicant/defendant is concerned, the same is rejected by this Court.



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13. Insofar as the second ground raised by the applicant/defendant that the plaintiff is liable to be rejected on the ground that the respondents/plaintiffs did not institute pre-suit mediation, which is mandatory as per the provisions of Section 12A of the Commercial Courts Act is concerned, the said ground has also to be rejected for the following reasons:

a) Adequate averments have been made about the reputation of the respondents/plaintiffs Trade Mark 'UDHAIYAM'. The averments have also been made by the respondents/plaintiffs, as stated supra that the applicant/defendant has recently introduced two new products, namely, 'curd' and 'paneer' by using the deceptively similar Trade Mark "UDHAYAM" as that of the respondents/plaintiffs recently in the month of September 2024. The respondents/plaintiffs have also made averments that the applicant/defendant had stopped using the respondents/plaintiffs deceptively similar trade mark earlier, but had recommenced using the same only recently. The respondents/plaintiffs claim to be a leader in their field of business and have also pleaded that the applicant/defendant is attempting to ride over the reputation of the respondents/plaintiffs and their goodwill by using the deceptively similar mark. When adequate averments have been made, the question of rejecting the plaintiff does not arise.



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b)As seen from the judgment of the Hon'ble Supreme Court, relied upon by the learned counsel for the applicant/defendant in the case of **Yamini Manohar vs. T.K.D.Keerthi reported in 2024 (5) SCC 815**, it has been made clear that in cases, where this Court does not grant interim relief as prayed for in the interim injunction applications, then the plaint need not be rejected. The relevant paragraph in the plaint is re-produced hereunder:

'10.We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after Issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely: (i)prima facie case, (ii)



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irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint'.

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14.In fact, as seen from paragraph 10 of the aforesaid decision, it has been observed that if the Court issued notice and/or granted interim stay may indicate that the Court is inclined to entertain the suit. In the case on hand, this Court had issued notice in the interim injunction application filed by the respondents/ plaintiffs and counters have also been filed by the applicant/defendant in those applications and those applications are ripe for arguments and the same to be heard by this Court once this Court decides this application. As adequate pleadings have been made in the plaint seeking urgent interim relief from this Court, the question of rejecting the plaint on the ground of non compliance of Section 12A of the Commercial Courts Act does not arise.

15.For the foregoing reasons, this Court does not find any merit in this application. Accordingly, this application is dismissed.



27.11.2024

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Note: Post the matter for arguments on 04.12.2024
in the other Interlocutory Applications.

A.No.6001 of 2024 in C.S. (Comm.Div.) No.203 of 2024