

Special Legal Issues Seminar

CPC Order II Rule 2 for Different Types of Claims in Different Types of IP Lawsuits

Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order II Rule 1 – Frame of Suit:

“Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.”

❖ Order II Rule 2 - Suit to include the whole claim:

“(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

*(2) **Relinquishment of part of claim.**—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3) **Omission to sue for one of several reliefs.**—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”*

Relevant Case Laws

❖ ***Alka Gupta vs. Narender Kumar Gupta* [AIR 2011 SC 9]**

- *“The object of Order 2, Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2, Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.”*

❖ ***Coffee Board vs. Ramesh Exports Pvt. Ltd.* [AIR 2014 SC 2301]**

- *“The bar of Order 2 Rule 2 comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; and when the Plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and both the suits are between the same parties. Furthermore, the bar under Order 2 Rule 2 must be specifically pleaded by the Defendant in the suit and the Trial Court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the Plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different”*

Relevant Case Laws (Contd.)

❖ ***Gurbux Singh vs. Bhooralal* [AIR 1964 SC 1810]**

- *“In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.”*

❖ ***Sidramappa v. Rajashetty and Ors.* [AIR 1970 SC 1059]**

- *“the requirement of Order 2 Rule 2, is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of a cause of action. 'Cause of action' means the 'cause of action for which the suit was brought'. Cause of action is a cause of action which gives occasion for and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings”*

Relevant Provisions of the Trade Marks Act, 1999

❖ **Section 135: Relief in suits for infringement or for passing off.—**

“(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff’s ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.”

Relevant Provisions of the Copyright Act, 1957

❖ **Section 55: Civil remedies for infringement of copyright.—**

“(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.”

Relevant Case Laws in IP

- ❖ ***SABMiller India Ltd. vs. Jagpin Breweries Ltd. [2014(58)PTC556(Bom)]***
 - *“If the Plaintiff comes to a Court for getting any redress basing his case on an existing cause of action he must include in his suit the whole claim pertaining to that cause of action. But if he gives up a part of the claim based on the said cause of action or omits to sue in connection with the same then he cannot subsequently resurrect the said claim based on the same cause of action. The provision has, however, no application to cases where the plaintiff bases his suit on separate and distinct causes of action and chooses to relinquish one or the other of them. Order II, Rule 2 requires that the cause of action in the earlier suit must be the same on which the subsequent suit is based and unless there is identity of causes of action in both the suits the bar of Order II. Rule 2 will not get attracted. In such a case, it is open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he had omitted while filing the previous suit.”*
 - *“From the facts of the present case it is clear that the suit filed by the Plaintiff in the High Court of Madras at Chennai is based on the following two causes of action:
 - i) *Infringement of Plaintiff's registered Design No. 223479 in Class 09-01 and*
 - ii) *Passing off the Defendant's beer bottles bearing the trademarks SABMILLER and/or SABMILLER INDIA as and for the Plaintiff's bottles.”**

Relevant Case Laws in IP (Contd.)

- *“Whereas the present suit filed by the Plaintiff is based on the following two causes of action:
 - i) Infringement of Plaintiff's trademarks bearing registration Nos. 436744 and 1521743 both in class 32 and
 - ii) Passing off the Defendant's beer bearing the impugned trade mark containing the numeral 5001 as and for the Plaintiff's beer bearing the trade mark HAYWARDS 5000.”*

Hence, both the suits filed by the Plaintiff are in respect of different causes of action. The Plaintiff is entitled to initiate separate actions on the basis of separate causes of action and the provisions of Order 2 Rule 2 of Code of Civil Procedure will not be a bar to the subsequent suit filed by the Plaintiff on a separate and distinct cause of action. Hence, the present suit filed by the Plaintiff before this Court restraining the Defendant from infringing the Plaintiff's registered trade mark and from passing off its beer as and for the Plaintiff's beer is not barred under the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908.”

Relevant Case Laws in IP (Contd.)

- ❖ ***Smithkline Beecham Consumer... vs. Hindustan Lever Limited And Anr. [(2002) ILLJ 453]***
 - *“The Court will not grant relief to a plaintiff if he had adopted previous proceeding in which he could have asked for relief which he is now trying to seek by adopting successive proceeding. The question in such a case is to find out whether it was possible for the plaintiff to claim in the previous proceeding the relief which he is now trying to seek in the successive proceeding. Even if the grounds for reliefs in the subsequent proceeding are different from the grounds for reliefs in the earlier proceedings, if such grounds for reliefs urged in the subsequent proceeding were available to the plaintiff when he initiated the earlier proceedings, the Court will not grant reliefs and will refuse to entertain the subsequent proceeding, in order to prevent multiplicity of proceedings.”*
 - *“This principle of abuse of process of law is applicable even when the principle of res judicata does not apply (as when the earlier proceeding has not terminated in a final decision)...It applies to a case of filing an earlier proceeding and avoiding or omitting to include all grounds or all cause of action which had arisen and were available to be urged at the time when the earlier proceeding was adopted...This principle also applies to a case where the causes of action or grounds in the two proceedings are different, but which grounds or cause of action were available at the time when the earlier proceeding was adopted.”*

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Relevant Case Laws in IP (Contd.)

- *“In this background, it is to be considered as to what are the reliefs that the plaintiffs could have claimed in the Delhi suit on the allegation that their copyright in drawing and the mould has been infringed. Firstly, the plaintiffs could have claimed a decree for the ceasure of the infringing mould (this relief is claimed by the plaintiffs in this suit as also in the Delhi suit) and secondly, they could have claimed a decree of perpetual injunction restraining the 1st Defendant from importing anymore moulds (a relief to this effect has been prayed for in this suit)...There is no dispute before me that reliefs claimed in this suit could have been, in view of the provisions of Section 62 of the Copyright Act, claimed by the plaintiffs in a suit filed in the Delhi High Court.”*
- *“It is clear from the provisions of Order II, Rule 1 of the Civil Procedure Code that it obliges a plaintiff to frame his suit in such a manner that a final decision can be rendered by the Court in that suit on the subject in dispute. It goes without saying that if a particular ground is not within the knowledge of the plaintiff, though it is on the same subject, when the suit is filed, no fault can be found with the plaintiff, therefore, phrase "as far as practicable" has been used by Order II, Rule 1 of the Civil Procedure Code. But it can definitely be said that, the provisions of Order II, Rule 1 of the Civil Procedure Code oblige a plaintiff to raise in his suit all the grounds available to him, on the subject in dispute, which he was capable of raising when the suit was filed.”*

Relevant Case Laws in IP (Contd.)

- *“Insofar as the aspect of this suit being barred by the provisions of Order II, Rule 2 of the Civil Procedure Code is concerned, Rule 2 of Order II obliges the plaintiff to include in one suit all the claims to which he may be entitled arising out of the same cause of action. It, therefore, becomes necessary to consider what does the term "cause of action" mean...It can be said that the fact which gives a person a right to judicial relief constitutes cause of action. The Supreme Court has considered the question as what constitutes cause of action in its judgment in the case of A. B. C. Laminart Pvt. Ltd. v. A. P. Agencies, and has observed thus in paragraph 12 of the judgment:*

“A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right used on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree.””

THANK YOU!

Questions?

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