

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMYC.S.No.238 of 2015

and

A.No.2330 of 2015

and

O.A.Nos.331 & 332 of 2015

1.A.D.Padmasingh Issac
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.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai – 600 040
Represented by its Director
Ashwin Pandian

3.M/s.Heavenly Foods Pvt Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West,
Chennai – 600 040
Represented by its Director,
Gibson Gnanasiromani Vedamani

... Plaintiffs

Vs.

Hotel Aachi Chettinad
No.2/1331, Medavakkam Main Road,
Kovilambakkam, Chennai – 600 117.

... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(a) granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the name HOTEL AACHI or any other similar Trademark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trademark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiffs' registered trademark Nos.838786, 1116254, 1479159, 1715718 or in any manner infringing the 1st plaintiff's registered trademark referred herein.

(b) granting a permanent injunction restraining the defendant by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements the mark/name HOTEL AACHI in relation to the Restaurant or with respect to or any other food

preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiff's Trademark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the plaintiffs.

(c) 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 AACHI HOTEL or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI HOTEL/AACHI CHETINAD RESTAURANT/AACHI KITCHEN.

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark HOTEL AACHI on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts:

(e) directing the defendant to pay to the plaintiffs the costs to the suit, and

(f) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.C.Daniel & Gladys Daniel
For Defendant : Set ex-parte
vide order dated 04.07.2019

J U D G M E N T

The suit has been filed by the plaintiff for the relief of permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. The first plaintiff is the proprietor of the trademark Aachi, he continues to use the trademark Aachi through his licensees Aachi Spices and Foods Private Limited and the second plaintiff. The third plaintiff is the licensee of the first plaintiff's registered trademarks Aachi Kitchen and Aachi Chettinad Restaurant.

3. Learned counsel submits that the plaintiffs have also diversified their business activities and started manufacturing and marketing various kinds of consumer goods, within a short span of 17 years. The plaintiffs have now become one of the leading manufacturers of packaged masalas, because of the efforts undertaken by the plaintiffs in promoting and advertising their products through various mediums, their market share in these products have risen considerably. The plaintiffs have put in enormous effort, hard work and money towards advertising their products Aachi in all forms of media such as radio, newspapers, hoardings, magazines

and television networks. The plaintiffs have also received many prestigious awards for the quality of products and customer service.

4. The trademark Aachi was first applied for and registered in the name of first plaintiff trading as Naveen Products. Since then 105 applications have been filed for the trademark Aachi in respect of various goods that have been manufactured and marketed by the Aachi group of companies. At present, there are 51 registrations of the trademark Aachi in various word, label and stylized marks.

5. In order to distinguish its various items of products from others adopted the trademark Aachi for all its products and services. The expression Aachi has become very popular because of its continuous and substantial usage of this mark over a decade. This trademark has become very popular and is a very valuable intellectual property of the first plaintiff. No one can use the said expression Aachi for spices and masalas and other goods or services for which the first plaintiff is using the mark. The mark is unique and distinctive of the plaintiffs goods and no one has used the trademark Aachi for masala preparations and its allied preparations prior to the first plaintiff.

6. The subject matter of this proceeding is in respect of 'Aachi' word mark. This word mark as a whole has been used by the plaintiffs since 1995 and has become a well known trademark of the plaintiffs. The plaintiffs have honestly adopted the mark and have put in enormous amount of hard work and labour and invested huge sums of money, for advertisement and sales promotional expenses. Because of the efforts made by the plaintiffs, the trade and the public, associate the mark with the plaintiffs and none else. The trademark of the plaintiffs as used is registered.

7. Learned counsel also submits that huge sums of monies are being spent every financial year by the plaintiffs towards advertisement expenditure and learned counsel for plaintiff submits that a tabular column giving the turnover as well as the advertisement expenditure (financial year wise) has been set out in Paragraph 7 of the plaint. Tabular column in paragraph 7 of the plaint reads as follows:

<i>S.No.</i>	<i>YEAR</i>	<i>TURNOVER (in Rs)</i>	<i>ADVERTISING EXPENDITURE (in Rs)</i>
1.	1995-1996	3,96,420.00	9,893.00
2.	1996-1997	4,37,568.00	4,691.00
3.	1997-1998	5,10,755.00	352.00
4.	1998-1999	14,68,159.00	15,820.00

<i>S.No.</i>	<i>YEAR</i>	<i>TURNOVER (in Rs)</i>	<i>ADVERTISING EXPENDITURE (in Rs)</i>
5.	1999-2000	20,27,457.00	16,775.00
6.	2000-2001	52,03,979.00	57,676.00
7.	2001-2002	64,12,491.00	2,13,512.00
8.	2002-2003	1,69,44,334.00	6,62,290.00
9.	2003-2004	9,00,05,884.00	19,63,479.00
10.	2004-2005	24,46,95,540.00	1,13,28,450.00
11.	2005-2006	79,47,99,230.00	4,63,96,880.00
12.	2006-2007	1,36,54,50,781.00	5,68,45,817.00
13.	2007-2008	2,07,85,55,508.00	7,87,06,261.00
14.	2008-2009	4,14,12,42,106.00	9,40,86,979.00
15.	2009-2010	4,73,98,26,852.00	10,76,86,530.00
16.	2010-2011	6,40,40,50,524.00	11,63,97,497.00
17.	2011-2012	7,59,35,14,309.00	12,42,15,050.00
18.	2012-2013	8,82,91,64,390.00	13,72,06,476.00

8. The growth of Achi could not be contained in the Indian territory. The products spread to several countries around the world. The first plaintiff was keen to secure statutory protection of the mark in other jurisdictions. With this goal in sight as on date 25 applications have been filed and 16 registrations have been secured in UAE, Australia, France, Singapore, USA, UK, Nigeria, Malaysia, Bahrain, New Zealand, Switzerland, Saudi Arabia and China.

9. On acquiring enormous goodwill and reputation, the first plaintiff with a view to protecting his intellectual property,

particularly with respect to his trademark applied for the registration of this word mark Aachi on 29.01.1999, in Class 30. The Registrar of trademarks in consideration of the substantial use and reputation granted registration for the trademark "Aachi" under Registration No.838786. Since then the first plaintiff has become an exclusive owner of this word mark 'Aachi'.

10. The first plaintiff obtained Registration of the trademark Aachi Chettinad Restaurant under No.1116254 on 03.07.2002 and also obtained registration for the mark Aachi Kitchen under No.1715718 and also obtained registration of the mark Aachi in tamil vide Registration No.1479159 and the registration is valid and subsisting.

11. The first plaintiff is using the trademark Aachi Kitchen with respect to restaurant business through his licensee the third plaintiff herein. The first plaintiff has sole proprietary right over this mark, and any unauthorized use of the same mark or similar trademark would amount to infringement. Apart from the above mentioned application, plaintiffs on the date of filing the plaint, had as many as 51 registrations, enumeration of which has been set out in paragraph 19 of the plaint.

12. After the admission of the suit, the suit summons was served on the sole defendant on 11.06.2015. In spite of the service of the suit summons, the defendant failed to appear before this Court. Therefore, the sole defendant was set ex-parte vide order dated 04.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one Mr.B.Gnanasambandam, was examined as P.W.1 and Exs.P1 to P25 were marked.

13. It has already been set out supra that as many as 25 exhibits, namely Exs.P1 to P25 have been marked and the details of the 25 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The original Authorisation Letter dated 15.07.2019
2	P2	The Attested photocopy of list of products manufactured and marketed by the plaintiffs bearing the trademark AACHI
3	P3	The photocopy of certificate of Incorporation of Aachi Masala foods (p) Ltd dated 30.06.2006. (Marked and compared with original)
4	P4	The photocpy of Deed of Assignment between Abishek Enterprises and Aachi Masala Foods (p) Ltd dated 01.12.2006.
5	P5	The photocopy of Dissolution Deed between Mrs.Rani Pandian and the Mr.A.D.Padmasingh Issac dissolving the partnership firm, Naveen

S.No.	Exhibits	Description of Documents
		products dated 31.03.2007.(Marked and compared with original)
6	P6	The Attested photocopy of Deed of Assignment between Naveen Products and Aachi Masala Foods Pvt.Ltd dated 01.12.2006
7	P7	The photocopy of Certificate of Commercial Tax Registration and Central Sales Tax of Aachi spices and foods dated 28.12.2007 and 03.01.2007.(Marked and compared with original)
8	P8	The Attested photocopy of Deed of Assignment between Aachi Masala Foods Pvt. Ltd and Mr.A.D.Padmasingh Issac trading as Aachi Spices and Foods dated 30.03.2007.
9	P9	The photocopy of Certificate Commercial Tax Registration of Aachi Masala and Foods (p) Ltd dated 10.07.2006. (Marked and compared with original)
10	P10	The Attested photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods and Aachi Masala Foods(p) Ltd dated 10.07.2006. (Marked and compared with original)
11	P11	The Attested photocopy of Certificate of Incorporation of Aachi Spices and foods(p) Ltd dated 01.04.2007. (Marked and compared with original)
12	P12	The photocopy of Memorandum of Association of Aachi Spices and Foods (p) Ltd dated 06.03.2010. (Marked and compared with original)
13	P13	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods (p) Ltd dated 21.04.2010. (Marked and compared with original)
14	P14	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Masala Foods (p) Ltd dated 21.04.2010. (Marked and compared with original)
15	P15	The Computer generated copy of Certificate of Incorporation of M/s.Heavenly Foods(p) Ltd., and Memorandum and Articles of Association dated 01.04.2014.

S.No.	Exhibits	Description of Documents
16	P16	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods and Heavenly Foods(p) Ltd., dated 11.08.2014.(Marked and compared with original)
17	P17	The Computer generated copy of Sale of details report along with certificate u/s 65B Evidence Act, 1872, 2014-2017.(Marked and compared with original)
18	P18	The photocopy of Registration certificate of the mark Aachi in various countries around the world.(Marked and compared with original)
19	P19	The photocopy of Legal use certificate of Trademark No.838786 in Class 30 dated 29.01.1999. (Marked and compared with original)
20	P20	The photocopy of Legal use certificate of Trademark No.1116254 in Class 30 dated 30.07.2002.(Marked and compared with original)
21	P21	The photocopy of Legal use certificate of Trademark No.1715718 in Class 43 dated 30.07.2008. (Marked and compared with original)
22	P22	The photocopy of Legal use certificate of Trademark No.1479159 in Class 30 dated 17.08.2006. (Marked and compared with original)
23	P23	Computer generated copy of the order passed by Trademark Trial and Appellate Board, United States Patent and Trademark Office dated 13.09.2016.
24	P24	Computer generated copy the Aachi Kitchen's Name Board & Aachi Kitchen's Menu Card.
25	P25	Computer generated copy of defendant Name Board Hotel Aachi Chettinad.

14. Heard the learned counsel for the plaintiffs and also gone through the averments in the plaint and the proof affidavit and also perused the Ex.P.1 to P.25.

15. On perusal of Ex.P18, this Court is of the view that the trademark, 'Aachi' of the plaintiffs is a registered trademark. The plaintiffs also filed photograph of the trademark, along with trademark legal user certificate. On perusal of the certificate, this Court find that the plaintiffs' trademark is a registered trademark and accordingly, plaintiffs are the proprietor of the trademark 'Aachi'. The defendant is carrying on the business in the name and style, 'Hotel Aachi'. The trademark 'Aachi' is a registered trademark of the plaintiffs. The defendant is copying the whole trademark of the plaintiffs as part of its trade name. Further, the plaintiffs also filed their name board and the same is marked as Ex.P.24 and the defendant's name board as Ex.P.25. On perusal of Exs.P.24 and P.25, it is seen that the defendant is not only copying the trademark of the plaintiff 'Aachi' but also copying the colour scheme. Therefore, the defendant's copying the plaintiffs' trademark 'Aachi' will amount to infringement of the trademark, as stated in Section 29 of the Trademarks Act. Accordingly, the plaintiffs proved the

claim. Therefore, the plaintiffs are entitled to the decree as prayed for.

16. Learned counsel for plaintiffs requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendant in the light of conduct of the defendant which has been referred to supra. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the considered view of this Commercial Division will qualify as a vexatious defence (within the meaning of Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendants' approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.1,00,000/- (Rupees One lakh only) on the defendant.

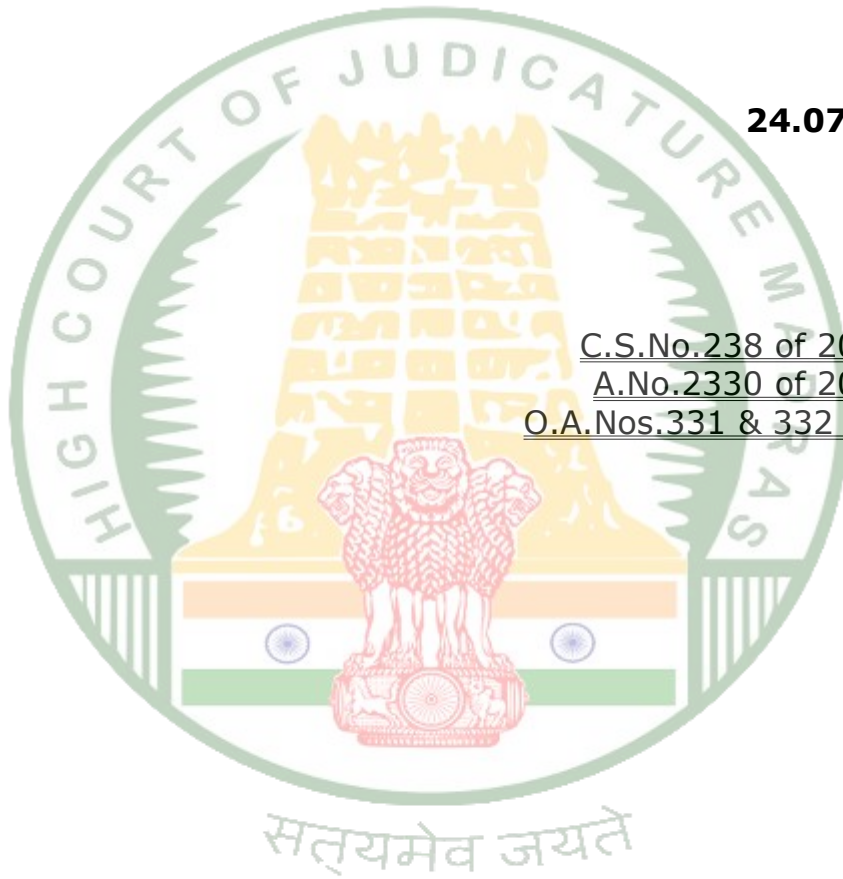
17. Plaintiffs will obviously be entitled to costs as the plaintiffs have incurred substantial expenditure in carrying this suit to its logical end.

Krishnan Ramasamy,J.

18. Suit is decreed with costs and compensatory costs as set out supra. Consequently, connected applications are closed.

AT

24.07.2019



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O.A.Nos.331 & 332 of 2015

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