

IN COMMERCIAL TRADE MARK CIVIL SUIT NO. 4 OF 2022

ORDER BELOW EXHIBIT - 12

- (1) The Defendant has preferred the present application *inter alia* praying that their sister concern company 'Kanaiya Fashion' be arrayed as a defendant to the present suit under Order 1, Rule 10 of The Code of Civil Procedure.
- (2) The Plaintiff has preferred the present suit for passing off *inter alia* seeking relief of permanent injunction and damages with respect to the Trade Mark 'Kanaiya Creation' and 'Kanaiya'.
- (3) The defendant herein has prayed that their sister concern firm namely 'Kanaiya fashion' is also doing the same business and hence, they are also necessary and proper party in the present suit. It is further submitted by the defendant that no prejudice is likely to be caused to the plaintiff if their sister concern firm is arrayed as a party to the present suit. Ld. Advocate for the defendant has relied upon the Judgment of Hon'ble Allahabad High Court report in ***Civil Misc. Writ Petition No. 8223 of 1988 in case of Kisan Uchattar Madhyamik Vidyalaya Samiti, Deoria and Other Petitioners Vs. IIIrd Addl. District Judge, Deoria and Other Respondents*** to contend that the court has wide power of impleadment and even the court can *suo motu* implead a party. Hence, upon all such grounds, it is prayed that present application allowed.
- (4) *Per contra*, Ld. Advocate for the plaintiff has opposed the present

application and has submitted that they are not concerned with the sister concerned firm of the defendant namely 'Kanaiya Fashion' and if any cause of action accrues against them, they may take independent remedy against them. Hence, it is prayed that the present application be rejected.

- (5) I have heard the Ld. Advocate for the parties and perused the entire case record.
- (6) At the outset it is required to be noted that the present suit is filed by the Plaintiff against the defendant with respect to passing off actions. It is trite that plaintiff is the *dominus Litis* and he has complete discretion as to against who he want to file and contest the suit. The defendant cannot force the plaintiff to fight against third party or any other person against whom plaintiff does not want to fight, unless it is mandated by law. The Law on this issue is very much well settled by the Judgment of Hon'ble Apex Court in ***Civil Appeal Nos. 5522-5523 of 2019 in case of Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others*** wherein, it is held that ..

"....plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law"...

- (7) Also very recent judgment of ***Hon'ble Delhi High Court in case of Kranti Arora Vs. Digjam Ltd. 2022 LL Delhi 666***, is noteworthy at this stage. It is held by the Hon'ble Delhi High Court that

"Dominus litis is the person to whom a suit belongs and is

master of a suit and is having real interest in the decision of a case. The plaintiff being dominus litis cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom he wants to implead as defendants and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as necessary party if that party is likely to suffer any legal injury due to outcome of the suit. The doctrine of dominus litis should not be over stretched in impleading the parties"...

- (8) Now, the argument of the Ld. Advocate for the defendant that even the court can *suo motu* implead a party to the Suit is concerned, it is well settled proposition of law that Court has *suo motu* power in this regards. However, the test is whether such party is a necessary party, in absence of whom a decree cannot be passed or who would be directly effected by such decree. In this regards it is to be noted that the present is a suit for passing off. Passing off is a common law remedy available under the law Torts for enforcement of unregistered mark. Passing off, is an action *in personam*. Passing off is an action between the plaintiff and a person who is alleged to have committed the act of Passing off. Hence even, if the sister concerned firm of the Defendant has used the mark of the Plaintiff, then also the same is a separate cause of action for the Plaintiff, and such sister concern firm is not required to be arrayed as a party to the present proceedings. Hence 'Kanaiya Fashion' is not necessary party.

- (9) The arguments of the Ld. Advocate for the Defendant with respect to multiplicity of the proceedings is not sustainable in view of the fact that the cause of action herein is only with respect to the defendant and not against the sister concerned firm of the Defendant.
- (10) Hence, in view of the aforesaid facts and circumstances, there is no merit in the present Application, and hence I pass the following order in the interest of justice :-

-:: O R D E R ::-

The present application Ex. 12 stands '**Rejected**'.

No order as to costs.

Order Signed and Pronounced on

Date: 25.07.2022

Place : Surat

(VIVEK N. MAPARA)
Special Commercial Judge,
12th Additional Sessions Judge,
District & Sessions Court, Surat
(Unique ID: GJ01589)