

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM :

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

AND

The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

O.S.A.Nos.219, 239 and 240 of 2015  
and M.P.Nos.1, 1 and 1 of 2015

M/s.Lion Dates Impex Pvt. Ltd.,  
Rep. By its Managing Director,  
P.Ponnudurai, Nungambakkam,  
Chennai-34.

... Appellant in OSA.219/15  
& Respondent in  
OSAs.239 & 240/15

-vs-

P.Mohammed Ibrahim,  
Proprietor, Lion Brand Sharbath  
Company, Tirunelveli,  
Tamilnadu, India.

...Respondent in OSA.219/15  
& Appellant in OSAs.239  
and 240/15

Appeals filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent, against the common order dated 13.04.2015 passed in O.A.Nos.994 of 2014 and 135 & 136 of 2015 in C.S.No.799 of 2014 on the file of original side of this Court.

OA 994/2014: This petition has been filed to pass an order & interim injunction restraining the respondent/defendant from in any manner passing of the products of the respondent/defendant more so Sharbath and squash, under trade name LION BRAND COMPANY and under any other identical or deceptively similar trade name/label to that of the applicants/plaintiffs trade name and lion and device of Lion Trade Mark/Labels and there by from using manufacturing, packing, distributing or selling or offering for sale, advertising, displaying or otherwise directly or indirectly dealing with any product more so sharbath and squash under a brand name or trade mark/label, using the word "LION" and device no Lion or a deceptively similar label in any manner, whatsoever pending disposal of the suit.

OA: 135/2015 has been filed to grant an ad interim injunction restoring the plaintiff from in any manner manufacturing selling, offering, sale stocking, advertising, directly, and indirectly dealing in any goods (i.e) Sharbath, syrups, fruit drinks, fruit juice and other preparations for making averages identical or deceptively similar under the trade mark LION or any other trademark resembling the defendants trade mark LION or any other marks/label identical or similar to the defendant's trade mark so as to pass off or enable passing off the goods of the plaintiff on and for the goods of the defendant or in any other manner whatsoever pending disposal of the above suit.

OA NO.136 OF 2015 has been filed to grant an ad interim injunction restraining the plaintiff from in any manner manufacturing, selling, offering for sale, stocking & advertising directly or indirectly dealing in any goods (i.e) Sharbath, Syrups, Fruit drinks, Fruit Juices and other preparations for making beverages identical or deceptively similar under the trade mark LION or any other trademark resembling the defendants' trade mark registered trademark LION or any other mark, which is identical or deceptively similar to the defendant's trademark Lion so as to infringe the defendants trade mark or in any other manner whatsoever pending disposal of the above suit.

For Appellant in  
OSA.219/15 & Respondent  
in OSAs.239 & 240/15

: Mr.R.Gandhi, S.C.  
For Mr.G.K.Muthukumar for  
M/s.GMS Law Associates.

For Respondent in  
OSA.219/15 & Appellant  
in OSAs.239 & 240/15

: Mr.K.Rajasekaran

#### COMMON JUDGMENT

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

The appeal filed by the original plaintiff is listed today. Learned counsel for the respondent / defendant has stated that they have also filed appeals. The appeals have been numbered and called to Court.

2.We have heard both the learned senior counsel for the parties. After some arguments, it is agreed that the solution lies really in having an expedited trial, as the impugned order permits both the sides to carry on their businesses in view of the facts set out therein.

3. We are informed that the pleadings are complete, but documents, as yet, have not been filed in toto. It is, thus, agreed as under:

1. The parties will file their respective documents within two (2) weeks.
2. The suit will be listed before the learned Single Judge for settlement of issues on 23.11.2015.
3. The suit will be listed before the Master for exhibiting of documents on 03.12.2015.
4. In order to expedite the trial, learned counsel for the parties are agreeable that a retired Judicial Officer be appointed to record the evidence of both sides and he will endeavour to conclude the recording of evidence within three (3) months from the first date fixed before him and the parties will co-operate in the same.
5. Mr. A. Krishnan, a retired Judicial Officer, is appointed as the Commissioner to record evidence. The fee of the Commissioner is fixed at Rs.50,000/- (Rupees fifty thousand only) plus out-of-pocket expenses to be shared equally between the parties.
6. On completion of evidence, the suit shall be placed before the learned Single Judge for fixing a date for final disposal.

4. The appeals are, accordingly, disposed of, leaving the parties to bear their own costs. Consequently, M.P.Nos.1 of 2015 stand closed.  
sra

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2. Mr. A. Krishnan  
District Judge (Retired)  
Olympia Opaline,  
No.4E, Garnet Block,  
33, Navalur Village,  
OMR, Chennai 600 130.

+1cc to Mr. GMS Law Associates, Advocate Sr.16720[30/11/2015]

O.S.A.Nos.219, 239 and  
240 of 2015

RSI (CO)  
EU 27.11.2015