

Jay Industries Vs. Nakson Industries

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Court : Delhi

Decided On : Feb-10-1992

Reported in : AIR1992Delhi338; 1992(1)ARBLR264(Delhi); 48(1992)DLT651; 1992RLR176

Judge : B.N. Kirpal and; Santosh Duggal, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 3; [Copyright Act, 1957](#) - Sections 13

Appeal No. : Suit No. 2789 of 1990

Appellant : Jay Industries

Respondent : Nakson Industries

Advocate for Pet/Ap. : K.L Aggarwal and; M.L. Mangala, Advs

Judgement :

B.N. Kirpal, J.

(1) The question which has been referred to this Bench, by a Single Judge of this Court, turn decision is whether a single suit can be filed when it is alleged that there has been an infringement of the plaintiff's trade mark and copy right. In other words can one suit be filed in relation to two distinct statutory causes of action.

(2) The plaintiff in the suit had alleged that the defendant had infringed the plaintiff's registered trade mark and also its copy right. The allegation was that the plaintiff's copy right existed on the labels and carton? in which goods had been packed which carried the trade mark of the plaintiff. With regard to the trade mark the allegation was that-the plaintiff was the registered proprietor of the mark 'JAY'. It was also: alleged, with relation to the copy right, that the plaintiff had been using distinctive cartons in which the goods manufactured by the plaintiff namely, locks, meters, cut outs etc. were packed. It was further alleged in the plaint that the defendant was infringing the plaintiff's aforesaid registered trade mark and also the copy right which existed in the artistic work on the cartons of the plaintiff. Based on this allegation the suit was filed for injunction and damages.

(3) Before issuing summons the learned single Judge passed an order dated 18th September, 1990 in which it was, inter alia, stated that the plaintiff had alleged that two distinct statutory rights had been violated, namely, the right granted by The Trade and Merchandise Marks Act and the other right granted by the Copy Right Act. After referring to Order li Rule 6, Civil Procedure Code the learned single Judge was of the opinion that where two distinct statutory causes of action existed which will require different kinds of proof then it would not be convenient to try them as a part of the same suit. Because the learned Single Judge did not agree with the observations of G. R. Luthra, J. in the case of Glaxo Operations U.K.. Ltd. Middlesex (England) v. Samrat Pharmaceuticals Kanpur : AIR1984 Delhi265 , wherein a contrary view had been taken, he directed that this issue be referred to a larger Bench. It is as a consequence thereof that the reference has been heard by us.

(4) Before dealing with the aforesaid issue it will be appropriate to observe that in the reference order the learned single Judge has observed that the document which is sued upon in case of original artistic work would be the original artistic work itself and a mechanically re-produced carton cannot be equated with the original artistic work. Shri Aggarwal contends that the copy right of the author or the artist would exist not only for the manuscript of the first work of the author or the artist but also in mechanical re-production thereof. While referring to Sections 13 and 14 of The Copy Right Act it has been submitted by the learned counsel that

the exclusive right, in the case of an author, has been given to him not only in the manuscript but also in the mechanical re-production thereof, e.g., an author who gets a book printed or published would continue to have and retain the copy right, unless it is assigned, in each and every volume of copy which is printed. When a person, who does not have a copy right, seeks to print any book then that would result in the infringement of Section 14 of the Copy Right Act and would give a right to the author to take suitable action. In other words the right of re-production is with the author and with no one else except in the case of a person authorised by him. Similar is the position with regard to an artistic work. The mechanical re-production of an artistic work would also, if it has been submitted, be subject to the protection given by the Copy Right Act just as there is protection given to audio cassettes. In our opinion it is not necessary for us to go into the aforesaid contention because this is an issue which will arise on merits if an objection is taken with regard to the existence of a copy right. The stage at which the reference was made by the single Judge before the issuance of summons. The reference was made only because the learned single Judge did not agree with the observations of G. R. Luthra, J. to the effect that on two different causes of action a single suit could be filed. We, therefore, propose to deal only with this issue and the other issue pertaining to existence of copy right in a mechanically re-produced carton will have to be decided if and when raised in the suit.

(5) Coming to the point in issue it appears that the consistent view of this Court has been that in a suit similar to the present one separate causes of action can be combined. Three different Judges of this Court had occasion to deal with this matter in *Deepchand Arya v. Kiran Soap Works* 1981 Raj LR 113 ; *Tata Oil Mills Company Ltd. v. Reward Soaps Works.* : AIR1983 Delhi286 (supra). It was held, and in our opinion rightly, that these two different causes of action can be agitated upon in a single suit.

(6) In the present case there is one plaintiff and one defendant. The two different causes of action in effect pertain to the same transaction. The allegation of the plaintiff is that the defendant is selling goods by mislabeling them and by infringing the trade mark and copy right of the plaintiff. The sale is alleged to be made in cartons similar to the ones in which the plaintiff had a copy right and it is further

alleged that those cartons contain the trade mark which is registered in the plaintiff's name. A single transaction of sale by the defendant, in effect; allegedly results in the infringement of both the trade mark and copy right of the plaintiff.

(7) The Code of Civil Procedure clearly contemplates joinder of causes of action as is evident from Order II Rule 3 Civil Procedure Code . It is permissible and up to the plaintiff, to unite in the same suit several causes of action against the same defendant. There is no prohibition against the causes of action being joined together under The Trade and Merchandise Marks Act and The Copy Right Act. A single suit like the present would clearly avoid multiplicity of proceedings and while agreeing with the earlier decisions of this Court we would answer the reference by observing that, on the basis of the averments made in the plaint, a single suit relating to two different causes of action viz., Trade Mark and Copy Right is maintainable.

(8) We now direct that the suit should be listed before the appropriate Court for further proceedings on 24th February, 1992.