

(2011) 03 CAL CK 0076
In the Calcutta High Court

Case No : G.A. No. 3886 of 2008, A.P.O.T. No. 480 of 2008 and C.S. No. 195 of 2008

Gouri Sankar Das

APPELLANT

Vs

K.C. Das Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2011) 8 RCR(Civil) 2880

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Gautam Chakraborty and Ratnanka Banerjee, for the Appellant; Ranjan Bachawat and Sakya Sen, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a Defendant in a suit alleging not only infringement of trademark but also passing off and is directed against an order dated 26th November, 2008 passed by a learned Single Judge by which the learned Judge dismissed an application for rejection of the plaint filed under Order 7 Rule 11 of the Code.

2. Being dissatisfied, the Defendant has come up with the present appeal.

3. In the plaint, the Defendant is described as "K.C. DASS", carrying on business at 101, Bidhan Sarani, Kolkata, within the jurisdiction of the Court and the prayer of the Plaintiff in the suit was for restraining the Defendant, their men, servants and assigns from in anyway and manner using and/or manufacturing and/or marketing and/or selling the goods or carrying on business under the trade name "K. C. Dass" and/or any other trademark containing the mark "K.C. Dass" and/or any other trademark similar to the trademark "K.C. Das".

4. One Gouri Sankar Das, claiming to be a Director of the company by the name of K.C. Dass Fashion Pvt. Ltd., filed an application for rejection of the plaint.

According to him, there is no person by the name of K.C. Das and one Kali Coomar Das died in the year 1943 and as such, the suit was filed against a dead man. The said Gouri Sankar Das alleged that he is a partner of K.C. Das & Co. and also a partner of K. C. Dass, another partnership firm.

5. By the order impugned herein, the learned Single Judge has dismissed the prayer for rejection of the plaint on the ground that on the basis of the averments made in the plaint, it did not appear that the suit was barred by any law for the time being in force and consequently, dismissed the application.

6. Being dissatisfied, the said Gouri Sankar Das has come up with the present appeal.

7. After hearing the learned Counsel for the parties and after going through the materials on record, we do not find any reason to interfere with the order passed by the learned Single Judge. It is now well settled law that for the purpose of disposal of an application for rejection of plaint under Clause (d) of the Order 7 Rule 11 of the Code of Civil Procedure, the Court must treat all the averments made in the plaint to be true and if it appears that even though the statements so made are treated to be true, the suit is barred by any law for the time being in force, the Court can reject the plaint. In the case before us from the averments made in the plaint, it does not appear that K. C. Dass is dead. Thus, there is no scope of rejection of the plaint on the basis of averments made in the plaint.

8. We, thus, find that this appeal is devoid of any substance and is, consequently, dismissed.

9. In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.

10. I agree.