



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM)/423, 457/2023
(ORA/158, 159/2011/TM/CH)
and C.S.No.87 of 2008
and O.A.No.118 of 2008
and A.No.1400 of 2008

(T)OP(TM)/423, 457/2023

A.D.Padmasingh Isaac
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai 600 040.

... Petitioner in both OP's

-VS-

1.V.Senthil Kumar,
Sole Proprietor,
Trading as R.C.Traders,
No.1, Pari Street,
Annanedumpathi,
Choolaimedu,
Chennai - 600 094.

2.The Registrar of Trademarks,
Office of the Trademarks Registry,
Intellectual Property Building,
GST Road, Guindy,
Chennai 600 032.

... Respondents in both OP's



COMMON PRAYER in (T)OP(TM)/423, 457/2023: Transfer Original

Petitions (Trademarks) filed under Sections 47 and 57 of the Trade Marks Act, 1999, praying to allow the application and remove / rectify the entry in the Trade Mark Registry under Nos.1580696, 1580695, respectively, dated 17.07.2007 in Class 30 in the name of the respondent.

For Petitioner : Mrs.Gladys Daniel
in both OP's

For Respondent 1 : Mr.Amar D.Pandiya
in both OP's

For Respondent 2 : Mr.K.Subbu Ranga Bharathi, CGSC
in both OP's

C.S.(Comm.Div.) No. 87 of 2008

1.Mr.A.D.Padmasingh Isaac
Trading as Aachi Spices and Foods
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai 600 040.

2.M/s.Aachi Masala Foods (P) Ltd.,
No.6, Ground Floor,



15th Street, Anna Nagar, 'G' Block,
Chennai 600 040.

Represented by its Director

Mr.Ashwin Pandian

... Plaintiffs

-vs-

V.Senthil Kumar,
1, Pari Street,
Annanedumpathi,
Choolaimedu,
Chennai - 600 094.

... Defendant

PRAYER: Complaint filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the CPC read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, praying for a Judgment and Decree:-

(a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale of Masala spices or food preparations in Class 29 & 30 using trade mark AACHI or AARCEE or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any



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way visually or deceptively or phonetically similar to the Plaintiffs' trade mark AACHI or in relation to any spice or food preparation in Class 29 & 30 items and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe the Plaintiffs' registered Trade Mark.

(b) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing / bearing the name AARCEE and packets or other deceptively similar trade mark used in the pouches and packets in respect of masalas.

(c) directing the Defendant to render an account of profits made by them by the use of the impugned trademark on the goods



referred and decree the suit for the profits found to have been made by the Defendant, after the Defendant have rendered accounts.

(d) directing the Defendant to pay to the Plaintiffs the costs to the suit, and

(e) pass such further or other order, as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mrs.Gladys Daniel
for M/s.C.Daniel

For Defendant : Mr.Amar D.Pandiya

COMMON ORDER

Both the civil suit and the rectification petitions were instituted by Mr.A.D.Padmasingh Isaac, trading as Aachi Spices and Foods. The parties reached a settlement and executed a Memorandum of Compromise dated 31.08.2023. The relevant terms and conditions of the said Memorandum of Compromise are set out below:



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"6. The Defendant submit to a Judgment and decree as prayed for in terms of prayer [a] of para 27 of the Plaint for

(a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale of Masala spices or food preparations in Class 29 & 30 using trade mark AACHI or AARCEE or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or deceptively or phonetically similar to the Plaintiffs' trade mark AACHI or in relation to any spice or food preparation in Class 29 & 30 items and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos.922594, 922595, 1318494 &



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1318495 or in any manner infringe the Plaintiffs' registered Trade Mark.

7. The Defendant undertakes not to oppose the Applications filed by the Plaintiffs for the registration of the trademark **AACHI**.

8. The Defendant shall not use or make any application for registration of the Trademark **AACHI / AARCEE** (word) and / or (device) or any other similar Trade Mark name or similar sounding expression in any media or other deceptively similar trade mark used and its formative marks in future in the pouches and packets in respect its goods.

9. The Defendant shall not adopt any of the word or visual features of the Plaintiffs' Trademark **AACHI** or any mark deceptively similar thereto in future.

10. The Defendant's Trademark Registrations of the Trademark **AARCEE** under Nos.1567652 & 1580695 dated 12.06.2009 & 17.07.2007 will be cancelled / rectified."

2. Upon examining the above terms, I see no impediment in the



disposal of the suit and the rectification petitions in terms thereof.

Accordingly, C.S.No.87 of 2008 is decreed on the terms set out below and (T)OP(TM)/423, 457/2023 are disposed of on the terms indicated below:

(i) There shall be a decree of permanent injunction restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale of masala spices or food preparations in Classes 29 & 30 using trade mark AACHI or AARCEE or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or deceptively or phonetically similar to the Plaintiffs' trade mark AACHI or in relation to any spice or food preparation in Classes 29 & 30 and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade



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Mark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe the Plaintiffs' registered trade mark.

(ii) The reliefs claimed as prayers (b), (c), (d) and (e) in paragraph 27 of the suit are rejected in view of the settlement.

(iii) The Registrar of Trade Marks is directed to cancel the certificates of registration of Trademark Nos.1580696 and 1580695 and remove the entries relating thereto from the Register of Trade Marks.

(iv) In view of the settlement, there shall be no order as to costs.

(v) Consequently, O.A.No.118 of 2008 and A.No.1400 of 2008 are closed.

12.09.2023

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Index : Yes / No

Internet : Yes / No



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SENTHILKUMAR RAMAMOORTHY,J

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