
(1998) 07 KAR CK 0114

In the Karnataka High Court

Case No : Civil Revision Petition No. 1429 of 1995

Times Publishing House Ltd.

APPELLANT

Vs

The Financial Times Ltd. and Another

RESPONDENT

Date of Decision : 27-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 2, Order 39 Rule 1, Order 39 Rule 2
Evidence Act, 1872 — Section 162
Trade and Merchandise Marks Rules, 1959 — Rule 119

Citation : (1999) 2 CivCC 616 : (1998) ILR (Kar) 3212

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : Udaya Holla, for the Appellant; K.G. Raghavan, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Veerabhadraiah, J.—This is a defendant's revision being aggrieved of the order passed on I.A.No. 17 by the VII Additional City Civil Judge, Bangalore in O.S.No. 7087/93 rejecting the application.

2. The brief facts are as follows:

The plaintiff-Financial Times Ltd., London (for short London) filed a suit for permanent injunction against the defendant-Times Publishing House Ltd., Bangalore restraining them from printing, publishing or in any manner using in relation to any news paper publication, magazine, periodicals of stationary bearing impugned trade mark Financial Times, for damages and for other costs and reliefs.

3. Defendant No. 1 entered appearance and filed detailed written statement running to 41 pages. In the said suit, the plaintiff has also filed an application under Order 39 Rule 1 & 2 CPC praying for injunction restraining the defendants

from publishing any such news papers. The injunction was granted. As against the grant of order of injunction, the defendant herein filed MFA No. 330/94 before this Court. The appeal was allowed by setting aside the order passed by the Learned City Civil Judge, Bangalore. As against the said Order, the plaintiff approached the Apex Court by filing SLP (Civil) Nos.8859 and 8884 of 1994. The Hon"ble Supreme Court of India directed the City Civil Judge, Bangalore to dispose of the matter finally on merits within 4 months from October, 3, 1994. In the same order, it is observed that the Rectification Petition No. CO 23/1993 filed by the respondents against the appellants is pending in the Delhi High Court and to expedite the same also. Accordingly, the matter was disposed of. While the trial is in progress before the City Civil Judge, the revision petitioner filed I.A.No. 17 under Order 16 Rules 1 and 2 CPC to issue summons to the registrar of Trade Marks, Bombay summoning certain documents. The plaintiff filed a detailed objection statement, learned Judge of the City Civil Court, after hearing both the sides by his order dated 10.3.1995 dismissed I.A.No. 17. Being aggrieved of the dismissal of I.A.No. 17, the defendant has come up with this revision.

4. Learned Counsel for the revision petitioner Sri Udaya Holla contended that the Court below has framed 2 issues Nos.6 and 7 and the burden is on the defendant. That in order to prove that the registration made in favour of the plaintiff under the Trade Marks Registration Act is not proper. That is essential for him to summon the documents which are in the custody of the Registrar of Trade Marks and that those documents pertain to the plaintiff's Trade Mark. If the documents are not summoned that irreparable injustice will be caused to the defendant as they have already registered their Financial Times under the Press and Registration of Books Act during the year 1994 itself as per Section 5. He further submitted that the revision petitioner filed necessary application before the Registrar of Trade Marks for issue of certified copies during December, 1994. But in spite of it they could not able to secure the copies. On this ground also, he prays to allow the revision by setting aside the orders of the Court below. In support of his contentions, he relied on the decisions reported in 1974 (1) KarLJ 70 : 1984 (1) KLC 97 : 1984 (1) KarLJ 2 and Gopala Krishna Murthy Vs. B. Ramachander Rao and Others, . Relying on the judgments supra, he submitted that the documents which are to be summoned are essential and therefore, prayed to allow the revision.

5. Learned Advocate for the respondent Sri K.G. Raghavan contended that the document which are to be summoned are unnecessary for the adjudication of the matter involved in this case and that the plaintiff has produced Ext.P 67, letter issued by the Registrar of Trade Marks, Certificate of Registration-Ext.P 68, Certified copy of the affidavit filed by Mr. Hall-Ext.P 69 and Ext.P 70, certified copy of the Trade Marks Journal. When the documents are already available and produced by the plaintiff, the question of summoning any of the documents from the Registrar of Trade Marks does not arise. He further submitted that in the application filed by the defendant, it is not made specific as to which are the documents to be summoned and the application is vague and prayed to dismiss

the petition. It is also contended by the Learned Counsel for the respondents Mr. Raghavan that there is a clear provision under the Trade and Merchandise Act, 1959 that the revision petitioner can very well obtain the certified copies that are required and produce without wasting any time and without protracting the trial.

6. In the light of the contentions raised by the parties, the points for determination that arise are;

1) Whether the documents called for have to be summoned?

2) If so, what order?

Points 1 and 2:

7. As per the contentions of the plaintiffs, they are publishing The Financial Times in London and all other places. Similarly, according to the contentions of the defendants, they are also publishing news papers in the name and style of Financial Times, It is in so far as infringement of the registration of Trade Mark is concerned that a dispute has arisen and the suit came to be filed. Now the only question that has to be considered is, whether under the provisions of Order 16 Rules 1 and 2 documents have to be summoned and they are essential for adjudication of the matter involved in the controversy.

8. In the decision reported in 1974 (1) KarLJ 70, at para 3, it has been observed as follows:

"3. It seems to me that the Trial Court has misunderstood the scope of Order 16 Rule 1. The said Rule provides that at any time, after the suit is instituted a party is entitled as of right to take summons to witnesses. The Court, unless it holds that the application of the party lacks bona fides cannot refuse to issue summonses. The statutory principle behind the said rule is that Court ordinarily should not shut out relevant documents and any opportunity to any. party to summon witnesses."

This is a case arising for summoning of an attester to a pronote to prove the document in question and therefore, there cannot be any dispute regarding the observation.

9. In the decision reported in 1984 (1) KLC 97, at para 8 it has been observed as follows:-

"When the Learned Counsel Judge did not choose to reject I.A.No. IV on the grounds available under Order XVI Rule 1 CPC, the only question that would be considered by him would be whether the Court was, by any provision in the statute, prohibited from issuing any summons to such a witness calling upon him to bring such a document for production in the suit. No such provision is available in the Income Tax Act as it is in force though a provision to somewhat this effect was there in the Income Tax Act of 1961. In this context, the Court ought to have taken into consideration Section 162 of the Indian Evidence Act."

In the said case that an application was filed for summoning of the Income Tax file and the same was allowed for issue of summons for production of the documents and it has considered the provisions of Order 16 Rule 1 and its validity.

10. Similarly, in the decision reported in 1984 (1) KarLJ 2, it has been held as follows:-

"When the Court had not rejected the I.A. on any of the grounds available under Order XVI Rule 1 CPC and when any provision in the Income Tax Act did not prohibit from issuing any summons to (I.T.O) a witness, calling upon him to bring such a document for production in the suit, the Trial Court ought to have taken into consideration Section 162 of the Evidence Act. The question of relevancy of the document in question has to be gone into after looking into the document and bearing in mind the provision of Section 162 of the Evidence Act. The Trial Court was directed to issue summons to the said witness for production of the document referred to in I.A.No. IV to consider the question of production of the document in the light of the provision in Section 162 of the Evidence Act."

10. In the decision reported in Gopala Krishna Murthy Vs. B. Ramachander Rao and Others, , it has been observed as follows:

"A reading of the above authorities leads me to lay down the following propositions:

(1) Under Order 16, Rule 1 Civil P.C., it is the right of the party at any stage of the suit to make an application to the Court seeking that summons be issued to a witness either to give evidence or to produce documents.

(2) The Court is not entitled to refuse such an application on the ground that it might cause delay in the trial of the suit on the adjourned date of the suit.

(3) If the summons is not served by the adjourned date of the suit, the party who filed the application to issue the summons would take the risk.

(4) If an application for adjournment is made at the instance of the party who applied under Order 16 Rule 1 Civil P.C., it is for the Court to consider whether or not an adjournment should be granted.

(5) the Court may not refuse to order an application under Order 16 Rule 1 Civil P.C. on the ground that the evidence, if produced may not be of any help to the applicant.

(6) Though Order 16 Rule 1 Civil P.C. does not in terms impose any restrictions on the Court, the Court in the exercise of its inherent jurisdiction may refuse to issue summons in an application made under Order 16 Rule 1 Civil P.C. in those case where it is satisfied that the application, filed was not bona fide or was vexatious or granting the application would result in an abuse of process of the court. Except in these three above contingencies, the application must almost always be ordered."

11. Thus from the rulings supra, it becomes clear that when an application is filed for issue of summons or production of documents, the Court has to examine the facts of each case and if it is so necessary and essential for adjudication of such cases, that such documents have to be summoned and therefore, the principles enunciated in the decisions supra cannot be disputed.

12. Rule 119 of the Trade and merchandise Marks Rules 1959 reads as under:

"119. Certified copies of documents.

The Registrar may furnish certified copies of any entry in the register or certified copies of any document referred to in subsection (1) of Section 125 or of any decision or order of the Registrar, or give a certificate (other than a certificate under subsection (2) of Section (23) - as to any entry matter or thing which he is authorised or required by the Act or the rules to make or do, upon receipt from any person of an application therefore on Form TM-46 accompanied by the prescribed fee. The Registrar shall not be obliged to include in any certificate or certified copy a copy of any mark unless he is furnished by the applicant with a copy thereof suitable for the purpose."

13. It makes clear that the Registrar is competent to issue certified copies in respect of the documents they have maintained, on an application made by a party. It is the submission of the learned Advocate Sri Udaya Holla that though an application has been filed before the Registrar of Trade Marks for issue of copies during the month of December, 1994 that he could not able to secure the copies.

It is really strange to note as to how an authority functioning under the Act is withholding the documents when an application is filed as per the Rules and Regulations.

Order 16 Rules 1 and 2 CPC reads as follows:

16.1. List of witnesses and summons to witnesses. On or before such date as the Court may appoint and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

2. A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

3. xxx xxx xxx

4. xxx xxx xxx

By a reading of Order 16 Rule 1 CPC provides for issue of summons to attend the court to give evidence or produce documents which are essential for adjudication of the matter involved in controversy for settlement of issues. The Court may

refuse to issue summons in order to prevent an abuse of the process of the Court. The Court may pass an order directing the concerned authorities to issue copies of documents called for and permit them to produce such copies called for or call upon the custodian of the documents to produce it before the Court or call upon the parties to admit or deny regarding the entry and contents of such documents failing to comply with the Court Order, to draw an adverse inference and to proceed to dispose of the matter in accordance with law. In the case on hand, the application is filed by the defendant for issue of summons to the Registrar of Trade Marks, Bombay to produce the following documents.

"1. Application filed by M/s Financial Times Limited along with all enclosures and annexures thereto for registration of Trade mark/Trade Name "Financial Times".

2. Proof of user, all documents, depositions statements and evidence filed by Financial Times Ltd., in furtherance of their application for registration of Trade name/Trade Mark "Financial Times".

3. Entire file of the Registrar of Trade Marks, Bombay pertaining to the registration of Trade Mark/Trade Name "Financial Times"

14. In this regard, it has to be noted that the plaintiff has produced certain documents which are marked as Ex.P.67, a letter issued by the Registrar of Trade Marks, Ex.P.68 certificate of Registration, Ex.P.69, certified copy of the affidavit filed by Mr. Hall and Ex.P.70, certified copy of the Trade Marks Journal.

15. That on a perusal of the application filed, it is not specifically stated as to what are the documents that are required. Apart from that, Rule 117 of the Trade and Merchandise Marks Rules, 1959 permits a party to make inspection of the documents. Therefore, it is open for the defendant to make an inspection of the documents with the Registrar of Trade Marks, Bombay and thereupon, if the defendant so needs and if it is essential, to make a fresh application in the Court of the City Civil Judge, Bangalore for issue of summons afresh in case if the certified copies of the documents are not issued to the defendant as contemplated under Rule 119 of the Trade and Merchandise Marks Rules, 1959.

16. With these observations, the revision petition is dismissed.