

Daniel Vs. A.R. Safiullah

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Court : Chennai

Decided On : Jan-28-2004

Reported in : (2004)2MLJ91; 2004(29)PTC62(Mad)

Judge : V. Kanakaraj, J.

Acts : [Designs Act, 2000](#) - Sections 19, 19(2), 19(3), 22 and 22(4); Code of Civil Procedure (CPC) - Sections 24 and 24(5) - Order 7, Rule 1; [Trade and Merchandise Marks Act, 1958](#) - Sections 27, 105 and 106

Appeal No. : Application Nos. 4458, 4459 and 4980 of 2003

Appellant : Daniel

Respondent : A.R. Safiullah

Advocate for Def. : G. Vijayakumar, Adv. in Application No. 4980 of 2003 and ;A.A. Mohan, Adv. in Application Nos. 4458, 4459 and 4980 of 2003

Advocate for Pet/Ap. : G. Vijayakumar, Adv. in Application Nos. 4458 and 4459 of 2003

Judgement :

V. Kanakaraj, J.

1. Application No. 4458 of 2003 has been filed praying to transfer O.S. No. 1 of 2002 and all its connected applications from the file of the Court of Principal District Judge, Pudukottai to this Court, as provided both under Section 22(4) of the [Designs Act, 2000](#) and also under Section 24(5) of the C.P.C.

2. Application No. 4459 of 2003 has been filed praying to stay all further proceedings in O.S. No. 1 of 2002 and all its connected applications pending on the file of the Court of Principal District Judge, Pudukottai, pending disposal of the above transfer application.

3. Application No. 4980 of 2003 has been filed by the respondent in the main transfer application praying to vacate the stay granted in A. No. 4459 of 2003, dated 17.10.2003.

4. In the affidavit filed in support of the above main transfer application, the applicant who is the defendant in the suit would submit that the respondent herein has filed a suit under Order 7, Rule 1 of CPC read with Sections 27, 105 and 106 of the [Trade and Merchandise Marks Act, 1958](#) and Section 22 of the [Designs Act, 2000](#), before the Court of Principal District Judge, Pudukottai for permanent injunction restraining the defendant and his men from in any manner infringing the plaintiffs registered copyright in respect of artificial banana leaves, laminated paper plates, laminated artificial leaf by manufacture and sale of products identical or an obvious imitation to the shape and configuration of plaintiffs products and for such other reliefs; that the appellant herein has opposed the said suit mainly on ground that the Controller of patent and Designs has misdirected himself while granting certificate of registration in favour of the respondent/plaintiff.

5. The applicant would further submit that the statutory provisions contained in Sections 4 and 19 of the [Designs Act, 2000](#) would disentitle the respondent to have the benefit of registration and undoubtedly the present registration certificate issued by the said authority requires to be cancelled; that this applicant has a statutory right to avail a defence under Section 22(3) of the [Designs Act, 2000](#) and once he avails such defence in his pleadings, as per the provisions of Section 22(4) of the Designs Act, the suit and its connected proceedings have to be mandatorily transferred to this Court for considering such issue and in terms of

express provisions of law, the concerned District Court would cease to have any jurisdiction to try such controversial defence availed as the ground of defence by the contesting party and moreover, under such circumstances, it is the mandatory duty of the concerned District Court, where such proceedings are pending, to automatically transfer the file and all records relating to the suit to this Court.

6. The applicant would further submit that since he availed the grounds of defence provided under Section 19 of the [Designs Act, 2000](#), it is the statutory duty of the Principal District Judge, Pudukottai to transfer the present suit to this Court, without considering the issue for which the Legislature has denied jurisdiction under Section 22(4) of the [Designs Act, 2000](#); that since his oral request was not considered by the learned Principal District Judge, Pudukottai, this applicant has filed an application under Section 22(4) of the [Designs Act, 2000](#) before the District Court praying to transfer the suit in O.S. No. 1 of 2002 to the High Court and since the said application was returned by the District Judge, by his order dated 05.07.2002 on ground of maintainability, the applicant herein has filed C.R.P. (PD) No. 2148 of 2002 before this Court under Article 227 of the Constitution of India praying to direct the Principal District Judge, Pudukottai to transfer O.S. No. 1 of 2002 from his file to the file of the High Court wherein a learned Single Judge of this Court, by the order dated 12.12.2002 has directed the learned Principal District Judge, Pudukottai to number the application, if it is otherwise in order, and dispose it of in accordance with law.

7. The applicant would further submit that pursuant to the orders of this Court, the said application was numbered as LA. No. 4 of 2002 by the District Court, Pudukottai and notice was also served on the other side; that in view of the proceedings initiated before this Court in C.R.P. (PD) No. 148 of 2002, the learned Principal District Judge, Pudukottai has developed an untold prejudice towards this applicant and, therefore, while adjourning the matter to 08.09.2003, has passed a comment stating that as to what prevented this applicant from filing a transfer application before the High Court instead of making a challenge over the order of return made in the applications and, therefore, this applicant apprehends that the learned District Judge, Pudukottai may grant temporary injunction in favour of the respondent irrespective of his objections as well as against express provisions of

law; that it is a well settled proposition of law that as non-jurisdictional authority could not voluntarily assume any jurisdiction and pass any order causing prejudice to any litigant; that since he has taken a ground of defence that all certificates of registration granted by the authority under the Designs Act in favour of the respondent deserve to be cancelled, a subtle and crucial issue is exclusively triable only by the High Court and the provisions of law ought not to be allowed to be over-ridden by any judicial forum and moreover right from inception, some how or other, some kind of prejudice has developed as against this applicant in the mind of the District Judge, Pudukottai and that has been obviously revealed at the time of hearing on 18.8.2003. On such grounds, the applicant would pray for the relief extracted supra.

8. This application for transfer has been stiffly opposed by the respondent/plaintiff, on ground that the suit in O.S. No. 1 of 2002 has been filed for design infringement and passing off and the relief for passing off is not affected and is de hors the provisions of Section 22 of the Designs Act; that even assuming but not admitting that the transfer petition is maintainable, the District Judge is not prevented from granting the relief of passing off, a common law remedy and the transfer petition is filed only to scuttle the legal remedies available to the plaintiff; that a meticulous reading of Section 22(4) of the Act would reveal that only if a cancellation petition is filed under Section 19, under Section 22(3) the suit for infringement should be transferred to the High Court and the applicant herein has no locus standi to file the transfer petition since he has not filed petition for cancellation of registered design granted in favour of the plaintiff before the Controller of Designs at Calcutta; that the defendant has made a bald statement in the written statement that the design is not new or original and is not registrable under the Designs Act, and has failed to substantiate the same with sufficient documentary evidence, the defendant has no locus standi to maintain a cancellation petition under Section 19 and, therefore, he cannot avail the provisions of Section 22(4) of the Act; that this transfer application is filed only to cause delay in grant of interim relief especially as the suit was filed in June, 2002 and for the last more than 18 months, the defendant has chosen to remain silent and has not moved the transfer petition; that the District Judge, Pudukottai has heard the applications in LA. Nos. 1 and 2 of 2002 and he has to only pronounce the order and at this belated stage, the

defendant has chosen to file a transfer petition before this Court; that the mere apprehensions of the applicant defendant cannot become subject matter of litigation and proper course for the applicant would be to wait for order of the learned District Judge rather than making such unwarranted allegations and the learned District Judge cannot be considered a 'non-jurisdictional authority. On such grounds, the respondent/plaintiff would pray to dismiss the above transfer application.

9. During arguments, this learned counsel appearing on behalf of the applicant/defendant would, besides reiterating those points which he has raised in the above applications, also would cite the following decisions:

(1) Padmasundara Rao (Dead) and Ors. v. State of Tamil Nadu and Ors., (2002) 2 CTC 55;

(2) J.P. Bansal v. State of Rajasthan and Anr., : [2003]2SCR933 ; and

(3) Pandian Chemicals Limited v. Commissioner of Income Tax, Madurai, : [2003]262ITR278(SC) .

10. So far as the first decision cited above is concerned, the Hon'ble Apex Court, while disposing of a Civil Appeal in a land acquisition case, particularly dealing with the period of limitation in issuing declaration under Section 6 of the said Act, in paragraphs No. 14 and 15 has held in the following manner;

'14. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, or repeat it, if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) of the Land Acquisition Act is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case, : [1996]1SCR698 . In Narasimhaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clauses (i) and/or

(ii) of the proviso to Section 6(1), but also by non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction - one relating to casus omissus and the other in regarding to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose the parts of a statute or, section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. 'An intention to produce an unreasonable result', said Danckwerts, L.J., in *Artemiou v. Procopiou*, (1966) 1 QB 87, 'is not to be imputed to a statute if there is some other construction available'. Where to apply words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result' we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction...'

11. In the second judgment cited above, the Hon'ble Apex Court in yet another Civil Appeal concerned with Section 3(2) of the Rajasthan Taxation Tribunal Act, 1995 and further in the light of the ordinance passed by the State Government abolishing the Tribunal and the continuance of the appellant/Chairman automatically coming to a close, himself claiming compensation having approached the High Court, the Single Judge and the Division Bench as well dismissed the writ petition and when an appeal was preferred before the Apex Court, their Lordships have held in paragraphs 13 and 14 in the following manner:

'13. Statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. In spite of Courts saying so, the draftsmen have paid little attention and they still boast of the old British jingle 'I am the parliamentary draftsman. I compose the country's laws. And of half the litigation, I am undoubtedly the cause'.

14. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to innovate or taken upon itself the task of amending or altering the statutory provisions. In that situation, the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased, This can be vouchsafed by 'an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so.'

12. In the third judgment cited above, the Hon'able Apex Court in a case relating to the Income-tax has held:

'The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant...'

On such arguments, lamenting that in spite of an application having been filed, the learned Judge has not either properly dealt with the same or passed any order in it and hence the learned counsel would pray to the reliefs extracted supra.

13. In reply, the learned, counsel appearing on behalf of the respondent would submit that this application has been filed under Section 24(5) of the C.P.C., and tracing the affidavit filed by the petitioner, would point out that they are not the grounds for transfer and would submit a judgment reported in Smt. Sanageetha S. Chugh v. V. Ram Narayan and Ors., AIR 1995 Kar. 112, wherein a learned Single Judge of the Karnataka High Court in a matrimonial proceedings wherein the transfer has been sought for, has held:

'Expression of some opinion by Presiding Officer pending proceeding is not a ground for granting transfer.'

14. The learned counsel for the respondent then cited two more decisions respectively reported in (1) Smt. Sudha Sharma v. Ram Naresh Jaiswal, : AIR 1990 MP320 and (2) Rajkot Cancer Society v. Municipal Corporation, Rajkot, :

AIR1988 Guj63 .

15. So far as the former judgment cited above is concerned, a learned Single Judge of the Madhya Pradesh High Court would hold:

'Exercising powers under Section 24 of the Civil Procedure Code, is discretionary and, therefore, with extreme care and caution, power of transfer should be exercised by the Court, but all the same such discretionary powers cannot be put within the straight-jacket of cast iron for all the situations and it is always for the Court to find out from the allegations so made, whether any reasonable ground is made out for transfer of the case. Considering, broad proposition, the Court must be satisfied that good atmosphere is likely to be extended between the parties if the case is transferred reposing full confidence upon the Court of Justice.'

16. In the latter judgment, a learned Single Judge of the Gujarat High Court has held:

'It must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another has to be exercised with due care and caution bearing in mind that there should be no unnecessary, improper or unjustifiable stigma or slur on the Court from which the case is transferred.'

On such arguments advanced, the learned counsel for the respondent would seek to dismiss the above application for transfer with costs.

17. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, from among the three

application above, the main applications in Application No. 4458 of 2003 is for the transfer of the suit in O.S. No. 1 of 2002 and the connected applications pending before the Court of Principal District Judge, Pudukottai to this Court as provided under Section 22(4) of the [Designs Act, 2000](#) and under Section 24(5) of the CPC and hence it has become incumbent on the part of this Court to extract both the above provisions of law under which the transfer is sought for:

'Section 22(4) of the [Designs Act, 2000](#)--Notwithstanding anything contained in the second proviso to Sub-section (2), where any ground on which the registration of a design may be cancelled under Section 19 has been availed of as a ground of defence under Sub-section (3) in any suit or other proceeding for relief under Sub-section (2), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceedings is pending, to the High Court for decision.

Section 24(5) of the CPC--A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.'

18. So far as the first provisions of law in Section 22(4) of the [Designs Act, 2000](#) is concerned, it is a pre-condition imposed by law that only on ground which the registration of a design may be cancelled under Section 19 of the said Act has been availed of as ground of defence and Sub-section (3) in any suit or other proceeding for relief under Sub-section (2), the said suit or other proceeding shall be transferred by the Court wherein it is pending, to the High Court for decision. Whether this condition is prevalent in the suit registered by the plaintiff in O.S. No. 1 of 2002 has neither been clarified in the petition nor argued before this Court and, therefore, factually it has to be decided whether such a condition is prevalent in the suit filed by the respondent/plaintiff only when the question of invoking this provision of law under Section 22(4) of the Designs Act would arise. Of course, it is the case of the respondent that such a condition is not prevalent in the suit registered by him and therefore, the applicant/defendant is not entitled to invoke the above provision of law.

19. Coming to the second legal question 'whether the suit has to be transferred under the general power of transfer and withdrawal of suits as adumbrated in Section 24 of the CPC, particularly Section 24(5) which is specific to the effect that

a suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it', needless to mention that it is yet to be proved on the part of the applicant that the lower Court has no jurisdiction to try the suit. Therefore, at the outset, it is safe to decide that the applicant has not established that under these two provisions of law, he is entitled to file an application of this sort and hence this application, at this score itself, becomes only liable to be dismissed.

20. Moreover, on facts, it comes to be seen that on a return of the application filed by the applicants under Section 22(4) of the Designs Act before the Trial Court, the Court of Principal District Judge, Pudukottai, by its order dated 05.07.2002, on ground of maintainability, it is an admitted case of the applicant that he filed a revision petition in C.R.P. (PD) No. 2148 of 2002 under Article 227 of the Constitution of India before this Court seeking to transfer the suit in O.S. No. 1 of 2002 from the file of the lower Court to that of the High Court and this Court, by its order dated 12.12.2002, has directed the Court of Principal District Judge, Pudukottai to number the application, if it is otherwise in order and dispose it of in accordance with law, which is still pending and, therefore, an application of this sort during the pendency of an application as per the directions of this Court is unnecessary and unwarranted.

21. So far as the judgments cited on the part of the applicant are concerned, they generally deal with the interpretation of the statutes and they have no direct application to the facts involved in this case and hence they are not adopted to decide the case in hand. On the contrary, the judgments cited by the respondent, extracted supra, are pointed towards the subject in hand cautioning the Court to be careful in exercise of its jurisdiction of transfer and even if such care and caution is taken to decide the above application, the only conclusion that this Court could arrive at is that there is no pith or substance in the above application particularly in view of the direction already issued by this Court in C.R.P. (PD) No. 2148 of 2002, dated 12.12.2002 according to which the lower Court has to promptly dispose of the application pending before it and hence the above first application seeking transfer of the suit in O.S. No. 1 of 2002 pending on the file of the Court of Principal District Judge, Pudukottai, in all fairness becomes only liable to be dismissed and the same is decided accordingly.

22. Secondly, regarding the other application filed seeking to stay all further proceedings also becomes liable to be dismissed in view of the above order passed in the transfer application and the same is decided accordingly.

23. So far as the Application No. 4980 of 2003 filed by the respondent in the main transfer application praying to vacate the stay granted is concerned, in view of the order passed in the stay application above, this application has to be closed and is ordered accordingly.

In result,

(i) Application Nos. 4458 and 4459 of 2003 are dismissed as without merit,

(ii) Application No. 4980 of 2003 is closed.

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