



A.No.2893 of 2025  
in C.S.(Comm.Div)No.2 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2026

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.2893 of 2025  
in C.S.(Comm.Div)No.2 of 2024

Bibin John, Trading as Melange Designing Studio  
Dwarai Swami Lane, MG Road, Ernakulam,  
Kerala 682035.

... Applicant/Defendant

-vs-

Lifestyle International Private Limited,  
Express Avenue, 49, 50L, Block No.9,  
Triplicane Village, Whites Road,  
Mylapore, Chennai – 600014,  
Represented by its Authorized Signatory  
Mr. A. Shyam Ravindhar

... Respondent/Plaintiff

Prayer: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order VII Rule 11 of the CPC, 1908, to reject the plaint filed in C.S. (Comm.Div)No.2 of 2024 as not maintainable in law.



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For Applicant : Mr.M.S.Bharath

For Respondent : Mr.Arun C.Mohan

## ORDER

The plaintiff asserts that it has adopted and applied the mark “MELANGE” to apparel. The action was instituted as a rolled-up action for alleged infringement of trade mark and passing off by the defendant’s use of a device mark containing the word element MELANGE. On the ground that the branch office of the plaintiff is situated within the jurisdiction of this Court, the plaintiff instituted the suit without obtaining leave by resorting to Section 134(2) of the Trade Marks Act, 1999. The plaint was accompanied by an application for leave to combine causes of action. Such application was allowed.

2. After filing the written statement, the defendant has applied for rejection of plaint. Learned counsel for the defendant contends that the suit was wrongly framed as a composite suit. Adverting to paragraph 15 of the plaint, learned counsel points out that the plaintiff was aware that Trade



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Mark No.3587424 was registered in Class 40 with effect from 08.07.2017.

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Therefore, learned counsel contends that the framing of the suit as a composite suit was a ruse to circumvent the requirement of obtaining leave to sue. He also contends that the failure to obtain leave to sue is a non-curable defect.

3. Relying on the judgment of the Division Bench of the Bombay High Court in *Harman Overseas and others v. Dongguan Tr Bearing Company Limited*, 2017 SCC OnLine Bom 7327, learned counsel contends that the jurisdictional plea may be raised notwithstanding the application for joinder of causes of action being allowed.

4. After pointing out that the plaintiff chose not to appeal against the refusal of interim relief in relation to infringement, learned counsel contends that the only remaining remedy is in relation to passing off. Referring to the plaint documents, he contends that said documents do not establish cause of action for passing off within the jurisdiction of this Court. He also adds that the failure to obtain leave, where required, leads to the inference that the action is prohibited by law.



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5. Learned counsel for the plaintiff refutes these contentions. He relies on the fact that the application to combine causes of action was allowed. He also asserts that no case is made out to reject the plaint on any of the grounds specified in Order VII Rule 11 of the Civil Procedure Code, 1908 (the CPC).

6. A plaint may be rejected under Order VII Rule 11 if the plaint does not disclose a cause of action or if it appears from a statement in the plaint that the suit is barred by any law. On the ground that leave to sue was not obtained by the plaintiff, it cannot be said that the suit is barred by any law. Clause (d) of Order VII Rule 11 of the CPC comes into operation when filing of the civil suit in respect of a specific subject is barred under an applicable statute. Such is not the case here. As regards non-disclosure of cause of action, the matter should be considered by assuming that the averments in the plaint are true. The test to be applied is whether such averments disclose a cause of action and not whether the plaintiff is in a position to establish all elements of such cause of action so as to succeed.



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7. In the plaint, at paragraph 21 thereof, the plaintiff has asserted that the continuous use of the impugned mark by the defendant constitutes infringement and passing off. At paragraph 22, the plaintiff has averred that it has a branch office in Chennai within the jurisdiction of this Court. It is also averred that the defendant's products are available at Chennai through online websites. This is sufficient to conclude that the plaint does disclose a cause of action.

8. For reasons aforesaid, this application is dismissed without any order as to costs.

**08.04.2026**

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Index : Yes/No

Internet: Yes/No

Neutral Citation : Yes/No

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**SENTHILKUMAR RAMAMOORTHY,J**

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