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C.S. (Comm. Div.) No.159 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm. Div.) No.159 of 2023

and

O.A. Nos.573, 574, 580 of 2023

and

A. Nos.3216 and 3217 of 2023

TTK Prestige Ltd.,
Rep. by its Constituted Attorney
G. Ramesh Babu

.... Plaintiff

vs

Nirlon Kitchenware Private Ltd.,
Parmar Electric,
Harun Rangavli Building,
M.C. Jawle Marg,
Dadar West,
Mumbai – 401 404.

... Defendant

Prayer : PLAINT FILED UNDER ORDER IV RULE 1 OF O.S. RULES AND ORDER VII RULES 1 OF CPC, READ WITH SECTION 11 AND 22 OF THE DESIGNS ACT 2000, READ WITH PROVISIO 1 TO SECTION 7 OF THE COMMERCIAL COURTS ACT, 2015 to grant a judgment and decree on the following terms :

a. Permanent injunction restraining the Defendant, its directors, sister concerns, assigns in business, distributors, stockists, dealers and agents, from manufacturing, selling, offering for sale, exporting, advertising whether online or offline either directly or indirectly in any manner including through websites or other online shopping portals dealing in pressure cookers in any size or variation, bearing the impugned designs or any other design as may be fraudulent or obvious



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imitation of the Plaintiff's Design Registration No. 324727-001 dated 13.12.2019 and No.323933-001 dated 23.11.2019 amounting to infringement thereof;

b. Permanent injunction restraining the Defendant, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner passing off and enabling others to pass off their pressure cookers as and for plaintiff's Svachh Pressure cookers by using the identical shape and configuration for their products or any other Products which are identical to that of or an obvious imitation of the plaintiff's Svachh Pressure cookers respectively and amount to product passing off or in any other manner whatsoever;

c. Permanent injunction restraining the Defendant, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner passing off and enabling others to pass off their pressure cookers as and for plaintiff's Pressure cookers by use of the offending mark SVACHH or any other mark similar to that of the Plaintiff's mark SVACHH or in any other manner whatsoever;

d. The defendants be ordered to surrender to the plaintiff for destruction, all moulds, blocks, dyes, Brochures and all other materials used for the manufacture and marketing of Pressure cookers of the Defendant which are identical to or an obvious imitation of the plaintiffs' registered design in Design Registration No. 324727-001 dated 13.12.2019 and No. 323933-001 dated 23.11.2019;

e. a preliminary decree be passed in favour of the Plaintiffs directing the defendants to render account of profits made by imitation of the plaintiff's registered design in Design Registration No. 324727-001 dated 13.12.2019 and No. 323933-001 dated 23.11.2019 and a final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendant after the latter have rendered accounts;

f. The Defendant be ordered and decreed to pay to the Plaintiff a sum of Rs. 10,00,000/- as damages for acts of Design infringement and



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passing off committed by the Defendant by manufacture and sale of pressure cookers bearing the shape and configuration and design of the Plaintiff,

g. an order for costs in the proceedings:

h. any further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

For Plaintiff

: Mr.Arun C. Mohan

JUDGEMENT

The suit has been filed for infringement and passing-off.

2. According to the plaintiff as seen from the plaint averments, the defendant has blatantly copied and reproduced the overall design of the plaintiff's lid from its Svachh series of pressure cookers. According to the plaintiff, the imitation is obvious as well as fraudulent with a malafide intent to derive undue and unlawful illicit gains therefrom. It is the case of the plaintiff that the primary novel feature in the design of the plaintiff is contoured lid with a peripheral wall, with a depression on the inside of the peripheral wall. According to the plaintiff, this aesthetically pleasing design was invented by the plaintiff and the plaintiff was the first Company to manufacture pressure cookers with such a design.



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marketing the name under the phonetically similar "Svachh" or "Swachh" series.

6. Though the plaintiff has filed this suit for damages as well on account of the infringement and passing-off committed by the defendant, the learned counsel for the plaintiff on instructions would now submit that the plaintiff gives up the right of damages as prayed for in the plaint. The said statement of the plaintiff is recorded. Accordingly, there is no necessity for this Court to adjudicate the relief of damages sought for by the plaintiff in the plaint. Therefore, the reliefs viz., prayer No.(f) need not be adjudicated by this Court.

7. The defendant has already been set exparte in the suit on 12.09.2023. Till date, no application has been filed by the defendant to set aside the exparte order. The plaintiff has also let in oral and documentary evidence before the learned Additional Master – IV. In support of the plaint averments, the plaintiff witness Mr.G. Ramesh Babu, who was examined as P.W.1 has also filed his proof affidavit.

8. The following documents were marked as Exhibits and the



products of the plaintiff and the defendant and another competitor were marked as material objects before the learned Additional Master IV on the side of the plaintiff :

Ex.P1 is the certified copy of the Power of Attorney dated 21.01.2015.
Ex.P2 is the photocopy of the Design Registration No.319361 of the plaintiff dated 05.07.2019.
Ex.P3 is the photocopy of the Design Registration No.323933 of the plaintiff dated 23.11.2019.
Ex.P4 is the photocopy of the Design Registration No 318976 of the plaintiff dated 21.06.2019.
Ex.P5 is the photocopy of the Design Registration No.323930 of the plaintiff dated 23.11.2019.
Ex.P6 is the photocopy of the Design Registration No.324727 of the plaintiff dated 13.12.2019.
Ex.P7 is the printout of the sample invoices showing sales of the plaintiff's Svachh pressure cookers in Chennai for the period 2019 to 2023.
Ex.P8 is the photocopy of the certificate of sales and promotional expenditure of the plaintiff for the period September 2019 to March 2022.
Ex. P9 is the printout of the screenshot from amazon.com showing sale of the defendant's product.
Ex.P10 is the printout of the screenshot from youtube.com showing the defendant promotion its pressure cookers in the name of SWACHCH similar to SVACHH of the plaintiff.
Ex.P11 is the printout of the image of the defendant's pressure cooker.
Ex.P12 is the printout of the Invoice from amazon.com showing sale of the defendant's product to Chennai dated 12.06.2023



M.O.1 is the original TTK Svachh Pressure Cooker, Deluxe Alpha Svachh, Design No. 324727.

M.O.2 is the original Nirlon Pressure Cooker, the defendant's product

M.O.3 is the original Nakshatra Alpha Svachh, Design No. 323933.

9. As seen from the oral and documentary evidence available on record, the plaintiff has obtained registration of its design under the Designs Act and the Registration Certificates have been marked as Exs.P2 to P6. As seen from the respective Registration Certificates viz., Exs.P2 to P6, there is a novelty in the shape and configuration of the plaintiff's pressure cookers. The plaintiff's in the suit have contended that the defendant has blatantly copied and reproduced the overall design of the plaintiff's lid from its Svachh series of pressure cookers. According to them the primary novel feature in the design of the plaintiff is contoured lid with a peripheral wall, with a depression on the inside of the peripheral wall. A categorical assertion has also been made by the plaintiff that this aesthetically pleasing design was invented by the plaintiff and the plaintiff was the first Company to manufacture pressure cookers with such a design.



10. The plaintiff has also obtained registrations under the Designs

Act in respect of their design. According to the plaintiff, the imitation of the defendant in respect of the plaintiff's design is obvious as well as fraudulent with malafide intent to derive undue and unlawful illicit gains therefrom. The plaintiff design in respect of the lids of its pressure cookers and the defendant's imitation of the plaintiff's lid for its pressure cookers are illustrated through the following pictures :-





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11. The aforesaid pictures have also been extracted by the plaintiff in its plaint in paragraph No.24. The image of the defendant's design which according to the plaintiff is a replica of the plaintiff's design is also shown in paragraph No.20 of the plaint. The lids of the plaintiff's pressure cookers for which design registration was obtained as well as the defendant's pressure cookers were placed before this Court as material objects for the purpose of comparison. The lids of the defendant's pressure cookers are identical to the plaintiff's pressure cookers as the design is one and the same. The plaintiff is in the market of manufacturing pressure cookers for a long number of years and their trade mark is well known for which judicial notice can be taken by this Court. The turnover of the plaintiff is also disclosed in paragraph No.14 of the plaint and as seen from the statement of sales and promotional expenses for Svachh pressure cookers, the turnover of the plaintiff is huge. The plaintiff has also highlighted the advantages of their novel shape found in the Svachh pressure cookers of the plaintiff. According to them, the shape and configuration of the Svachh pressure cookers of the plaintiff are an example of designing expertise, skill, and labour of technically qualified team of the Plaintiff. According to them, the feature of Svachh pressure cookers achieved by the novel shape and



configuration of the lid may have utilitarian attributes insofar as it controls spillage of froth from within the pressure cooker but such novel shape and configuration is not the only mode/option of design which achieves said spillage control, and the purpose of such design is primarily driven by aesthetics.

12. It is also contended by the plaintiff that the design of a flat plate type structure with a peripheral wall with contours applied to the lid of the pressure cooker imparts an overall novel and unique visual effect and appearance to the Plaintiff's Svachh pressure cookers is distinguishable distinguished from the design of the pressure cookers which form part of the prior art from the date of design registrations obtained by the Plaintiff.

13. The plaintiff has also contended that considering the novel and unique invention of the Svachh pressure cookers, they have filed an application under The Patents Act, 1970 bearing No.201941025068 dated 24.06.2019 and the same is pending adjudication before the Controller of Patents and Design. According to the plaintiff, the said patent application is yet to be published.



14. The defendant, is a Company registered in the year 2018 under the Companies Act, 2013. It is contended by the plaintiff that the plaintiff is not aware of the correct and current constitution of the defendant and involvement of other persons in the illegal activities complained of in the present proceedings.

15. The plaintiff has also filed sample invoices showing the sales of the plaintiff's Svachh pressure cookers in Chennai between the years 2019-2023, which have been marked as Ex.P7. The plaintiff has filed documents in the form of certificate of sales and promotional expenditure incurred by the plaintiff for promoting its product which has been marked as Ex.P8. The screen shots from amazon.com and youtube.com showing the sales of the defendant's product imitating the plaintiff's design have been marked as Ex.P9 and Ex.P10 respectively. The images of the defendant's pressure cookers imitating the plaintiff's design have been marked as Ex.P11. In order to file the suit before this Court, the plaintiff has also filed an invoice from amazon.com showing the sale of the defendant's product at Chennai, which is dated 12.06.2023 and the same has been marked as Ex.P12.



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16. This suit was filed before this Court on 21.06.2023. Despite service of suit summons on the defendant on 17.07.2023, the defendant did not choose to enter appearance in the suit and subsequently they were also set exparte by this Court on 12.09.2023. Till date, no application has also been filed by the defendant to set aside the exparte order. The plaintiff is in the pressure cooker market for long number of years, for which, judicial notice can be taken by this Court. Adequate averments have also been made in the plaint in respect of the credentials insofar as pressure cookers market is concerned. As seen from the impugned design of the defendant and after giving due consideration to the oral and documentary evidence placed on record by the plaintiff, it is clear that the defendant has blatantly copied and reproduced the overall design of the plaintiff's lid from its Svachh series of pressure cookers. A categorical assertion has been made by the plaintiff that the defendant has fraudulently with malafide intent to derive undue and unlawful illicit gains reproduced the design of the plaintiff for its pressure cookers.

17. Since the defendant has not entered appearance, despite service of suit summons and they have remained exparte and the contentions of the plaintiff have not been rebutted, this Court will have to accept the



contentions of the plaintiff that the defendant has fraudulently with malafide intent in order to derive undue and unlawful illicit gains, infringed the design of the plaintiff, which is the subject matter of this suit.

18. The primary novel feature in the design of the plaintiff is the contoured lid with a peripheral wall, with a depression on the inside of the peripheral wall, which has been blatantly copied by the defendant as seen from the defendant's pressure cooker and as seen from the averments contained in the plaint which are supported by oral and documentary evidence placed on record by the plaintiff.

19. For the foregoing reasons, the suit claim insofar as prayer (a), (b), (c), (d) and (e) are proved.

20. However, insofar as prayer (f) in the plaint is concerned, which has been sought for claiming damages, the same need not be adjudicated by this Court in view of the fact that the plaintiff is not pressing the said suit claim.

21. In the result, the suit is partly decreed by granting the following reliefs :

a. Permanent injunction restraining the defendant, its directors, sister concerns, assigns in business, distributors, stockists, dealers and



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agents, from manufacturing, selling, offering for sale, exporting, advertising whether online or offline either directly or indirectly in any manner including through websites or other online shopping portals dealing in pressure cookers in any size or variation, bearing the impugned designs or any other design as may be fraudulent or obvious imitation of the Plaintiff's Design Registration No. 324727-001 dated 13.12.2019 and No.323933-001 dated 23.11.2019 amounting to infringement thereof;

b. Permanent injunction restraining the defendant, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner passing off and enabling others to pass off their pressure cookers as and for plaintiff's Svachh Pressure cookers by using the identical shape and configuration for their products or any other Products which are identical to that of or an obvious imitation of the plaintiff's Svachh Pressure cookers respectively and amount to product passing off or in any other manner whatsoever;

c. Permanent injunction restraining the defendant, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming



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through them from in any manner passing-off and enabling others to pass off their pressure cookers as and for plaintiff's Pressure cookers by use of the offending mark SVACHH or any other mark similar to that of the Plaintiff's mark SVACHH or in any other manner whatsoever;

d. The defendant is directed to surrender to the plaintiff for destruction, all moulds, blocks, dyes, Brochures and all other materials used for the manufacture and marketing of Pressure cookers of the defendant which are identical to or an obvious imitation of the plaintiffs' registered design in Design Registration No. 324727-001 dated 13.12.2019 and No. 323933-001 dated 23.11.2019 and

e. a preliminary decree is granted in favour of the plaintiff by directing the defendant to render account of profits made by imitation of the plaintiff's registered design in Design Registration No. 324727-001 dated 13.12.2019 and No. 323933-001 dated 23.11.2019.

The defendant is also directed to pay the cost of the suit.
Consequently, connected applications are closed.

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Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 – Mr.G. Ramesh Babu

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