

Order Below Exh. 16 in Trademark Suit No.2/2022.

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1. Present application has been given by the defendant under Order 7 Rule 11, of the C.P.C. on the ground that from plain reading to plaint, no cause of action arise to file suit. It is submitted that there is no specific averment in the plaint that defendant is using plaintiff's logo and when same came to knowledge of the plaintiff ? It is further submitted that plaintiff is Trust and their is nothing in the plaint from which it transpires that who has created logo, so without not being creator or owner of the said logo plaintiff has no right to file suit. It is further submitted that plaintiff is non profit making Trust, only for the purpose of development of community, so plaintiff is not using logo "SPG" in relation to trade as per the provisions of the Sec 2 (1) (Zb) read with Sec. 2 (1) (m) of the Trade Mark, so , plaintiff is not entitle to claim any rights over the same. It is further submitted that their is nothing on record from which it transpires that Trust gave authority to file suit to Mr. Laljibhai Patel, so on that ground present suit is required to be dismissed. In support of his application Ld. Advocate for the defendant relied on following judgment.

1. 2021(0) AIJEL SC 67716, Rajendra Bajoria V/S Hemant Kumar Jalan.
 2. 2020 (0) AIJEI -SC 65828 Canara Bank V/S P Selathal
 3. 2016 (0) AIJEL HC 235079 Ipeg Inc V/S Kay Bee Engineers
2. Plaintiff filed reply to present application vide Exh. 17 and denied averments made by the defendant. It has been stated that in para 22 of the plaint cause of action specifically mention. It is submitted that defendant apply for the trade mark by using same logo which is used by the plaintiff and claim monopoly right over it and same is use for business activities. It is further stated that ground taken by the defendant is triable issue and plaint can not be rejected threshold. It is further submitted that as per sec. 18 of the Trade Mark A Trust can apply for trade mark. It is further submitted that being trustee of the plaintiff's trust earlier in the year 2016, present defendant also apply on behalf of plaintiff's trust. It is further submitted that prayer of plaint does not covered by Sec. 50 read with Sec 51,79 and 80 of the Bombay Public Trust, hence permission of Charity Commissioner is not required to file suit. It is submitted that whether cause of action is arise or not is

triable issue hence requested to reject present application. In support of his argument he relied on following judgment.

1. Civil Revision Application No 1 Of 2020, Tripti Grover
V/S R G Mir Sanandwala Education Charitable Trust

3. Heard, both the advocates. Before going to factual aspect first of all I would like to reproduced O. 7 Rule 11 of the CPC.

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

4. It is settled law that whether a plaint discloses a cause of action or not is essential question of fact. As there is no proper definition for cause of action in CPC but the facts alleged in a complaint, upon which plaintiff's right to sue in a court of law. In other words the cause of action can be said to be those facts that entitle a person to seek legal remedy against a wrongdoer. Further it is settled while deciding application under O.7 Rule 11 court has to see averments made in the plaint and documents filed along

with the plaint, court can not consider the defence or pleas taken by the other side.

5. Keeping in mind above legal aspect we should evaluate record. Here, plaintiff is trust , registered under Bombay Public Trust Act and engaging in the services of social and religious activities under label of SPG with distinctive colour scheme, get up trade dress, style since long. It is further stated that defendant was one of the trustee of plaintiff trust from 2004 to 2020 and in the year 2020 he was terminated from the trust. It is further stated that present defendant file trade mark application on behalf of the plaintiff trust in the year 2016 but same was refused by Trade Mark Registry on 13/2/19.
6. It is stated that at present defendant is also engaged in providing social services under the name and style of SPG with same Artistic Logo of plaintiff Trust. It is stated that defendant filed application before Trademark registry, in the name of SPG with same Artistic Logo on 15/12/21. **So, in para 22 of the plaint, it has been specifically mention that defendant has started activities in the name of SPG with same Artistic Logo of the plaintiff trust and apply for Trade mark before Trade Mark registry.**

7. Ld. Advocate for the defendant argued that looking to memorandum of plaintiff's trust, same is for charity purpose so logo used by the plaintiff can not be considered as trade mark within the preview of Sec 2 (1) (zb) r/w 2 (1) (m). On this point I have gone through Sec. 18, wherein stated that "a person who claims to be the proprietor of the trade mark in relation to goods and services may apply for the registration of a Trade Mark and person includes "Trust" also. Even if Trust is only for the purpose of charity, apply for Trade Mark for the services which are provided by the Trust to public at large. So, argument advance by the Ld. Advocate that is not tenable.
8. It is further argued that plaintiff is failed to prove their ownership over the logo " SPG " and its Artistic work and further plaint is not signed by the authorized person of the Trust. Here, it is required to note that present application is filed under O.7 Rule 11 for rejection of plaint on the ground that no cause of action arise. So far as above argument advance by the Id. Advocate for the defendant, I am of the view that all are required to be taken in to consider at the time of evidence.
9. Here, looking to documentary evidence produced by the plaintiff it transpires that defendant apply for the trade mark

"SPG" similar to plaintiff's logo. So, it can not be said that no cause of action arise.

10. I have gone through judgment relied by the Ld. Advocate for the defendant. In the case of Rajendra Bajoria V/S Hemant Kumar Jalan reported in 2021(0) AIJEL SC 67716, suit was rejected on the ground of non disclosing cause of action. In said case suit was filed by the heirs of the partner against other partner's heirs. Hon'ble Apex Court held that only a partner of a firm who can seek dissolution of the firm. The dissolution of firm cannot be ordered by the court at the instance of a non partner. Hence, Plaintiff are not entitled to claim dissolution of the said firm. So, facts of the said case are different. I have also gone through other two judgments but facts of both the cases are different.
11. I have also gone through the judgment relied by the plaintiff and fully agree with the same. Here, looking to plaint it transpires that defendant has apply for trade mark SGP which is similar to plaintiff's logo. So, In view of the above discussion, defendant is failed to prove that no cause of action arise to filed present suit. Hence, in the interest of justice following order passed.

ORDER

Present Application filed by the defendant under O. 7 Rule 11 is rejected.

It is worthless to note that observation and reasons are preliminary in nature only with a view to decide present application and shall not influence at the stage of final hearing.

Pronounced today on this 14th day of March, 2023 in open Court at Mahesana.

(Zankhana V. Trivedi)
4th Additional District Judge,
Mahesana.
CODE NO.GJ00676