
(2013) 09 MAD CK 0311

In the Madras High Court

Case No : Original Side Appeal No. 40 of 2009 and M.P. No. 1 of 2009

Urooj Ahmed, Lords Enterprises (India)

APPELLANT

Vs

Preethi Kitchen Appliances Private Limited and Proprietor,
Chandra Stores

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 6 CTC 247 : (2013) 5 LW 440 : (2014) 3 MLJ 715 : (2014) 57 PTC 139

Hon'ble Judges : N. Paul Vasanthakumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : V.P. Raman, for the Appellant; Arunkarthik Mohan for Sathish Parasaran, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The appellant is the first defendant in the suit filed in C.S. No. 949 of 2008. Pending suit, an application was filed by the appellant under Order VII Rule 11 of the CPC (hereinafter referred to as "the C.P.C.,") to reject the plaint on the ground of lack of territorial jurisdiction alleging that no cause of action has arisen within the jurisdiction of the Court. The learned single Judge has dismissed the said application and therefore, the appellant has come forward to file this Original Side Appeal before us.

Facts in Brief:-

1.1. The first respondent filed a suit against the appellant herein and the second respondent seeking the following reliefs:

(i) Permanent injunction to restrain the first defendant from using the registered design of the plaintiff to his products;

(ii) Permanent injunction to restrain the first defendant from passing off his goods as that of the plaintiff's products;

(iii) Directing the defendants to surrender to the plaintiff for destruction all the infringing goods and associated items such as moulds, dies, articles, packets, cartons, packaging materials, advertising materials etc., and all other things used in connection with the manufacture or marketing of the infringing goods;

(iv) Direct the defendants to pay compensation to the plaintiff by way of damages for the infringement and the loss suffered by the plaintiff;

(v) Direct the defendants to pay the costs of the suit;

(vi) Pass any such other orders as this Hon''ble Court may deem fit and proper under the facts and circumstances of the case and in the interest of justice.

1.2. In the said suit the first respondent has averred in its plaint that it is carrying on business in Chennai having its residence within the jurisdiction of this Court. A further averment has been made that the defendants have sold their infringed goods at Chennai by themselves or through their agents. The relief has been sought for on the basis of passing off their goods as that of the plaintiff in Chennai. The relevant averments in the plaint regarding the cause of action are as follows:

15. The plaintiff is carrying on business in Chennai and resides within the jurisdiction of this Hon''ble Court and hence it is submitted that this Hon''ble Court has competent jurisdiction to try this suit. The plaintiff has stated in detail in the plaint how and when the defendants have acted in violation of plaintiff's Design right how the defendants have passed off their goods as that of the plaintiff. Since the defendants have sold their infringing goods at Chennai either by themselves or through their agents and have passed off their own goods as that of the plaintiff in Chennai, this Hon''ble Court has jurisdiction to entertain the suit against the defendants. Further the plaintiff resides and carries on business within the jurisdiction of this Hon''ble Court. Though the reliefs are sought under the Designs Act, 2000 and the Trade Marks Act, 1999, they all arise from a single transaction of selling the infringing product in the market and hence, from a single cause of action.

1.3. An application was filed by the appellant in Application No. 5533 of 2008 in C.S. No. 949 of 2008 seeking invocation of the power of this Court for the rejection of the plaint under Order VII Rule 11 of C.P.C. It has been contended in the said application that the plaintiff cannot sue before this Court with the averment that it resides and carries on business in an action for infringement of its registered design under the Designs Act, 2000. There is no cause of action for maintaining the suit before this Court as the plaintiff has failed to make necessary averments that the first defendant is selling his product commercially within its jurisdiction. A third contention has been raised that inasmuch as the defendants are residing outside jurisdiction of this Court, the suit is liable to be set aside as no leave has been obtained by the plaintiff as required under Clause 12 of the Letters Patent Act.

1.4. The learned single Judge dismissed the application by making reliance upon Section 134 of the Trade Marks Act, 1999, Section 11 of the Designs Act, 2000, along with Section 62(2) of the Copy Right Act, 1957. Accordingly, the learned single Judge was pleased to hold that inasmuch as there are averments to show that the plaintiff is residing and carrying on the business within the territorial jurisdiction of this Court, the suit as filed is maintainable. Challenging the same, the present Original Side Appeal has been filed.

2. Submissions of the appellant:

2.1. The learned counsel appearing for the appellant would submit that the learned single Judge was not correct in making reliance upon Section 134 of the Trade Marks Act, 1999, Section 11 of the Designs Act, 2000, and Section 62(2) of the Copy Right Act, 1957. The provisions of the Copy Right Act, 1957 are not applicable to the case on hand. A copy right in a design as defined in the Designs Act, 2000, is different from one as defined in the Copy Right Act, 1957. Section 15 of the Copy Right Act, 1957, places an embargo for enforcing a right of the copy right design coming under the purview of the Designs Act, 2000. Therefore, there cannot be any application of Section 62(2) of the Copy Right Act, 1957. In other words, no relief can be claimed based upon the provisions of the Copy Right Act, 1957. Hence, there is no territorial jurisdiction available to the plaintiff as stipulated u/s 62(2) of the Copy Right Act, 1957. According to the appellant, even assuming that the plaintiff is residing and carrying on business within the jurisdiction of this Court, Section 62(2) of the Copy Right Act, 1957, which empowers a suit to be filed cannot be applied to the present suit as the relief sought for is an infringement of a design under the Designs Act, 2000. It is further submitted that the averments do not disclose a cause of action and therefore, in the absence of the same, the application ought to have been allowed by the learned single Judge. Further more, as the defendants are residing outside jurisdiction of the Court, the plaintiff ought to have sought for leave u/s 12 of the Letters patent Act. As the said requirement is mandatory, the non-compliance of the same would make the suit as not maintainable in law.

2.2. In support of his contention, the learned counsel apart from the written submissions, made reliance upon the following judgments:

- (i) Arun Agarwal v. Nagreeka Exports, (2002) 10 SCC 101 ;
- (ii) T. Arivandandam Vs. T.V. Satyapal and Another, ;
- (iii) Exphar SA and Another Vs. Eupharma Laboratories Ltd. and Another,
- (iv) Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, ;
- (v) The Clan Line Steamers Ltd. Vs. Gordon Woodroffe and Co. (Madras) Pvt. Ltd. and Others, ;
- (vi) Microfibres Inc. Vs. Girdhar and Co. and Another, ;
- (vii) State through S.P., New Delhi Vs. Ratan Lal Arora, ; and

(viii) Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura, . A legal issue is also raised by the learned counsel appearing for the appellant that even though the word Designs Act, 2000 has been incorporated into Section 15 of the Copy Right Act, 1957, with effect from 21.06.2012 by replacing "Designs Act, 1911", the embargo provided therein would continue to apply. In other words, it is submitted that in the absence of a different intention expressed by the legislature, the reference to the repealed Act would be considered as a reference to the new Act. Therefore, the learned counsel would submit that the above appeal will have to be allowed and consequently, the plaint filed on the file of C.S. No. 949 of 2008 will have to be rejected.

3. Submissions of the first Respondent:

The learned counsel appearing for the first respondent/plaintiff would submit that the word "cause of action" would constitute bundle of facts. There are sufficient averments in the plaint regarding the cause of action. What is required are the material facts made out through the pleadings. There is a difference between a non disclosure of a cause of action and a defective cause of action. In the latter case, the scope of Order VII Rule 11 of C.P.C., cannot be fitted into, as such an issue will have to be decided at the time of trial. There are specific averments that the defendants are selling their product constituting infringement and passing off with respect to the products of the plaintiff. The learned single Judge has rightly made reliance upon Section 62(2) of the Copy Right Act, 1957. Section 15 of the Copy Right Act, 1957, cannot be applied to the case of the plaintiff as the suit was filed claiming right under the Copy Right Act, 1957, much prior to the amendment Act, 2012, which came into effect from 21.06.2012. Until and unless, an Amendment Act is specifically made retrospective, the same cannot be inferred. There are specific averments in the plaint that the plaintiff's trade mark application for trade dress "Preethi Blue Leaf" with its application No. 1544728 filed on 29.03.2007 was pending registration at the relevant point of time. It was registered in the Register of Trade Marks on 27.10.2008 and a Registration Certificate No. 762051 was issued. Therefore, the benefit u/s 23(1) (b) of the Trade Marks Act, 1999, by which, a right accrues from the date of making trade mark application itself is available to the plaintiff. In such view of the matter, the application of Section 134 of Trade Marks Act, 1999, to the case on hand is perfectly in order. In support of the abovesaid submissions, the learned counsel has made reliance upon the following judgments:

- (i) Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ;
- (ii) State of Orissa Vs. Klockner and Company and Others, ; and
- (iii) Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, .

4. DISCUSSION:-

4(a). Cause of Action and Scope of Order VII Rule 11A of C.P.C.,

4(a)(i). A perusal of the averments made in the plaint would show that there are averments to the effect that the plaintiff is carrying on business in Chennai and resides within the jurisdiction of this Court. A further averment has been made that the defendants have sold their infringed goods at Chennai either by themselves or through their agents. The averments further indicate that the defendants are trying to pass off their goods as that of the plaintiff in Chennai. Therefore, the averments are sufficient enough to bring the suit within the territorial jurisdiction of the Court.

4(a)(ii). A cause of action would constitute bundle of facts. It implies a right to sue. There is difference between a non disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under Order VII Rule 11 of C.P.C., would govern a case of non disclosure of a cause of action. However it does not govern a defective cause of action. A question as to whether a plaint discloses a cause of action is a question of fact which has to be governed on the basis of the claims made therein in entirety. The Court has to take the averments as true and then apply its mind as to whether a plaint discloses a cause of action or not. Applying the abovesaid principles of law, we are of the view that the averments made in the plaint in the case on hand are sufficient enough to disclose a cause of action. The Honourable Apex Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, has held as follows:

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

.....

9. Although in view of Section 141 of the CPC the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

5(a)(iii). While deciding the scope of Order VII Rule 11-A of the CPC on the issue of a plaint disclosing a cause of action, it has been held by the Honourable Apex

Court in State of Orissa Vs. Klockner and Company and Others, as follows: "25. Now coming to SLP (C) No. 19846/95, this petition is filed against the judgment and order of the High Court of Orissa at Cuttack in First Appeal No. 14/95 dated 12.5.95. By the Order under appeal, the High Court has reversed the Order of the learned Subordinate Judge, Bhubaneswar dated 26.3.94, by which the learned Subordinate Judge accepting an application filed under Order 7 Rule 11 C.P.C., rejected the plaint in title suit No. 231/92 filed by the first respondent in Special Leave Petition. The learned Single Judge of the High Court while reversing the Order of the learned Subordinate Judge observed as follows:-

In the present case on a fair reading of the petition filed by defendant No. 1 under Order 7, Rule 11 of C.P.C. it is clear that the case of the applicant is that the plaintiff has no cause of action to file the suit. It is not specifically pleaded by the applicant that the plaint does not disclose any cause of action. The learned trial Judge has also not recorded any specific finding to this effect. From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action to the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20.4.82 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint.

On the analysis and discussions in the foregoing paragraphs, it is my considered view that the order passed by the learned trial Judge rejecting the plaint under Order 7, Rule 11(a) and (d) of C.P.C. is unsustainable and has to be set aside. Accordingly the appeal is allowed and the order dated 26.3.1994 of the Civil Judge (Senior Division) Bhubaneswar in Misc. Case No. 75 of 1993 is set aside. There will be no order for costs of this Court.

5(a)(iv). Similarly, the Honourable Apex Court in Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, has held as follows:

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the

plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

5(a)(v). In *Jageshwari Devi and Others V. Shatrughan Ram* (2007) 15 SCC 52, it has been held as follows:

We have heard learned counsel for the parties. We have perused the order of the trial Court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action; while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 of CPC, no exception can be taken to the order.

5(a)(vi). Therefore, in the light of the abovesaid pronouncements, we have no hesitation in holding that the plaint does disclose a cause of action. Further it is not in dispute that the plaintiff has made a specific averment in his plaint that this trade mark application for trade "dress" approved till label was pending registration. It is also not in dispute that the trade mark application was subsequently registered in the Register of Trade Marks on 27.10.2008 as Trade mark No. 1544728. Thereafter, a Registration Certificate bearing No. 762051 was also issued. Section 23(1)(B) Trade Marks Act, 1999, provides for an accrued right over registered trade mark holder from the date of making the trade mark application itself. It is also brought to the knowledge that the plaintiff has already filed an application for amendment of plaint in C.S. No. 949 of 2008 seeking an infringement of the registered trade mark. We merely take note of the abovesaid facts only for the purpose of holding that the suit is maintainable before this

Court. We also make it clear that all the facts narrated above shall not impact the merits of the amended application, which is pending before the learned single Judge.

5(b). Clause 12 of the Letters Patent Act, 1970:-

There is no difficulty in appreciating the submissions of the learned counsel appearing for the appellant that when there is a part of cause of action having arisen outside the jurisdiction of the Court, a leave under Clause 12 of the Letters Patent is required mandatorily. Consequently, when such a leave has not been obtained already, the same cannot be cured subsequently, as held by this court in *The Clan Line Steamers Ltd. Vs. Gordon Woodroffe and Co. (Madras) Pvt. Ltd. and Others*, . However, the said proposition of law on the interpretation of Clause 12 of the Letters Patent does not have any application to the present case. As discussed earlier, there are specific averments in the plaint about the defendants selling their infringing goods at Chennai and passed off their own goods as that of the plaintiff. In view of the said averments, we do not find that the plaint is liable to be rejected for not obtaining leave as the same is not required under law.

5(c). The Provisions of Copy Right Act, 1957 and Designs Act, 2000:-

5(c)(i). Section 2(c) of the Designs Act, 2000 defines a "copy right" to mean an exclusive right to apply a design to any article in any class in which the design is registered. Section 11 of the said Act deals with a copy right of the registered proprietor of the design.

5(c)(ii). Coming to the provisions of Copy Right Act, 1957, there is no definition of copy right in the definition clause. However, Section 2(c) defines "artistic work". Therefore, it is clear that an artistic work as defined u/s 2(c) of the Copy Right Act does not come under the purview of the Designs Act, 2000. Section 14 of the Act is a specific provision, which gives the meaning to the word "copy right". According to which, a copy right means "an exclusive right to do certain acts prescribed therein in respect of a work or a substantial part thereof. The important Section to be considered before us is Section 15 of the Copy Right Act, 1957. It is a special provision regarding a copy right in a design registered or capable of being registered under the Designs Act, 2000. The said provision in clear terms mandates that no copy right shall subsist in any design, which is registered under the Designs Act, 2000. It does not stop with it. u/s 15(2) a copy right in any design, which is capable of being registered under the Designs Act, 2000, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times. Therefore, on a reading of Section 15 of the Copy Right Act, 1957, it is very clear that a copy right of a design, which is registered under the Designs Act, 2000, cannot claim protection under the Copy Right Act, 1957. Therefore, such a design registered under the Designs Act, 2000, would be governed only by the provisions of Designs Act, 2000 and not the Copy Right Act, 1957. In other

words, the provisions contained in the Designs Act, 2000, and Copy Right Act, 1957, are distinct and separate functioning in their respective spheres. With that legislative intent, Section 15 of the Copy Right Act, 1957, has been introduced. In view of the above said clear cut division between the two enactments, we are of the view that the reasoning of the learned single judge to the effect that a design registered under the Designs Act, 2000, can claim protection under the Copy Right Act, 1957 cannot be sustained. In this connection, we agree with the view expressed in the majority judgment rendered by the Full Bench of the Delhi High Court in Micolube India Limited Vs. Rakesh Kumar and Others, . Paragraph 15.2 of the majority judgment is usefully quoted here under:

Thus in effect, after registration, the registrant has in its possession a copyright in an industrial design. By statutory fait, such industrial designs, which are registered under the Designs Act, are excluded from protection of the Copyright Act (see Section 15(1) of the Copyright Act). There is, however, a caveat added by the legislature to this, which is, that a copyright in any design which is capable of being registered under the Designs Act, shall have protection under the Copyright Act, till such time it is not reproduced more than 50 times by an industrial process by the owner of the copyright or with his licence by any other person. (See Section 15(2) of the Copyright Act). This of course would be subject to the provisions of Section 13 of the Copyright Act, which enumerates the works in which copyright can subsist.

5(c)(iii). This takes us to the next issue, on the applicability of Section 15 of the Copy Right Act, 1957. Section 15(1) and (2) of the Copy Right Act, 1957, place an embargo to claim a right for a design, which is registered and which is capable of being registered under the Designs Act, 2000. By the Act 27/2012, the word "Designs Act, 1911" substituted by the word "Designs Act, 2000. This substituted word came into effect from 21.06.2012. Even though the Designs Act, 2000 has come into existence on 11.05.2001, Act 27/2012 came into existence with effect from 21.06.2012 by bringing the necessary amendment u/s 15 of the Copy Right Act, 1957. The Copy Right Act, 1957 came into effect on 21.01.1958. At that relevant point of time Section 15 only made a reference to the Designs Act, 1911.

5(c)(iv) In view of the above said position, it was contended by the learned counsel appearing for the first respondent that inasmuch as Act 27 of 2012 came into effect from 21.06.2012 by way of replacement of Designs Act, 2000, in the place of Designs Act, 1911, it cannot be applied to a period before it. In other words, according to the learned counsel, the amendment being not retrospective, it cannot affect the suit filed prior to it and therefore, Section 15 of the Copy Right Act, 1957 will have no bearing. Hence, resultantly, the learned single judge is not wrong in making reliance upon Section 62(2) of the Copy Right Act, 1957. We are afraid that such a contention cannot be accepted. What has been sought by way of amendment is only a subrogation. Therefore, the Designs Act, 1911 as it was in the statute in the unamended Section 15 of the Copy Right Act, 1957,

has to be read as Designs Act, 2000 for the period between 11.05.2001 to 21.06.2012. This has to be construed so in view of Section 8 of the General Clause Act, 1987. We also extract Section 8 of the General Clause Act, 1987 for better appreciation:

8. Construction of references to repealed enactments:-

(1) Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) [Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted) with or without modification, any provision of a former enactment, then references in any (Central Act) or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]

5(c)(v). We are of the view that unless different intention is expressed by the legislature, the reference to the repealed Act would be considered as a reference to the provision so enacted. In this connection, we would like to refer the judgment rendered by the Division Bench of Delhi High Court in *Microfibres Inc. Vs. Girdhar and Co. and Another*, and the relevant passage is extracted hereunder:

37. Dr. Abhishek Manu Singhvi, the learned Senior Counsel appearing for the respondent in FAO (OS) No. 447/2008 had submitted, and in our view rightly so that the object of the two legislations was to prevent long term usage by the person who was commercially exploiting something and yet wanting to claim an exclusive monopoly through longer period of copyright protection afforded to an artistic work. Section 15 of the Copyright Act demonstrates the legislative intention of integrating the Copyright and Designs Acts and any other interpretation would, as rightly submitted by Dr. Singhvi, render the registration under the Designs Act as meaningless as a design proponent will always get a longer period of copyright protection under the Copyright Act. In our view, the above plea would make a registration under the Designs Act meaningless, which the legislature could have never intended. In fact, the plea of Dr. Singhvi that a design which has been granted the protection under the Designs Act cannot be granted protection under the Copyright Act is correct and this is evident from Section 15(1) of the Act.

5(c)(vi). In *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura*, , the Honourable Apex Court has held as follows:

10. Equally clearly, there is no substance in the contention that the same Order should have been repeated by the President after the enactment of the Act. It would have been a sheer act of supererogation and the legal fiction laid down in

s. 8 is meant to avoid such unnecessary duplication of the use of the constitutional machinery.

5(c)(vii) Similarly, the following passage of the Honourable Apex Court's decision in State through S.P., New Delhi Vs. Ratan Lal Arora, , is apposite:-

Much stress was laid on the non-amendment of the Probation Act which referred to the old Act and not the present Act. It was submitted that since there has been no corresponding change in the Probation Act, therefore, the provisions of said Act cannot be applied to cases under the Act. The argument overlooks the principles underlying Section 8 of the General Clauses Act. When an Act is repealed and re-enacted unless a different intention is expressed by the legislature, the reference to the repealed Act would be considered as reference to the provisions so re-enacted.

5(c)(viii). Therefore, on a conspectus of the above said judgments referred to above, we have no difficulty in holding that Section 15 of the Copy Right Act, 1957, would be applicable to the case on hand. Resultantly, we hold that Section 62(2) of the Copy Right Act, 1957, cannot be made applicable to the present case. Any other interpretation would be contrary to the legislative intent of keeping the two enactments to operate in their own respective fields, unhindered by the other.

CONCLUSION:-

Even though we do not agree with the findings of the learned single Judge, in his attempt to synthesis the Designs Act, 2000 and the Copy Right Act, 1957 by giving the benefit u/s 62(2) of the later enactment, for the purpose of giving territorial jurisdiction, we find that the order passed does not require any interference. This we do so in view of the discussion made on the cause of action and the scope of Order VII Rule 11 of C.P.C., and the applicability of Clause 12 of the Letters Patent. In such view of the matter, we do not wish to interfere with the final outcome of the order passed in Application No. 5533 of 2008 in C.C. No. 949 of 2008. Accordingly, the Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.