(1997) 04 DEL CK 0038

In the Delhi High Court

Case No : F.A.O. (OS) 254 and C.M. 2685 of 1995

Fanner India Limited APPELLANT

Vs

Salbros Enterprises Private Limited RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:
Suits Valuation Act, 1887 — Section 9

Citation : (1997) 4 AD 24 : (1997) 2 ARBLR 500 : (1997) 67 DLT 673 : (1997) 42 DRJ 91 : (1997) 4 RCR(Civil) 669 : (1997) RLR 365

Hon'ble Judges : Mahinder Narain, Acting C.J.;S.K. Mahajan, J

Bench : Division Bench

Advocate : Ishwar Sahai, R.K. Aggarwal, Ajay Sahni, A.K. Goyal, G.D. Chugh, Mohan Vidhani, S.K. Bansal, S.C. Chadha, H.P. Singh, C.M. Lall, Amit Kapur, Sarita Sehgal and M.M. Singh, for the Appellant;

Judgement

Mahinder Narain, A.C.J.

1. The appellant M/s. Fenner India Ltd. instituted a suit against the respondent M/s. Salbros Enterprises Pvt. Ltd. claiming that the respondents were passing-off Fenner''s copyright in their logo.

2. The relief sought by the Fenner''s was for rendition of accounts and injunction. They valued the amount claimed in this suit for unsettled accounts on estimated basis. Suit for unsettled accounts has to be valued in accordance with Rule 4 of the Rules framed order Section 9 of the Suits Valuation Act. Rule 3 covers suits other than those which relate to unsettled accounts. Rule 4 relates to suits for unsettled accounts.

3. The nature of passing off action is such that the relief sought can only be for rendition of accounts of profits made consequent upon the breach of copyright. The owner of copyright asserts his common law right to be compensated for loss of profits in a passing off action. Only unsettled accounts can be sued for. As the suit has to be for unsettled accounts, as required by the provisions of the Code of

Civil Procedure, 1980, an estimate of profits which are likely to be recovered is set out in the plaint itself. For a claim based on unsettled accounts, under Rule 4 aforesaid, the court fee payable is a fixed court fee which is to be paid on the plaint. It is not disputed that originally fixed court fee was paid.

4. We do not agree with the view expressed by the learned Single Judge that a suit for passing off in which the accounts are sought, would be governed by Rule 3. The nature of suit for passing off is such that there is no contractual relationship between the parties to the suit. The plaintiff usually asserts that he has a statutory monopoly and that statutory monopoly has been breached, and as a consequence of this breach, profits that have been made by the defendants which have to be determined and paid over to the owner of copyright, the plaintiff.

5. We also do not agree with the view expressed by the learned Single Judge that for the purpose of jurisdiction, a suit for passing off has to be valued at Rs. 1, 000/- for the reason that in case of unsettled accounts suit, Rule 3 of the Rules framed u/s 9 of the Suits Valuation Act has no application whatsoever. Such suits are governed by Rule 4 of the Rules framed by the High Court and the plaintiff can value the suit for the purposes of jurisdiction as he wishes it to be valued.

6. A Division Bench of this Court in Commercial Aviation and Travel Co. (Inc.) and Others Vs. Vimla Panna Lal, has already held that suit for unsettled accounts have to be valued under Rule 4. While so holding, it followed a Full Bench judgment of this Court in 1974(2) Del 491, as also the judgment of the Supreme Court in Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar, .

7. For the aforesaid reasons, the Judgment of the learned Single Judge is set aside. It is made clear that in suits for unsettled accounts, fixed court fee is payable, and for jurisdictional purposes, such a suit can be valued in terms of such valuation as is fixed by the plaintiff.

8. No order as to costs.

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