

KAUP010018802020



**IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE, UDUPI**

Present : **Dinesh Hegde**, B.A., LL.B.,
II Addl. District and Sessions Judge,
Udupi.

Dated :- This the 25th day of March, 2023

ORIGINAL SUIT No.1/2020

M/s Sumukha Surgicals India Pvt Ltd.,
Kanchikan Road,
Uppunda, Kundapura Taluk,
Udupi District-576232
Rep. by its Managing Director
Mr. Suresh Shetty

.. Plaintiff

(By Sri. K.S.H., Advocate)

- Vs -

M/s Dhrithi Surgical Solutions Pvt. Ltd.,
Door No.5-110-1042/8, Alke,
Kambla Cross Road,
Mangalore – 575003.
Rep. by its Director
Mr. Sharath Kumar Shetty.

... DEFENDANT

(By Sri. K.S.B/G.K.J., Advocate)

ORDERS ON I.A No.III

This application is filed by the advocate for the plaintiff under Order 6 Rule 17 Section 94(e) and Section 151 of CPC for amendment of plaint.

2. I.A.No.III is accompanied by the sworn affidavit of the plaintiff.

3. The advocate for defendant's filed objections.

4. Heard both sides arguments and perused the records.

5. The following point arises for may consideration.

“Whether the plaintiff has made out grounds to amend the plaint?”

6. My answer to the above point in the Affirmative for the following:

REASONS

7. According to the plaintiff he filed suit for the relief of injunction and other reliefs against the defendant. At the time of filing the suit the defendant's director was residing at Mangalore. To serve the summons, the plaintiff given the

address of the defendant as Mangalore as he was residing at Mangalore at that point of time, registered address of the defendant Firm is very much relevant in the cause title. By over sight he has mentioned the address of the director of the Firm instead of Firm's. Therefore, he filed this application to replace the Firm's office address in the cause title by deleting the earlier address. The defendant is a registered company. It is also prayed to seek the relief No.ii(a) to the effect grant permanent injunction restraining the defendant from using trading style 'Dhrithi' for carrying on business in surgical equipments as it amounts to impingement of registered trademark 'Dhatri' of the plaintiff for similar products.

7. The defendant filed objections stating that the application is filed to over come inherent defect. The reasons stated in the application are all untenable and cannot be looked into as there is no grounds to amend and it will give fresh cause of action. The plaintiff sought for a permanent injunction as of restraining the defendant infringing the plaintiff's trademark "Dhatri" by using offending trademark "Dhrithi" and other relief's and also filed application under seeking temporary injunction under order XXXIX Rule 1 of CPC. The said I.A. came to be rejected by this court. The plaintiff has filed MFA No.3484/2021 before the Hon'ble High Court of Karnataka at Bengaluru challenging the order of this court. The Hon'ble High Court of Karnataka vide its

order dated 25.09.2021 allowed the appeal filed by the plaintiff and restraining the defendants from using the trademark “Dhrithi”.

8. On compliance of the order dated 25.09.2021, the defendant adopted the unique trademark “Shaivi” and stopped using the trademark/brand name “Dhrithi’ for their products/cartons. The defendant changed the brand name and adopted the unique trademark/brand name “Shaivi” for their products, manufactured and supplied by them and not using the trademark of the plaintiff.

9. The plaintiff has registered their company under the name M/s Sumukh Surgicals India Pvt. Ltd., even after changing the brand name trademark and now the plaintiff filed application seeking incorporated additional prayer seeking restraining the defendant from using the company name M/s Dhrithi Surgical Solutions Private Limited. The Name of the plaintiff’s company is totally different from the defendant, defendant stopped using the trademark Dhrithi for their product. The defendant company is ISO9001, ISO 13485 certified company is a private limited company incorporated and registered under the Companies Act 2013. The defendant has applied for the MSME certificate on 20.03.2018 and the Ministry of Micro Small and medium enterprises issued MSME registration certificate in favour of the defendant

company. The defendant registered their company after search and due verification from the company board and incorporated the name of the company. The defendant neither used the trademark “Dhatri” nor “Sumukha Surgicals India Pvt. Ltd., for their business. On the same ground itself the application liable to be dismissed in limine.

10. On perusal of the records, the amendment of plaint sought in the application is before commencement of trial. Under Order VI Rule 17 of CPC the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such a terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

11. Since it is pre-trial amendment of plaint is sought, it is just and necessary to allow the plaintiff to amend the plaint at the initial stage in order to avoid multiplicity of proceedings. Of course what ever the averment made in the plaint is subject to prove at the trial. The delay caused to the defendant can be compensated by imposing cost. Therefore, the plaintiff has made out the grounds to amend the plaint. Accordingly, I answer the above point in the affirmative and pass the following:

ORDER

I.A No.III filed by the appellant under Order 6 rule 17 of CPC dated 08.11.2021 is hereby allowed with cost of Rs.500/-.

To amend the plaint and file amended plaint.

The defendant is at liberty to file additional written statement within the statutory period.

(Dictated to the stenographer,directly on computer, corrected and signed by me and then pronounced in open court on this the **25th day of March, 2023**)

II Addl District and Sessions Judge,
Udupi