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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2015

CORAM

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

O.S.A.Nos.96 and 97 of 2015
and
M.P.Nos.1 and 1 of 2015

1. Bharat Balar,
F-3, First Floor, Akshaya Plaza,
108, Adittanar Salai,
Egmore,
Chennai-600 002.
2. While Lion Trading Private Limited,
F-3, First Floor, Akshaya Plaza,
108, Adittanar Salai,
Egmore, Chennai-600 002
rep. by its Managing Director
Bharat Balar.

... Appellants in both appeals

vs

1. Rajendra Distributors,
38/41, Reghunayakuly Street,
Park Town,
Chennai-600 003.
2. Sha Mahendra Kumar Asuram,
Director,
Rajendra Distributors,
No.2, Nyniappa Maistry Street,
Chennai-600 003.
3. Sha Asuram Madaji,
Director,
Rajendra Distributors,
No.2, Nyniappa Maistry Street,
Chennai-600 003.

... Respondents in both appeals



Appeals filed under Clause 15 of the Letters Patent read with Order XXXVI, Rule 9 of Original Side Rules against the common order made in Application Nos.861 and 862 of 2014 in C.S.No.701 of 2014, dated 17.03.2015 on the file of this Court.

O.A.861 of 2014: Original Application praying to grant an interim injunction restraining the respondents, by themselves, their Legal representatives, man, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner passing off and enabling others to pass off their containers with or without idly plates as and for applicants Unitary Multilayer container and idly plates by using the identical shape and configuration for their products or any other products which are identical to that of or an obvious imitation of the applicants Unitary Multilayer container and idly plates respectively and amount to product passing off or in any other manner whatsoever pending disposal of the suit.

O.A.862 of 2014: Original Application praying this Hon'ble Court be pleased to grant an interim injunction restraining the respondents, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner infringing the applicants copyright in the registered design by manufacturing, assembling, sale and distribution of containers with or without idly plates with identical designs for their products or any product which is an imitation of the applicants copyright in the registered design No.256062 dated 27.8.2012 in Class 07-02 for unitary Multilayer container and idly plates or in any other manner whatsoever pending disposal of the suit.

For Appellants : Mr.Arun C.Mohan

For Respondents : Mr.G.Kalyan Jhabakh
for
M/s.Surana & Surana



COMMON JUDGMENT

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

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The appellants (original plaintiffs) have filed the suit for infringement of their registered design in respect of containers, as also for passing off of the defendants' products as that of the plaintiffs. Along with the suit, applications for interim relief were filed, which were dismissed by the impugned common order dated 17.03.2015.

2. We have heard the learned counsel for parties for some time and with the assistance of the learned counsels, we have been able to arrive at an agreed arrangement at the interim stage pending trial of the suit. Such an arrangement are on two aspects:-

1. firstly, expeditious trial of the suit; and
2. secondly, some observations/modifications of the impugned common order.

3. Insofar as the second aspect is concerned, the agreement is as under:-

(i) The observations made in the impugned common order dated 17.03.2015 in O.A.Nos.861 and 862 of 2014 in C.S.No.701 of 2014 being prima facie in the nature as already observed, would in no manner prejudice the trial in the suit or affect the proceedings, which may be filed for cancellation of the registered design of the appellants.

(ii) The observations made in paragraph 15 of the impugned common order that the appellants' design is liable to be cancelled under Section 19 of the Designs Act, 2000 are set aside.

(iii) It would be open to the appellants to plead and canvass the proposition of there being a presumption in favour of the appellants arising from the registration of the design, subject to the contrary plea which may be raised by the respondents on this legal principle.

4. Now coming to the first aspect of the matter on the expeditious trial of the suit, it is agreed as under:-

(i) The Written Statement already filed by the respondents be taken on record.



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- (ii) Replication be filed by the appellants within two weeks.
- (iii) The suit be placed before the learned single Judge for framing of issues on 16.07.2015.
- (iv) Proposed issues be filed by both parties at least three (3) days before the date of hearing before the learned single Judge. The parties will endeavour to have the agreed issues.
- (v) Parties to file original documents and list of witnesses within four weeks from today.
- (vi) For marking exhibit of documents, the suit be placed before the learned Master of this Court on 06.08.2015.
- (vii) After marking the documents, the appellants to file affidavit of evidence within two weeks thereafter.
- (viii) On completion of the cross examination of the witnesses on the side of the appellants, the respondents to file affidavit of evidence within two weeks thereafter.
- (ix) The evidence will be recorded by a retired Judicial Officer/District Judge in order to expedite the trial, as even the Court of Master is overloaded.
- (x) Mr. K. Sivanandajothi, a retired District Judge is appointed as the Commissioner to record the evidence and he shall endeavour to conclude recording of evidence within three months of the first date fixed by him, after the aforesaid process is over.
- (xi) The fee of the Commissioner is fixed at Rs.70,000/- (Rupees Seventy Thousand only) to be shared by both parties equally apart from out of pocket expenses.
- (xii) The Commissioner will record the evidence within the premises of the High Court for which the original files shall be made available. The venue can be in any of the specified areas or at the



Madras High Court Arbitration Centre. In the latter case, the charges for Arbitration Centre shall be equally borne by the parties.

5. The original side appeal, accordingly, stands disposed of. No costs. Consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bbr

To

Mr.K.Sivanandajothi (Retd) District Judge,
No.23, Parker Street,
Nagercoil - 629001
Kanniyakumari District.
Mobile No.9444049583

Copy To

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

+2cc's to M/s.Surana & Surana, Advocate, S.R.No.27507
+1cc to M/s.Arun C.Mohan, Advocate, S.R.No.26949

O.S.A.Nos.96 and 97 of 2015

SAI (CO)
CA(15/06/2015)