

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.S.A.No.100 of 2015 (OSA.SR.26103/2015)

Bajaj Auto Limited,
Bombay-Pune Road,
Akurdi,
Pune-411 035,
State of Maharashtra.

Appellant

vs

TVS Motor Company Limited,
Jayalakshmi Estates,
No.8, Haddows Road,
Chennai-600 006,
rep. by its Authorised Signatory
Harne Vinay Chandrakant.

Respondent

Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI, Rule 9 of Original Side Rules against the order made in Application No.413 of 2015 in C.S.No.979 of 2007.

A.No.413 of 2015

Praying that this Hon'ble Court to grant leave to the applicant/Plaintiff to file the Additional Affidavit of documents filed herewith and take on record the same.

C.S.No.979/2007:

a)Declaring that the threats held out by the defendant on September 1 and 3, 2007 that the Plaintiff is infringing the defendant's patent No.195904 and the Defendant is proposing to take infringement action against Plaintiff are unjustified.

b)Declaring that the Plaintiff's Product TVS Flame which uses two spark plug with screw-fitted sleeve and three valves does not infringe Patent No.195904 of the Defendant;

c)Granting permanent injunction restraining the Defendant by themselves or through their agents, servants, licensees, employees

and distributors and anyone claiming through them and/or all those in active concert and participation with them from continuing the issuance of threats that the plaintiff is infringing the Defendant's patent NO.195904 and /or that the Defendant is contemplating infringement action against the Plaintiff or threats of like nature and import, directly or indirectly in any manner including by way of circulars, advertisements and communications, oral or in writing to the plaintiff or any other person and also thereby interfering with the launch and sale of the product TVS Flame;

d)directing the Defendants to compensate the plaintiff a sum of Rs.1,00,00,000 or such other amount as this Hon'ble Court may determine after the records are produced for the damages sustained on account of the unjustified threats made by the Plaintiff;

For Appellant ... Mr.P.Chidambaram
Senior Counsel &
Mr.T.V.Ramanujam
Senior Counsel
for
M/s.Arun C.Mohan &
Ms.Subashine

For Respondent ... Mr.C.S.Vaidyanathan
Senior Counsel &
Mr.P.S.Raman
Senior Counsel
for
M/s.T.K.Bhaskar &
K.Harishankar

J U D G M E N T

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

Heard the learned Senior Counsel for parties and leaving the issue of maintainability of the appeal open, we consider it appropriate to dispose of the appeal in the following terms:-

- (i) It is agreed that the question whether the documents brought on record are admissible in evidence or not and whether this question should be decided at this stage or at a later stage may be urged before the learned single Judge after marking all documents, for which the suit will be placed before the learned single Judge.

(ii) For marking the documents, the matter will be listed before the learned Master on 10.06.2015 and with regard to stage at which the admissibility, proof and relevancy of the documents filed by the original plaintiff could be raised, the suit will be listed before the learned single Judge on 18.06.2015. Upon such decision being taken by the learned single Judge with regard to the stage at which admissibility, proof and relevancy could be raised, evidence be recorded.

(iii) Taking into consideration the already over-burdened Board of the learned Master of this Court for recording of evidence, and the desirability of concluding the evidence expeditiously in the suit, it is appropriate that a retired Judicial Officer/District Judge be appointed as Commissioner to record the evidence.

(iv) On a query, the learned Senior Counsel for parties agree on the name of Mr.C.Manickam, a retired District Judge to be appointed as Commissioner to record the evidence.

(v) The Commissioner will endeavour to complete the process of recording the evidence as expeditiously as possible, preferably within a period of four (4) months from the first date.

(vi) The fee of the Commissioner is fixed at Rs.1,00,000/- (Rupees One Lakh only) to be shared equally between the parties. If the appellant has some inability to pay the fee, the respondent will pay the charges which would form part of the main cause as the request for such procedure is of the respondent.

(vii) The Madras High Court Arbitration Centre, located in Madras High Court campus may be utilised for recording of evidence and the cost in this regard to be borne by the parties equally.

2. The appeal as well as the miscellaneous petitions are disposed of, leaving the parties to bear their own costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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1.The Sub Assistant Registrar
Original Side, High Court, Madras

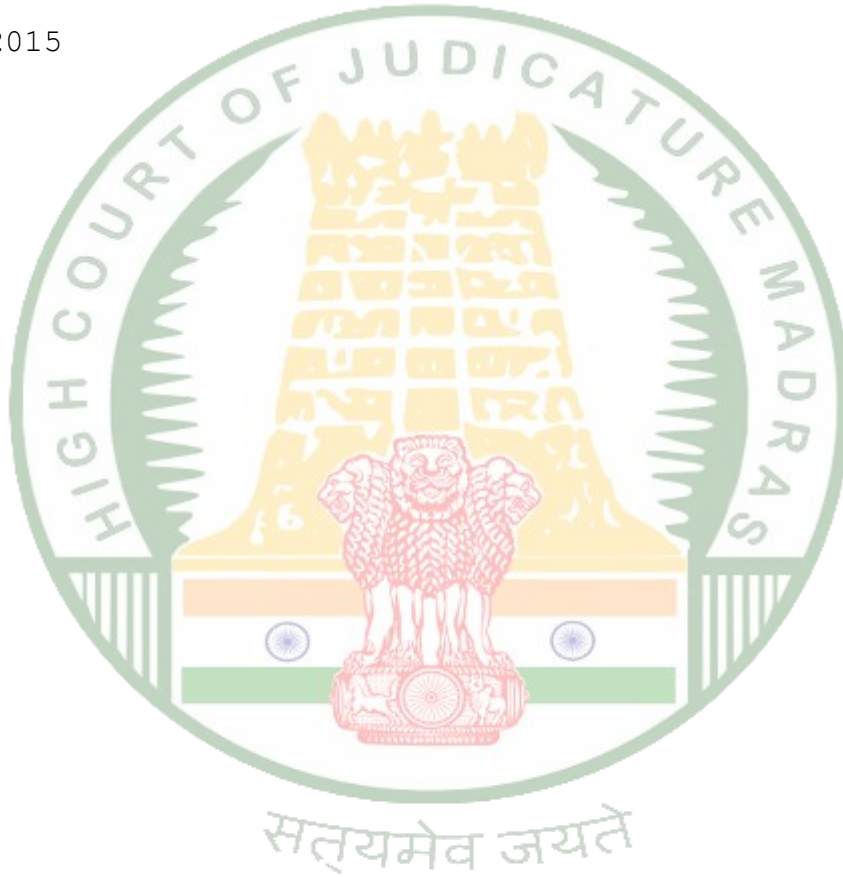
2.The Chairman,
The Arbitration and Conciliation Centre, High Court, Madras-104.

1 cc to Mr.Arun C.Mohan, Advocate Sr.No.26946

1 cc to T.K.Bhaskar, Advocate Sr.No.26740

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