

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

Civil Suit No.679 of 2014

SUPERFIL PRODUCTS LIMITED,
A public limited company,
rep. by its Managing Director S.Narayan,
having its registered office at
No.672, Anna Salai,
Temple Towers, 10th Floor,
Nandanam, Chennai-600 035. ... Plaintiff

Vs.

- 1.SREEMA NETS,
rep. by its Partner/Proprietor,
having his/its place of business at
Kovithamvillai Road,
Erumbukadu (P.O)
Nagercoil-629 004,
Kanyakumari District,
Tamil Nadu, India.
- 2.SEAL NETS PRIVATE LIMITED,
A private limited company,
having its registered office at
R.S.No.843/8, Kovithanvilai Road,
Erumbukadu (P.O)
Nagercoil-629 004,
Kanyakumari District,
Tamil Nadu, India. ... Defendants

Plaint filed under Order VII, Rule 1 of Civil
Procedure Code read with Order IV, Rule 1 of Original Side
Rules and Section 28, 29, 134 and 135 of the Trademarks
Act, 1999.

Prayer - (i) A permanent injunction restraining the 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 defendants from in any manner infringing the registered trademark of the plaintiff under trade mark registration number 1353683 in class 22 for the trademark "SUPERLINE FISHING LINES" and Elephant Device Label, and thereby restraining them from using the Elephant device 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 plaintiff in relation to the manufacture, packaging, distribution, sale, offering for sale, advertising on any of the defendants products or from in any manner dealing with them in particular fishing lines; (ii) that the defendants be ordered and directed to pay to the plaintiff a sum of Rs.25,00,000/- (Twenty Five Lakhs only) by way of damages; (iii) A preliminary decree be passed in favour of the plaintiff directing the defendants to render a true and faithful accounts of all profits made by it, using the plaintiff's said trademark in particular the "Device of an Elephant" and as well as the words "SUPER", "STRONG" & "SOFT", which forms an essential, prominent and integral

part of the plaintiff's trademark 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, together with interest, after the defendant has rendered accounts; (iv) that the defendants be directed to deliver-up to the plaintiff for destruction, all packaging, labels, blocks, dyes, all other print materials, stickers, signage, visiting cards, letter heads, catalogues, pamphlets, brochures, all other advertising and promotional material, all stationary and such other infringing material and (v) for costs of the suit.

For Plaintiff : M/s.GMS Law Associates

For Defendants : Mr.Ramesh Ganapathy
for
M/s.Mission Legal Advocates

* * * * *

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The plaintiff has filed the suit for permanent injunction against the defendants in respect of their registered trademark "SUPERLINE FISHING LINES" and Elephant Device Label alleging infringement by the defendants by use of words such as "SUPERFIL", "SUPERLINE", "SUPER" with or without Elephant Device, claim for damages, preliminary decree for accounts and deliver-up.

2. The defendants, however, chose not to file the written statement, but they filed reply to the application for interim injunction filed under Order 39, Rule 1 and 2 of Code of Civil Procedure. An interim injunction was initially granted on 20.10.2014, but was subsequently vacated on 05.01.2015. The plaintiff, thus, preferred an appeal in O.S.A.No.SR 51335 of 2015.

3. In the mean time, the parties have settled their disputes and have filed Memo of Compromise signed on behalf of the plaintiff by its Managing Director and on behalf of the defendants by the Director of the second defendant, who also happens to be the sole Proprietor of the first defendant. In terms of the settlement, the defendants have acknowledged plaintiff's right in the subject matter trademark and have undertaken unconditionally to do the acts as set out in paragraphs 4 and 5 of the Memo of Compromise.

4. The aforesaid terms have been accepted by the plaintiff and on failure to comply, it has been observed that the plaintiff would be entitled to proceed against the defendants, including enforcement of the Memo of Compromise. A prayer is made to decree the suit in terms of the conditions set out in paragraphs 4 and 5, leaving the parties to bear their own costs. The prayer made in paragraph 10 of the Memo of Compromise is as under:-

"i) Accept the undertakings given by the Defendants as laid down in specified in Sr.No.(4) & (5) of this Memo of Compromise;

ii) Record the present Memo of Compromise as being lawful;

iii) Pass a Judgment and decree in terms of Memo of Compromise."

5. Mr.E.Kasiviswanathan, Purchase Officer on behalf of the plaintiff and Mr.S.Azhagappa Pillai, Admin on behalf of the defendants respectively are present in Court, after being duly authorised. The authorisation letters dated 02.09.2015 produced before us have been placed on record. They identified the signatures and the seals affixed on behalf of the two parties.

6. In view of the aforesaid, we find there is no reason why compromise should not be accepted. We, thus allow the request and accepted the undertakings given by the defendants as specified in paragraphs 4 and 5 of the Memo of Compromise. The Memo of Compromise is exhibited as Exhibit ''A''.

7. Civil Suit No.679 of 2014, stands decreed in terms of Memo of Compromise. Decree be accordingly drawn in favour of the plaintiff and against the defendants on acceptance of the undertakings. The Memo of Compromise

(Exhibit ''A'') shall form part of the decree sheet. No costs.

8. We may note that the suit has been called out before this Court at the request of the learned counsel for parties in view of the pendency of the appeal - O.S.A.No.SR 51335 of 2015 before this Bench.

Sd/.(S.K.K., CJ.) (T.S.S, J.)
03.09.2015

//Certified to be a true copy//

Dated this the day of 2015

R.s/29.10.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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