
(2018) 11 DEL CK 0119
In the Delhi High Court
Case No : Civil Suit(COMM) 290 Of 2018

Greenlight Planet India Pvt. Ltd

APPELLANT

Vs

GEE Lighting Technology

RESPONDENT

Date of Decision : 14-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 2 Rules 2, Order 7 Rules 11(d)

Citation : (2018) 11 DEL CK 0119

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Ajay Sahni, Ankur Sangal, Richa Bhargava, Mohan Vidhani, Ahul Vidhani, Saurabh Kumar

Judgement

MANMOHAN, J:

I.A. 21247/2015

1. Present application has been filed by the defendant under Order 7 Rule 11(d) CPC for rejection of the plaint.

2. Mr. Mohan Vidhani, learned counsel for defendant submitted that the present plaint was liable to be rejected as the present suit for permanent

injunction restraining passing off was barred under Order II Rule 2 CPC. He pointed out that in spite of filing the earlier suit being CS(OS) 3795/2014

for infringement of design, the plaintiff did not claim any relief in respect of passing off of its goods under the trade mark GEE-LITE trade name and

domain name. He further stated that as the plaintiff did not reserve its right to initiate the present proceedings and did not seek any leave of the Court,

it went against the basic intention of Parliament to avoid multiplicity of litigations between the parties.

3. Mr. Vidhani submitted that when the Statute confers power to do an act and

lays down a method in which a power has to be exercised, it necessarily prohibits doing of an act in any other manner than what has been prescribed. In support of his submission, he relied upon the following judgments:-

A. State of Uttar Pradesh Vs. Singhara Singh & Ors., 1964 (4) SCR 485

B. Canning Mitra Phoenix Ltd. Vs. M/s. Popular Constructions and Anr., AIR 1993 Bombay 67

C. Kunjan Nair Sivaraman Nair Vs. Narayanan Nair & Ors., AIR 2004 SC 1761

D. K.R. Beri & Co. Vs. The Metal Goods Mfg. Co. Pvt. Ltd. & another, 1980 SCCOnLine Del 154

4. Consequently, he submitted that the plaintiff had relinquished and/or omitted to sue the defendant in respect of the relief of alleged infringement and

passing off of the trade mark, trade name and domain nameâ€the subject matter of the present suit.

5. Per contra, Mr. Ajay Sahni, learned counsel for plaintiff stated that the plaintiff had unequivocally reserved its right to institute separate proceedings

in relation to infringement and passing off its trade mark in the previous suit filed for design infringement against the defendant. He submitted that

passing off being a continuing cause of action, the plaintiff reserved its right to institute such proceedings till the defendant continued to pass off its

trade mark. In support of his submission, he relied upon the judgment of the Supreme Court in West Bengal Waterproof Limited Vs. Bombay

Waterproof Manufacturing Company & Anr. (1997) 1 SCC 99.

6. Mr. Sahni also submitted that the cause of action in the two suits were distinct and different. He pointed out that a Full Bench of this Court in

Micolube India Limited Vs. Rakesh Kumar Trading as Saurabh Industries & Ors., AIR 2013 Delhi 143 has even held that cause of action for an

infringement suit under the Designs Act is different from that of a passing off action under the Designs Act.

7. It is settled law that Order II Rule 2 CPC is applicable to claims relating to the same cause of action. It is based on the principle that every suit filed

by the plaintiff should include the whole claim which the plaintiff is entitled to make on the same cause of action. The intent of Order II Rule 2 CPC is

to prevent multiplicity of suits and to protect a person from being vexed twice qua the same cause of action. Consequently, Order II Rule 2 CPC bars

a subsequent suit relating to the same cause of action.

8. However, this Court is of the opinion that cause of action for an infringement suit under the Design Act is different/separate/distinct from the cause

of action for a passing off suit of a trade mark, trade name and domain name.

9. Consequently, it was open to the plaintiff to institute separate proceedings for the passing off of its trade mark, trade name and domain name and

there was no requirement for the plaintiff to obtain the leave of this Court to file a suit for a completely different cause of action.

10. Accordingly, present application being bereft of merits, is dismissed with costs of Rs.25,000/-.

CS(COMM) 290/2018 & I.As. 17547/2015, 17549/2015 and 17551/2015

List the matter on 24th January, 2019.