

18.09.2024

TM No. 82/17
Januki Kumari and ors vs. V.K International

Present: Sh. Pranay Sarkar, Ld. Counsel for the plaintiff.
Ms. Meenakshi, Proxy counsel for the defendant no. 3 through VC.

Perusal of the record shows that there are three pending application as follows :-

1. Order 7 Rule 11 CPC filed by defendant no. 1.

Perusal of the record further shows that the defendant no. 1 only appeared as recorded vide order dated 07.08.2019 and has thereafter not been appearing in the present matter.

Today also nobody has appeared on behalf of defendant no. 1 and 2 to argue the application under Order 7 Rule 11 CPC which was filed on 09.07.2018.

Vide the aforesaid application, it has not been contended that the present suit is not maintainable for want of cause of action.

It has further been contended that defendant no. 1 and 2 had only sold one pair of shoes in the name and style of BERSACHE GLOBE STAR-182 RUNNING SHOES and also that the suit of the plaintiff is not maintainable since there has not been any infringement of the trade mark of the plaintiff.

The aforesaid facts as stated in the application under Order 7 Rule 11 CPC are a matter of trial and no ground whatsoever has been made for rejection of the plaint under the provisions of Order 7 Rule 11 CPC.

The plaint clearly discloses a cause of action and no ground whatsoever has been made out to reject the plaint under the provisions of Order 7 rule 11 CPC.

Ld. Counsel for the plaintiff submits that besides the same, two other grounds have been urged by the applicant of the application under Order 7 Rule 11 CPC i.e. (1) that the plaint does not bear the signature of each and every plaintiff and the same is also not supported by the affidavits of every plaintiff. However, the aforesaid contention is clearly misconceived since the plaint is duly signed by the authorized signatory whose authorization has been annexed with the plaint and as per the affidavit sworn, it has been duly stated that the authorized signatory has signed the plaint.

Accordingly, on this ground the plaint cannot be rejected under the provisions of Order 7 rule 11 CPC.

Accordingly, the said contention is also dismissed.

Keeping in view the fact that as disclosed in the plaint and more particularly in para 26 of the plaint wherein the plaintiff has stated that the plaintiff is carrying on business through its exclusive distributors within the territorial jurisdiction of this court and keeping in view the provisions of Section 134, the jurisdiction of the court is made out

in whose local limits of its jurisdiction at the time of institution of the suit, the person instituting the suit is actually and voluntarily carrying on its business.

In view of the specific provision of the Section 134 of the Trade Marks Act, 1999, the present suit in terms of the averments made in the plaint, the suit is maintainable before this court. Moreover, it is settled law that for the purposes of the provisions of Order 7 Rule 11 CPC, only the plaint has to be considered.

Perusal of the plaint shows that the same discloses cause of action since the plaintiff in the present suit has contended that it is carrying on business of sale of goods in Delhi through its exclusive distributor.

Accordingly, **the present application under Order 7 Rule 11 CPC being devoid of any merits is dismissed.**

Perusal of the record further shows that there are two other pending applications i.e. Under Order 1 Rule 10 CPC read with Order 6 Rule 17 CPC.

Ld. Counsel for the proposed defendant no. 3 submits that the main counsel is not available today to address arguments since he is held up before the Hon'ble High Court of Delhi.

However, it is submitted by the proxy counsel for the defendant no. 3 that he would appear through VC at 11 AM.

At request, be awaited.

Sachin Sood
DJ-01, Central, THC
18.09.2024

At 11:35 AM

Present: None for the plaintiff.

Ms. Meenakshi, Proxy counsel for the defendant no. 3 through VC.

It is submitted on behalf of the proposed defendant no. 3 that the counsel is not available today to address arguments on the application under Order 1 Rule 10 CPC as well as the application under Order 6 Rule 17 CPC.

Last and final opportunity is granted to the parties to address arguments on the pending applications.

Renotify on **30.11.2024.**

Sachin Sood
DJ-01, Central, THC
18.09.2024