



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.06.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.1653 of 2025
in
C.S.(Comm Div) No.186 of 2024

M/s.PCI Pest Control Private Limited
(PCIPCPL), a Company incorporated
under the provisions of the Companies
Act having its Registered Office at
Villa No.3 Crescent Villa, Candolim,
Goa-403 515

AND

Corporate Office at 3rd Floor,
Narayani, Ambabai Temple
Compound, Aarey Road, off S.V.Road,
Goregaon West, Mumbai-400 104.

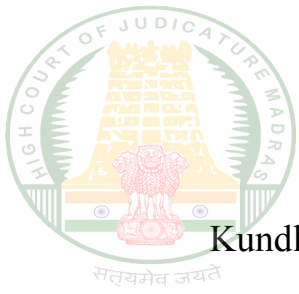
... Applicant/Proposed
Defendant No.2

-VS-

Mr. Keerthivasan. K
No.4/139, G5 & G6, Vjayakumar Thottam,
Agarwal School Road,
Kalappanaickenpalayam,
Coimbatore-641 046.

... Respondent No.1/
Plaintiff

M/s.JSG Innotech Pvt. Ltd.
Plot NO.63, Sector 53, HSIDC, Phase V,



Kundli, Sonipat, Haryana-131028, India.

...Respondent No.2/
Defendant No.1

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Prayer: Judge's summons filed under Order XIV Rule 8 of the OS Rules read with Order 1 Rule 10 of the Code of Civil Procedure, 1908, prayed to allow the present Application for Impleading the Applicant as Defendant No.2 in the aforesaid Commercial Suit No.186 of 2024 in order to put the correct and true facts on record.

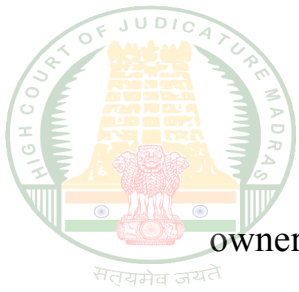
For Applicant : Mr. Abhishek R.

For Respondents : Mr.V.Avinesh

ORDER

The suit was filed seeking relief against M/s.JST Innotech Pvt. Ltd. for alleged infringement of the plaintiff's registered design in respect of a mosquito racquet. The third party, PCI Pest Control Private Limited, has filed this application to implead itself as the second defendant in the suit.

2. Learned counsel for the applicant submits that a Supply Agreement dated 08.03.2022 was entered into by and between the applicant and the plaintiff herein for the supply of mosquito racquets. It is further submitted that Article 11 thereof contains an acknowledgement of the applicant's

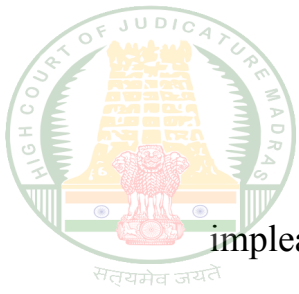


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ownership of all IPR in products manufactured and supplied pursuant to the agreement. While learned counsel for the applicant contends that some supplies were made pursuant to the agreement, learned counsel for the respondent/plaintiff submits that no supplies were made pursuant to the agreement.

3. According to the applicant, the real owner of the design over which the plaintiff has obtained registration is the applicant. Learned counsel, therefore, submits that the applicant qualifies as a proper party whose presence is necessary for the effective adjudication of all issues that arise for consideration in the suit. By relying on the arbitration clause in the supply agreement, learned counsel also points out that applications for interim relief and a petition for appointment of arbitrator were lodged before the Bombay High Court.

4. In response, learned counsel for the respondent/plaintiff submits that the suit is directed against the manufacturer of mosquito racquets for design infringement, and that the third party applicant is not entitled to be



impleaded.

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5. The first question that falls for consideration is whether the applicant is a necessary party. The plaintiff has prayed for a decree to restrain the defendant from infringing the registered design of the plaintiff. Therefore, the decree requested for may be issued in the absence of the applicant, which is, therefore, not a necessary party. As per Order 1 Rule 9 of the Code of Civil Procedure, 1908(the CPC), a suit cannot be dismissed on the ground of non-joinder or mis-joinder except with regard to non-joinder of a necessary party. As per Order 1 Rule 10(2) CPC, either party to a suit (but not a third party) may apply to add or delete a party from the array of parties. The said provision also empowers the Court to add or delete a party, if appropriate.

6. The case of the applicant appears to be that the applicant is the real owner of the design and that the plaintiff is merely the ostensible owner thereof. In those circumstances, it is always open to the applicant to apply for revocation of the design registration or to seek relief against the plaintiff



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by invoking the arbitration clause in the Supply Agreement. By this application, the applicant, which is a third party, is endeavouring to support the defendant. Given that the plaintiff is *dominus litis*, a third party cannot be permitted to implead for purpose of supporting the defendant or bolstering the defendant. Therefore, this application is dismissed without any order as to costs.

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SENTHILKUMAR RAMAMOORTHY,J



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