

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Original Application No.839 of 2014
in
Civil Suit No.679 of 2014

SUPERFIL PRODUCTS LIMITED

a public limited company

represented by its Managing Director Mr.S.Narayan,

having its registered office at

No.672, Anna Salai,

Temple Towers,

10th Floor,

Nandanam,

Chennai-600 035.

....Applicant/Plaintiff

Vs.

1.SREEMA NETS

represented by its partner/Proprietor,

Having his/its place of business at

Kovithamvillai Road,

Erubukadu (P.O.),

Nagercoil-629 004,

Kanyakumari (Dist),

Tamil Nadu, India.

2.SEAL NETS PRIVATE LIMITED

a private limited company

having its registered office at

R.S.No.843/8, Kovithanvilairoad,

Erumbukadu PO,

Nagercoil-629 004,

Kanyakumari (Dist.)

Tamil Nadu, India.

... Respondents/Defendants

Original Application filed under Order XIV Rule 8 of the Original Side

Rules read with Order 39 Rule 1 & 2 of CPC for the relief as stated therein.

For applicant : Mr.G.K.Muthukumar
for M/s.GMS Law Associates

For respondents : Mr.Ravi Kumar Paul
for M/s.Mission Legal Advocates.

ORDER

This Original Application has been filed by the applicant/plaintiff seeking for grant of interim injunction restraining the respondents/defendants, its proprietors/partners/directors, all their principal officers, staff, men, agents, servants, successors, assigns in business, representatives and any other person claiming any right through or under the respondents/defendants, from in any manner infringing the registered trademark of the applicant/plaintiff under trade mark registration No.1353683 in Class 22 for trademark "SUPERLINE FISHING LINES" and Elephant Device Label, and thereby restraining them from using the device of two Elephants facing each other and words such as "SUPERFIL", "SUPERLINE", "SUPER", or any other word/words/device that are identical or deceptively similar to the said registered Trademark of the applicant/plaintiff in relation to the manufacture, packaging, distribution, sale, offering for sale, advertising on any of the respondents/defendants' products or from in any manner dealing with them in particularly fishing lines.

2.The applicant herein is the plaintiff and the respondents herein are

the defendants in the suit. For the sake of convenience, the parties are referred to as per their rankings in the suit.

3.The averments in the affidavit filed in support of the application, in brief, are as follows_

3-1.The plaintiff is a reputed company, which was incorporated as a private limited company under the name and style of SUPERFIL PRODUCTS PRIVATE LIMITED on 17.02.1986 as per the provisions of the Indian Companies Act, 1956. Subsequently, the plaintiff decided to convert itself from private limited into public limited company, and changed its name as SUPERFIL PRODCUTS LIMITED through a special resolution dated 1st July 1995. The plaintiff, from the date of its incorporation, has been carrying on the business of manufacturing and trading of Nylon, Ployester and Synthetic Monofilaments and Multifilament Yarns, Resins, Fishing Lines, Fishing nets, Coils, Ropes Industrial Filters, Industrial Tyre and Medical Fabrics, Tarpaulin Cloth, Converyour Beltings, Zip Fasteners, Transmission, V and Fan – Belts etc, under the trade name "SUPERFIL" and trademark "SUPERLINE", with device of an elephant and the slogan/tag line "Soft, Strong, Transparent". The plaintiff has become a well-known and a reputed company that delivers synthetic fibre products especially that of fishing lines, with the finest quality, across the globe under its trade name. The plaintiff has also been recognized and accorded the status of "EXPORT HOUSE" by the Zonal Joint Director General of Foreign Trade, Ministry of Commerce and Industry, Government of

India, in accordance with the provisions of the Foreign Trade Policy, 2009-2014. The plaintiff with an intention to create a brand identity for its quality products among the target consumers as well as general public, and further to signify a patronage with its reputed Trade Name 'SUPERFIL', has conceived, conceptualized, adopted and used the trade mark i.e, 'SUPERLINE FISHING LINES', and the Device of an 'Elephant' in appropriate colour, font, style and layout, since February-2000 and has been continuously, uninterruptedly and extensively using the said Trademark since its commencement of usage in relation to fishing line and other said products. The said trademark, in particular, the term 'SUPERLINE' containing the word 'SUPER', was conceived and conceptualized by the plaintiff and is an arbitrary coinage of plaintiff which has all the trappings of an invented word. The said coinage also signifies a natural extension of the house brand 'SUPERFIL' and further creates a sense of natural integration and connectivity to the well-known status of the trade name 'SUPPERFIL'. Further, in order to create a distinctive visual identity and further to indicate the strength and tough character and quality of the products being sold under the said trademark, the plaintiff adopted the related 'Device of an Elephant' and a slogan/tagline with words 'Soft.. Strong... Transparent..", in association with the words 'SUPERLINE'. The target consumers of the plaintiff's products ie., fishing lines, are mainly fishermen who are mostly illiterate and as such the 'Device of an Elephant' has created a deep sense of mental impression in their minds which has the effect of such fishermen spontaneously associating the said

trademark ie., 'SUPERLINE FISHING LINES', and the 'Device of an Elephant' that form an essential, prominent and integral part of the said trademark, with that of the plaintiff, exclusively and extensively and with no one else. Due to the popularity gained by the said trademark, the plaintiff decided to register the said trademark, in particular the words 'SUPERLINE FISHING LINES' and the 'Device of an Elephant' that form an essential and prominent feature of the said trademark with the Trademarks Registry and filed application bearing No.1353683 under Class 22 on 27th April 2005, and subsequently the Trade Marks Registry issued the trade Mark Certificate on 1st February 2007, thereby granting trademark right over the said trademark to the plaintiff. The plaintiff has also spent considerable amount of time and money in order to promote and advertise its products.

3-2.While so, during the month of December-2013, the plaintiff came to know that the 1st defendant-company has been selling its products ie., fishing lines particularly in Nagercoil, Nagapattinam, Karaikal and other places in Tamil Nadu and Pondichery under a trademark label comprising of two elephants with the words "SUPER SOFT" and "SUPER STRONG" and the words "SREEMA LINES FISHING LINES". Use of the "Elephant" device and the word "SUPER" along with other words leads to deceptive similarity, confusion and thus, amounts to an infringement of the plaintiff's prior adopted and prior registered "SUPERLINE" and "Elephant" device trademark. The adoption and use of the said word by the defendants is without due

cause and would also dilute the reputation and distinctive nature of the applicant's reputed, well known, prior registered & prior used SUPERLINE and Elephant Device Trademark. In fact, the plaintiff has sent a legal notice dated 23.12.2013 to the defendants asking them to desist from using the trademark of the plaintiff in relation to their products. Since there was no response from the defendants, the plaintiff sent a final reminder notice dated 11.03.2014 to the defendants. Thereafter, on 31.03.2014 the defendants sent reply to the legal notice sent by the plaintiff, claiming usage of the said trademark from 21.02.2007, which is much later to the use of the trademark by the plaintiff. Hence, the plaintiff has filed the present suit. Pending the suit, the plaintiff has filed the above application seeking for interim injunction as stated supra.

4. When the above application came up on 20.10.2014, this Court has passed an order granting interim injunction for a period of three weeks.

5. On appearance, the respondents/defendants have filed a counter contending as follows_

5-1. The plaintiff is guilty of suppressing the material facts in obtaining the interim order on 20.10.2014. The plaintiff has deliberately concealed the fact that the registration for the mark 'SUPERLINE' under TM.No.1353683 is for a device and composite mark. During the prosecution of the mark vide hearing dated 14.12.2005, the plaintiff was granted only a

part-B registration with disclaimer stating that 'Registration of this trade mark shall give no right to the exclusive use of the all descriptive matter appearing on the label'.

5-2.It is further stated by the defendants that the defendants are engaged in the business of marketing and selling nylon mono-filament yarn, nylon mono-filament fishing nets and nylon mono-filament fishing lines from the year 2007 and 2005 respectively. The 1st defendant started manufacturing nylon mono-filament yarn, nylon mono-filament fishing nets and nylon mono-filament fishing lines and honestly adopted the inherently distinctive term 'SREEMA LINES' with the device of 2 elephants as a trade mark in respect of the goods manufactured by the defendants. Eversince its adoption, the defendants extensively, exclusively and continuously have been using the said trade mark uninterruptedly and in the course of trade and as proprietor thereof has been using its said respective trade mark in relating to its said goods and services in relation to its business and built up valuable trade, goodwill and reputation among the public at large and therefore, acquired proprietary rights therein. The copyright involved in the said 'SREEMA LINES with the device of 2 elephants trade mark and label are original artistic works within the meaning of Indian Copyright Act, 1957 and the defendants are the owners and proprietors of the Copyright therein. The defendants have all the statutory licenses to manufacture their goods under

the trade mark 'SREEMA LINES with the device of 2 elephants. The defendants are also exporting their manufactured products to various countries like Singapore, Sri Lanka, Dubai and Male under the trade mark 'STREEMA LINES with the device of 2 elephants. The goods and business of the defendants are known, recognized, demanded, sold and traded with reference to its said 'SREEME LINES with the device of 2 elephants trade mark. The members of the trade, industry, consumers and general public are well aware of the defendants' rights in the said trade mark. In fact, several retailers and stockists are stocking both the products of the plaintiff and the defendants and selling the same side by side without any confusion.

5-3. It is further contended by the defendants that it is not clear as to how the trade name of 'SUPERFIL' can be connected to the trade mark of 'SUPERLINE FISHING LINES'. It is specifically denied by the defendants that the plaintiff has acquired secondary meaning to the word 'SUPER' and to the device of elephant. It is also denied by the defendants that SUPER is the exclusive property of the plaintiff company. The coinage of the word 'SUPERLINE' is in no way similar or can be mistaken for the defendants' mark 'SREEMA LINES'. The said words were honestly coined and invented with the device of 2 elephants. It is a combination of SREEMA + LINES along with the device of 2 elephants facing each other which constitutes the mark of the defendants. The said mark is distinctive as SREEMA is the name of the sole proprietrix of SREEMA NETS with the suffix of the word 'LINES'. In view of the same, 'SREEMA LINES' with the device of 2 elephants is unique

and distinct from 'SUPER LINE' and can never be confused with that of the plaintiff. The plaintiff's trademark is registered under No.1353683 in Class 22 with a restriction and disclaimer as per Section 17 of the Trademarks Act 1999 that 'registration of this trade mark shall give no right to the exclusive use of the descriptive matter appearing on the label.' Therefore the plaintiff's trade mark is a composite mark which has combination of more than one work. The plaintiff does not have exclusive right and claim over the word SUPER and over the device of elephant. It is a well established rule that, when the similarity is alleged between 2 composite marks, both the marks have to be compared on the whole and not on separate parts. It is also denied by the defendants that the colour combination of the defendants' mark is that of the plaintiff. The plaintiffs' trademark registration does not have any colour as the same was registered in black & white. Thus, the defendants sought for dismissal of the application.

6.The learned counsel for the appearing for the plaintiff submitted that the plaintiff is a prior user and registered proprietor of the trademark 'SUPERLINE FISHING LINES' with the device of 'elephant' and slogan/tag line 'Soft, Strong, Transparent'. The plaintiff has been continuously and uninterruptedly using the said trademark since the year 2000. The plaintiff has also obtained registration of the said trademark with effect from 27.04.2005 and the said trademark has gained huge reputation and goodwill for the plaintiff. The learned counsel appearing for the plaintiff has also

invited the attention of this Court to the order passed by the Registrar of Trademarks dated 20.12.2005 in accepting the application filed by the plaintiff for advertising their trademark in the trademark journal, and submitted that the application of the plaintiff was accepted by the Registrar of Trademarks without any condition, which would show that absolutely there is no objection for registering the trademark of the plaintiff. While so, the plaintiff came to know that the defendants are selling their products viz. Fishing lines under a trademark label comprising two elephants with the words 'SUPER SOFT' and 'SUPER STRONG' and the words 'SREEMA LINES FISHING LINES'. Use of the device 'elephant' and the word 'SUPER' leads to deceptive similarity, confusion in the minds of the purchasers. In this regard, the learned counsel appearing for the plaintiff, by inviting the attention of this Court to the application filed by the defendants before the Registrar of Trademarks, submitted that the user date in their application was mentioned as 21.02.2007, which is much latter to the date of registration of the plaintiff's trademark. Thus, the learned counsel appearing for the plaintiff submitted that when the goods of the plaintiff and the defendants are identical and the customers are also mostly fishermen, there is likelihood to cause confusion in the minds of the buyers. Therefore, the plaintiff is entitled for injunction restraining the defendants from infringing the registered trademark of the plaintiff. In support of his contention that when the registered trademark is infringed, the plaintiff is entitled to injunction, the learned counsel appearing for the plaintiff invited the

attention of this Court to Section 29(4) & (7) of the Trademarks Act.

7. In this regard, the learned counsel appearing for the plaintiff has also relied upon the judgment reported in **1972 AIR 1359 (Parle Products (P) Ltd Vs. J.P & Co. Mysore)** and submitted that the marks should not be placed by side by side to find out if there are any differences in the design and it would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

8. The learned counsel appearing for the plaintiff has also relied upon the judgment reported in **(2001) 5 SCC 73 (Cadila Health Care Ltd Vs. Cadila Pharmaceuticals Ltd)** and submitted that the surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks should be taken into consideration for granting injunction. For the same proposition, the learned counsel appearing for the plaintiff has also relied upon the judgment reported in **PTC (Suppl) (2) 680 (SC) [Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories]**. Thus, the learned counsel appearing for the plaintiff sought for making the interim injunction granted by this Court as absolute.

9. Per contra, the learned counsel appearing for the defendants

submitted that what was registered by the plaintiff is the word 'SUPERLINE' under TM.No.1353683 which is a device and composite mark. The coinage of the word 'SUPERLINE' is in no way similar or identical to the mark of the defendants viz., 'SREEMA LINE'. The slogan line 'SOFT STRONG & TRANSPARENT' found in the label of the plaintiff is only a tag line and it is descriptive in nature and there cannot be any registration for the word 'SUPER'. The words 'Soft' 'Strong' & 'Transparent' do not form part of the plaintiff's registered trademark 'SUPRE LINE FISHING LINES'. On the contrary, the defendants' mark contains the words 'Super Strong' 'Super Soft' as a part of its mark. The coinage of the words 'SUPER SOFT, SUPER STRONG' by the defendants is in any event different from the tag-line claimed by the plaintiff. The learned counsel appearing for the defendants would further submit that a mark should not be dissected or split into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. The learned counsel appearing for the defendants has also submitted that the plaintiff's trademark is a composite mark which has combination of more than one work; therefore, the plaintiff does not have exclusive right & claim over the word SUPER and the device 'elephant'. In this regard, the learned counsel for the defendants further submitted that the plaintiff's trade mark was registered with a restriction and disclaimer and as per Section 17 of the Trade Marks Act 1999, the registration of this trade mark shall give no right to the exclusive use of all the descriptive matters appearing on the label. Thus, the learned counsel for the defendant prayed

for dismissal of the application. In support of his contentions, the learned counsel appearing for the defendants relied upon the following decisions_

(i)2001(21) PTC 360 (M/s.Girnar Food & Beverages Vs. M/s.Godfrey Phillips India Ltd.

(ii)2009(41) PTC 336 (Cadila Healthcare Ltd. Vs. Gujarat Co-operative Milk Marketing Federation Ltd and ors)

(iii)2008(2) Bom CR 132 (I.T.C.Limited Vs. G.T.C.Industries Ltd and ors)

(iv)1994(2) ARBLR 274 (J.R.Kapoor Vs. Micronix India)

(v)1955 AIR (SC) 558 (Registrar of Trade Marks Vs. Ashok Chandra Rakhit Ltd)

(vi)LAWS(DLH)-2014-2-106 (Living Media India Ltd Vs. Alpha Dealcom Pvt. Ltd)

(vii)LAWS(DLH)-2010-2-230 (Rich Products Corporation and anr Vs. Indo Nippon Food Ltd)

(viii)CDJ 2000 DHC 551 (Online India Capital Co. Private Ltd & ano Vs. Dimentions Corporate)

10.By way of reply, the learned counsel appearing for the plaintiff submitted that Section 17 of the Trade Marks Act is not at all attracted in this case. Section 17 deals with the registered proprietor's use of a registered mark and it has to be read along with Section 29 of the Trade Marks Act. The use of the registered trade mark by the others is an infringement as defined under Section 29 of the Trade Marks Act. The learned counsel for the plaintiff further submitted that either the word 'SUPER' or the device

'elephant' cannot be said to be descriptive of the goods of the plaintiff; therefore, the submission made by the learned counsel appearing for the defendants to the effect that word 'super' and the device 'elephant' is only descriptive of the goods of the plaintiff and as such the plaintiff cannot have any exclusive right over the word 'super' and the device 'elephant' is not legally sustainable. Further, the learned counsel appearing for the plaintiff submitted that the present application has been filed only for restraining the defendants from infringing the plaintiff's trademark, since it is likely to cause confusion in the minds of the buyers. Further, since the defendants themselves have already filed application for registering their trademark with the word 'SUPER' claiming statutory right, they cannot challenge the trademark of the plaintiff stating that the plaintiff's mark 'SUPER' and device 'elephant', are common in trade and descriptive. If the defendants are aggrieved, they have to seek ratification or cancellation of the plaintiff's trademark before the Registrar of Trademarks. Therefore, the defence taken by the defendants that the plaintiff's mark 'SUPER' and device 'elephant' are descriptive, cannot be agitated in the present application. In this regard, the learned counsel for the plaintiffs relied upon the judgment reported in **2011(4) CTC 417 (Blue Hill Logistics Pvt Ltd. Vs. Ashok Leyland Limited).**

11. In view of the submissions made on either side, the only question that falls for consideration is _

whether any prima facie case has been made out by the plaintiff and whether the balance of convenience is in favour of the plaintiff for grant of interim injunction, pending the suit?

12. The plaintiff is carrying on the business of manufacturing and trading of Nylon, Ployester and Synthetic Monofilaments and Multifilament Yarns, Resins, Fishing Lines, Fishing nets, Coils, Ropes Industrial Filters, Industrial Tyre and Medical Fabrics, Tarpaulin Cloth, Converyour Beltings, Zip Fasteners, Transmission, V and Fan – Belts etc, under the trade name "SUPERFIL" and trademark "SUPERLINE", with device of an elephant and the slogan/tag line "Soft, Strong, Transparent". They have registered their trade mark in the year 2005 itself. Whereas, the defendants, who are also dealing with the business of marketing and selling nylon mon-filament yearn, nylong mono-filament fishing nets and nylon mono-filament fishing lines, have also adopted the trademark 'SREEMA LINES' with the device of two elephants facing each others. Now, the grievance of the pliantiff is only as against the device 'elephant' and the word 'SUPER' being used by the defendants in their mark. According to the plaintiffs, the use of the word 'SUPER' and the device 'elephant' being used by the defendants would likely cause confusion on the part of the buyers. But, on a perusal of the registration certificate of the plaintiff under TM.No.1353683 for the mark 'SUPERLINE' dated 27.04.2005, it is seen that it was registered as a device and composite mark. In fact, the plaintiff was granted only a Part B registration with disclaimer stating that

'Registration of this trade mark shall give no right to the exclusive use of the all descriptive matter appearing on the label'. Therefore, it is apparent that except the word 'SUPERLINE' the other words 'Soft, strong & Transparent' mentioned in the label of the plaintiff are only descriptive words and the said words were not registered. Absolutely there is no similarity between the plaintiff's mark 'SUPRELINE' and the defendants' mark 'SREEMALINES'. Further, in my considered opinion, the word 'SUPERLINE' cannot be dissected or split into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. Undoubtedly, the word 'SUPER' is a common and universal word and nobody can have an exclusive right over the said word. If the trade mark of the plaintiff looked as a whole, namely 'SUPERLINE' with the trade mark of the defendants' 'SREEMALINES' without making any dissection or splitting up the word into several words, in my opinion, it would not cause any confusion in the minds of the purchasers.

13. In this regard, a reference could be placed in some of the decision;

In the decision reported in **2001(21) PTC 360 (M/s.Girnar Food & Beverages Vs. M/s.Godfrey Phillips India Ltd.)** it has been held as follows_

"In view of our finding that 'cup' refers to 'tea' the joinder of 'Super' and 'Cup' cannot give the words 'Super Cup' the requisite distinctiveness affording

protection by an injunction even against passing off. Similarly, Mc.Carthy Vol.1 (1994 Edition) at P.1139 has listed the marks Super Blend for motor oil and Super Gel for shaving gel as descriptive marks. In our view the instance of Super Blend for motor oil held to be descriptive is relevant for the present case because while Super Blend cannot be held to be as direct a reference to the concerned product as Gel is for shaving, yet it was nevertheless held to be descriptive."

The dictum laid down in the above said judgment would show that the word 'super' is only a descriptive word and such a word cannot have direct reference to the product involved in this application viz., fishing lines.

In the decision reported in **2009(41) PTC 336 (Cadila Healthcare Ltd. Vs. Gujarat Co-operative Milk Marketing Federation Ltd and ors)** it has been held as follows_

"54.It is important to be borne in mind that use of a descriptive expression as a trade mark by a trader, irrespective of the said trade mark having acquired a secondary meaning and distinctiveness in relation to the trader's products, does not entitle such trader from precluding other traders from

using the said expression for the purposes of describing the characteristic features of their products. I have no hesitation in stating, albeit without prejudice to the rights and interest of the plaintiff in the present suit, that by adopting such a purely descriptive and laudatory expression 'Sugar Free' as its trade mark, the plaintiff must be prepared to tolerate some degree of confusion which is inevitable owing to the wide spread use of such trade mark by fellow competitors. Simply because the plaintiff claims to be using the expression 'Sugar Free' as a trade mark much prior to the launch of the defendant's product Pro Biotic Frozen Dessert in the market does not give this Court a good ground for imposing a blanket injunction on the defendant from using the expression 'Sugar Free', especially when the defendant intends to use this expression only in its descriptive sense and not as a trade mark, and even otherwise, when the use of this expression is widespread in relation to foods and beverages."

In the decision reported in **2008(2) Bom CR 132 (I.T.C.Limited Vs.**

G.T.C.Industries Ltd and ors) it has been observed as follows_

“The learned senior counsel, therefore, rightly submitted that following principles can be deduced:

(i)In order to ensure public interest that a mark which can indicate the character or quality of the goods cannot be registered unless it is a well-known mark or it has acquired distinctiveness by use.

(ii)It is not necessary to establish by the Opponent that such descriptive use is infact is being made by other traders. It is sufficient if the mark has one of the meanings which indicates characteristic of the goods.”

The dictum laid down in the above said judgments would show that there cannot be any agitation with regard to descriptive word. In the instant case, the word 'SUPER' used in the label of the plaintiff is only a descriptive word and the trademark of the plaintiff viz., 'SUPERLINE' has to be read in whole and it cannot be dissected or split into its component parts. Therefore, I do not find any similarity between the marks of the plaintiff and the defendants. Therefore, the judgments relied upon by the learned counsel for the plaintiff cannot be made applicable to the facts of the present case.

14.Similarly, on perusal of the the device 'elephant' found in the label mark of the plaintiff as well as the defendants, this Court finds a lot of

difference between these two device marks. The defendant's trade mark comprises label device of two elephants facing each other with the words *super soft* and *super strong* and the word SREEMALINES FISHING LINES; whereas the plaintiff's trade mark label comprises a device of a single elephant with the trade mark SUPER FIL and the trade mark SUPERLINES and the slogan/tagline SOFT, STRONG and TRANSPARENT. On the whole, I do not find any similarity between the these two trade marks. Hence, the plaintiff is not entitled to continuation of the interim injunction. If the interim injunction is allowed to continue, it will cause great hardship to the defendants.

For the foregoing reason, the application is dismissed and interim injunction granted by this Court on 20.10.2014 is vacated.

05.01.2015

SSV

S.SUBBIAH, J.

SSV

Pre-delivery order
in

O.A.No.839 of 2014
in
Civil Suit No.679 of 2014

05.01.2015

