

(2021) 10 DEL CK 0114

In the Delhi High Court

Case No : CM(M)IPD No. 1 Of 2021, Civil Miscellaneous Application No. 17401 Of 2020

Baldev Singh Sole Proprietor Of M/S Madaan Plastic Industry APPELLANT

Vs

Indian Plastic Footwear And Clothing Pvt. Ltd. & Ors. RESPONDENT

Date of Decision : 22-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2), Order 6 Rule 17

Citation : (2021) 10 DEL CK 0114

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Mahir Malhotra, Satish Kumar, Smriti Papreja, Naqeeb Nawab, Shashwat Rakshit, Raghav Vig, Himanshu Deora, Anirudh Bakhru, Abhishek Singh

Final Decision : Dismissed

Judgement

CM(M)IPD 1/2021, CM APPL.17401/2020 (for stay)

1. This petition has been filed under Article 227 of the Constitution of India against the order dated 27th January, 2020 passed by the learned Commercial Court dismissing the application of the petitioner moved under Order I Rule 10 (2) in CS (COMM) 180/2020, seeking to implead "M/s Madaan Footcare Private Limited" as a co-defendant.

2. The facts as are relevant for the disposal of the present petition are that the petitioner/plaintiff claims be a leading manufacturer of plastic footwear under the mark MPI (logo) and "MADAAN". It is claimed that this business has been in existence since 1997 and the goods of the petitioner/plaintiff are sold in various parts of India and the petitioner/plaintiff has a well-established sales network throughout the country.

3. While resolving various family disputes amongst the petitioner/plaintiff and his brother Mr. Darshan Singh and sons of Mr. Darshan Singh, who are also the

directors of Respondent No. 1/defendant No. 1, namely, Mr. Simarpreet Singh and Mr. Charanjeet Singh, a Dissolution Deed dated 01st April, 1995 was executed, whereby, the petitioner was given the two registered trademarks, namely, the word mark and label "MADAAN" for footwear of all kinds. Several litigations are pending between the parties, however, the present suit had been filed since the respondent No.1/defendant No. 1 company had begun to infringe this registered trademark of the petitioner/plaintiff by using the mark, "HOUSE OF MADAAN".

4. In the written statement filed by the respondent No.1/defendant No.1, it was claimed that it had obtained a license from Respondent No. 2/M/s Darshan Singh and Sons HUF. It was also mentioned that Mr. Simarpreet Singh and Mr. Charanjeet Singh were presently directors of one "M/s Madaan Footcare Private Limited" which had been incorporated in 2001 but the details were not mentioned in the written statement. As such, the petitioner/plaintiff felt that there was nothing to be done on such a vague disclosure. However, it was from the filing of a Caveat that the petitioner/plaintiff discovered the commonality between the entities i.e., Respondent/Defendant No.1 and "M/s Madaan Footcare Private Limited" inasmuch as the directors being the nephews of the petitioner/plaintiff were common.

5. In these circumstances, an application under Order I Rule 10 (2) CPC was filed by the petitioner/plaintiff to implead M/s Darshan Singh and Sons HUF as also "M/s Madaan Footcare Private Limited". Vide the impugned order dated 27th January, 2020, the learned Commercial Court allowed the impleadment of M/s Darshan Singh and Sons HUF but rejected the application for impleadment of "M/s Madaan Footcare Private Limited" on the ground that there were no pleadings qua the said entity. Aggrieved the present petition has been filed.

6. Mr. Mahir Malhotra, learned counsel for the petitioner/plaintiff submits that the impugned order was liable to be set aside, primarily on the ground that the observation of the learned Commercial Court that the petitioner/plaintiff could file a fresh suit against the said "M/s Madaan Footcare Private Limited" was violative of the fundamental principle of avoiding multiplicity of litigation. It was submitted that the mention of "M/s Madaan Footcare Private Limited" in the written statement was without material particulars and as such, the petitioner/plaintiff believed that it had no cause of action against it. However, in December, 2017, after the written statement had been filed in September, 2017, five entities filed caveats and an email was sent to the petitioner/plaintiff bearing in the letterhead, with prominence, the name "MADAAN".

7. Investigations and inspection of documents of the Registrar of Companies in Gwalior revealed that the company called "M/s Madaan Footcare Private Limited" was a defunct company since 2006 as it was not carrying on any business of any kind. The directors of the respondent No.1/defendant No.1, namely, Mr. Simarpreet Singh and Mr. Charanjeet Singh became directors of the said company on 01st March, 2017 after which the two original directors of the said

company resigned leaving the company completely in the hands of the said Mr. Simarpreet Singh and Mr. Charanjeet Singh. "MADAAN" was the surname of the original founders despite which the shoes that they were manufacturing was sold under the trademarks of AEROCARE SHOES under application No. 1166010 in Class 25 and COSMIC SHOES under registration No.1166011 in Class 25. These trademarks were eventually abandoned and removed when the entity itself went out of business.

8. According to the learned counsel, the adoption of the name "MADAAN" now was a devious attempt by the Respondent No. 1/Defendant No.1 to get over the injunction that was issued vide orders dated 24th October, 2017, restraining them from using the mark, "HOUSE OF MADAAN" as the trademark "MADAAN" belonged to the petitioner/plaintiff. Furthermore, this "M/s Madaan Footcare Company" had filed petitions for cancellation/rectification of the trademarks in the name of the petitioner/plaintiff. Thus, it was a necessary and proper party to the suit. Hence, it was submitted that the dismissal of the application was improper.

9. The respondents impleaded in the present petition are Indian Plastic Footwear and Clothing Private Limited and Darshan Singh and Sons HUF. However, vide the order dated 31st July, 2020, on the oral request of the learned counsel for the petitioner/plaintiff, M/s Madaan Footwear Private Limited was impleaded as respondent No.3 in the present petition.

10. Mr. Anirudh Bakhru, learned counsel for the respondent No.3/ M/s Madaan Footwear Private Limited submitted that by means of this application, the petitioner/plaintiff only intended that the injunction order be extended to the operations of the respondent No.3 without the claims of the petitioner/plaintiff qua the respondent No.3 being tested before any court. It was submitted that on the facts as well as law, there was no commonality between the case that could be agitated against the respondent No.3 and the respondents No.1 and 2 because the respondent No.3 was not deriving any right from the Dissolution Deed. Merely, because the directors of respondent No.1 had acquired respondent No.3 would not make the rights of respondent No.3 subject to/limited by the Dissolution Deed.

11. It was further contended by learned counsel for Respondent No. 3 that whereas the petitioner/plaintiff had claimed the use of the trademark "MADAAN" since 2003, even as per the record, the respondent No.3 had started using the trade-name "MADAAN FOOTCARE" way back in 2001 when respondent No.3 was incorporated. Thus, it had the prior use. Therefore, the learned Commercial Court was right in holding that if at all, the petitioner/plaintiff so desired, it could file a separate suit against respondent No.3. Relying on the judgements of Nav Jagriti Niketan Education Society v. Delhi International School, 2019 SCC OnLine Del 7832 and Heiniger v. Droz, 1900 SCC OnLine Bom 47, it was submitted that allowing the impleadment of respondent No.3 would result in a completely altered plaint which was not permissible. Similarly, the cause of action would also

be changed as respondent No.3 had been incorporated by third parties and not by family members.

12. Learned counsel for the respondent No.3 also submitted, relying on the judgment of the Supreme Court in *Mohd. Yunus v. Mohd. Mustaqim*, (1983) 4 SCC 566 that since there was no perversity in the impugned order, the powers under Article 227 could not be exercised in the present matter. Relying on the judgement of a Coordinate Bench of this Court in *Gunjan Kumar v. Vipin Parwanda*, 2015 SCC OnLine Del 9521, it was submitted that there was no common facts or questions of law and the transaction was not the same and as such the defenses would also be different, and in the light of these circumstances, respondent No.3 could not be impleaded as a party to the instant suit.

13. It is to be noted that the suit had been filed by the petitioner/plaintiff for permanent injunction restraining infringement of his registered trademark of "MADAAN". The petitioner/plaintiff is using the same for footwear. On 11th February, 1994 the petitioner/plaintiff's firm applied for the registration of the trademark MADAAN when all three brothers were partners. However, by mutual agreement, vide the Dissolution Deed dated 1st April, 1995, the business of M/s Madaan Plastic Industry came to the petitioner/plaintiff alongwith the goodwill of the firm and the trademark was also transferred in favour of the petitioner/plaintiff.

14. Apparently, in the fourth week of May, 2017, Mr. Darshan Singh filed an opposition to the plaintiff's application for registration of the trademark "MADAAN SHOES" though he had no claim whatsoever in the same. Thereafter, the respondent No.3/company recently adopted the mark, "HOUSE OF MADAAN". No doubt, in the written statement, the respondent No.1/defendant No. 1 had mentioned having obtained a license from Darshan Singh and Sons HUF and also mentioned the existence of respondent No.3, but the commonality between respondent No.1/defendant No.1 and respondent No.3 was discovered by the petitioner/plaintiff only when the caveat notice was served.

15. The suit is to prevent infringement of the registered trademark of the petitioner/plaintiff. The respondent No.3 is also selling footwear and seeking to brand it as "HOUSE OF MADAAN". Whatever be the defense that respondent No.3 would like to raise against the allegations of infringement of the trademark of the petitioner/plaintiff would be seen at the appropriate stage. For the present, while respondent No.1/defendant No.1, claims license from the respondent No.2/defendant No.2, the directors of respondent No.1/defendant No.1 being the directors of respondent No.3 are seeking to setup another case of independent use of a surname of the original founders of "M/s Madaan Footcare Private Limited".

16. As held by the Coordinate Bench of this Court in *Association for Investment Management and Research v. Institute of Chartered Financial Analysts of India*,

2008 SCC OnLine Del 894, the plaintiff being the dominus litis, is entitled to implead the parties considered necessary for enforcing his claim. The only issue in the present matter seems to be that unlike in Association for Investment Management and Research(supra) where an application under Order VI Rule 17 was filed alongwith an application under Order I Rule 10, in the present case, the petitioner/plaintiff chose to file an application only under Order 1 Rule 10 CPC. It is in that context that the learned Commercial Court observed that there are no pleadings qua the respondent No.3. The only pleas taken are in respect of the respondent No.1/defendant No.1, which is a distinct company and the commonality of the directors will not suffice to overcome this status. All the averments that have been made in the application Order 1 Rule 10 CPC are appropriately to be made in an application under Order VI Rule 17 to incorporate them in the plaint.

17. As observed in Nav Jagriti Niketan Education Society(supra), unless the petitioner/plaintiff has disclosed the commonality of the transaction or series of transaction between respondent No.1/defendant No.1 and respondent No.3 on the same pleadings, the respondent No.3 could not have been held to be a necessary or proper party in the present suit without appropriate pleading. The conclusion of the learned Commercial Court is, therefore, neither erroneous nor perverse. Learned Commercial Court had also given liberty to the petitioner/plaintiff to incorporate specific pleadings or to file a separate suit. Thus, there is no ground made out to interfere with the said order.

18. The petition lacks merit and is, accordingly, dismissed with the pending application.

19. The judgment be uploaded on the website forthwith.