

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2015

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYNARAYANAN

CS.No.1114/2009

1.Castrol Limited
Burmah Castrol House
Pipers Way, Swindon,
Wiltshire, SN31RE
England, United Kingdom
rep.by its Constituted Attorney
Mr.Murlidhar Balasubramanian

2.Castrol India Limited
781-785 Rayala Towers
V Floor, Anna Salai,
Chennai 600 002
rep.by its Constituted Attornye
Mr.Murlidhar Balasubramanian

.. Plaintiffs

Versus

1.M/s.Shree Pramukh Bike Zone
9/A, Mayur Colony, Kirtan Complex,
Shop No.3, Mithakali Underbridge
Ahmadabad-380009.

2.Viral A.Gandhi
Proprietor of and trading as
M/s.Shree Pramukh Bike Zone
9/A, Mayur Colony, Kirtan Complex,
Shop No.3, Mithakali Underbridge
Ahmadabad-380009.

.. Defendants

Civil Suit filed under Order IV Rule 1 of O.S. Rules
read with Order VII Rule 1 CPC read with sections 27, 28,
29, 134 and 135 of the Trade Marks Act, 1999.

For Plaintiffs : Ms.S.Suba Shiny

For Defendants : No appearance

JUDGMENT

The suit is for permanent injunction restraining the defendants, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives of anyone claiming through them from in any manner infringing the plaintiffs' trademarks/service marks CASTROL, CASTROL logo, CASTROL logo in a capsule device with vertical end etc., and further restraining them from passing off and enabling others to pass off the defendants' service centre, two wheeler/motor vehicles repair and maintenance services, retail outlet for vehicles spares, parts, fittings, oils and lubricants by using the trade name/trading style by using the above said logo and the word "BIKEZONE", the signage, name board etc and also consequently, pray for payment of Rs.10,05,000/- towards damages between the acts of infringement and also destruction of all name boards, signage etc., which bears plaintiffs' registered Trademarks and a preliminary decree to render accounts of profits earned by the defendants by using the above said trademarks.

2 A perusal of the averments made in the plaint would disclose, among other things, the second plaintiffs is having its registered office and carrying on the business at Chennai and the first plaintiffs has obtained the registration of trademarks of CASTROL, CASTROL logo and CASTROL logo in a capsule device in the year 2000 and has also adopted and applied for the registered trademark/certificate mark "BIKEZONE" in respect of various produces and services rendered by it.

3 The plaintiffs, for the purpose of filing the suit, has appointed a Power of Attorney as per Ex.P.1. It has also passed a Resolution to that effect under Ex.P.2 ; Ex.P.3 pertains to the certified copy of the Registration No.1494 in Class 4 of the mark CASTROL ; Ex.P.4 is the Registration Certificate of mark "CASTROL logo" under No.1240239 in classes 37 and 42 ; Ex.P.5 is the Registration Certificate for the marks BIKEZONE under No.1339152 in classes 9, 35, 4, 25 and 18 respectively.

4 Under Ex.P.6, CASTROL BIKEZONE Agreement dated 18.08.2006 and under Ex.P.7, Supplemental BIKEZONE Agreement dated 13.03.2008, came to be entered between the plaintiffs and the 1st defendant represented by the 2nd defendant as the Proprietor.

5 It is the case of the plaintiffs, that since the defendants failed to adhere to the terms of the above said agreements, it had issued Letter of Termination dated 19.02.2009 under Ex.P.8, followed by the Notice of Termination dated 27.02.2009 under Ex.P.9. The first defendant, in response to the Notice of Termination, sent a reply dated 16.03.2009 under Ex.P.10, denying the averments. The plaintiffs have also issued Notice for Payment of Royalty and also for return of sales promotion materials etc., dated 03.04.2009 under Ex.P.11 ; for which the defendants sent a Rejoinder dated 09.04.2009 under Ex.P.12. The plaintiffs also sent a reply dated 16.07.2009 to the Rejoinder under Ex.P.13. The defendants also sent a reply dated 10.10.2009 under Ex.P.14.

6 The plaintiffs, in order to establish the fact that in spite of termination, the 1st defendant continued to carry on its business by using the logo CASTROL as well as BIKEZONE as evidenced from the photograph marked under Ex.P.15. It is the specific case of the plaintiffs that in spite of the mandatory nature of the terms of the Agreement and Supplemental Agreement, marked as Exs.P.6 and P.7, the defendants continued to carry on the business by using CASTROL and BIKEZONE logo, which resulted in issuance of

Letter of Termination under Ex.P.8, followed by Notice of Termination under Ex.P.9 and hence, the plaintiffs is constrained to file the suit.

7 The defendants, though served did not enter appearance and they were set exparte and exparte evidence was taken.

8 The Constituted Power of Attorney is filed and proof affidavit in lieu of the Chief Examination are marked as Ex.P.1 and Ex.P.15

9 Learned counsel for the plaintiffs has drawn the attention of this Court to the averment made in the plaint as well as Exs.P.1 to P.15 and would submit that in terms of Exs.P.6 and P.7, the equipment shall be used to promote CASTROL products during the subsistence of the Agreement and it shall not confer any right, title or interest. Once, Notice of Termination issued, the defendants have to cease and desist from carrying on the business under the name and style of CASTROL and BIKEZONE and however, it continued to carry on. It is the further submission of the learned counsel that the reply under Ex.P.11 and the Rejoinder under Ex.P.12, contain false averments and to clarify the legal position, it also sent notices marked as Exs.P.13 and 14 respectively. It is the primordial

submission of the learned counsel for the plaintiffs that as per the Franchisee Agreement, marked as Ex.P.6, the defendants are under obligation to hand over the materials, signage, hoarding, stationeries and other materials bearing plaintiffs' marks on the termination of the said Agreement and in spite of the receipt of the same and in spite of having agreed to comply with the terms of Exs.P.6 and P.7, the defendants continue to use the logo for their own benefits and earn profits and hence, prays for decree of the suit.

10 This Court has carefully considered the submissions made by the learned counsel appearing for the plaintiffs and also perused the proof affidavit in lieu of chief examination as well as Exs.P.1 to P.15.

11 As rightly contended by the learned counsel appearing for the plaintiffs, Exs.P.6 and P.7 are the CASTROL BIKEZONE Agreement and Supplemental BIKEZONE Agreement and the 1st defendant, with open eyes, has entered into the said Agreements, agreeing to comply with the terms and conditions of the same. In spite of the Letter of Termination as well as Notice of Termination, marked as Exs.P.8 and P.9, the defendants continue to indulge in trade activities, using the logo of CASTROL and BIKEZONE.

It is also evidenced under Ex.P.15 [Photographs]. Though, on behalf of the defendants, reply as well as rejoinder have been sent under Exs.P.10 and P.12, this Court is of the view that the defence projected by the defendants in the said exhibits, are only a sham and there are no tenable grounds. This Court, upon going through the plaint, proof affidavit in lieu of the chief examination as well as Exs.P.1 to P.15, is of the considered view that the plaintiffs have made out a clear case for decreeing the suit as prayed for.

12 In the result, the suit is decreed as prayed for, with cost.

Plaintiffs' side Exhibits:-

1. Ex.P.1 - The Power of attorney executed by the 1st plaintiff in favour of the deponent Mr.Murlidhar Balasubramanian
- 2 Ex.P.2 13.02.2012 The extract from the minutes of meeting of the board resolution of the 2nd plaintiff authorising Mr.Murlidhar Balasubramanian to depose on behalf of 2nd plaintiff
- 3 Ex.P.3 - The notarised copy of trademark Registration Certificate for the mark CASTROL under No.1494 in Class 4.
- 4 Ex.P.4 - The certified copy of trademark Registration Certificate for the mark CASTROL LOGO under No.1240239 in Classes 37 and 42

- 5 Ex.P.5 - The certified copy of trademark Registration Certificate for the mark BIKEZONE under No.1339152 in classes 9, 35, 4, 25 and 8
- 6 Ex.P.6 - The notarised copy of the CASTROL BIKEZONE agreement between the 2nd plaintiff and the 1st defendant
- 7 Ex.P.7 13.03.2008 The office copy of the supplemental BIKEZONE Agreement
- 8 Ex.P.8 18.02.2009 The office copy of the termination letter
- 9 Ex.P.9 27.02.2009 The office copy of the correspondence between the 2nd plaintiff and 1st defendant
- 10 Ex.P.10 16.03.2009 The legal notice issued by the 1st defendant's counsel to the 2nd plaintiff
- 11 Ex.P.11 03.04.2009 The office copy of the further termination notice issued by the 2nd plaintiff to the defendants
- 12 Ex.P.12 09.04.2009 The notarised copy of rejoined issued by the defendants counsel
- 13 Ex.P.13 16.07.2007 The office copy of the rejoinder notice issued by the 2nd plaintiff through its counsel to the defendants
- 14 Ex.P.14 10.10.2009 The reply issued by the defendants counsel to the 2nd plaintiff
- 15 Ex.P.15[series] The photographs of the defendants premises proving the use of plaintiff's mark/name even after the termination of agreement

Plaintiffs' side witness:-

P.W.1

Mr.Murlidhar Balasubramanian

Defendants' side Exhibits:-
Defendants' side witness:-

Nil
Nil

Sd/M.S.N.J

02.11.2015

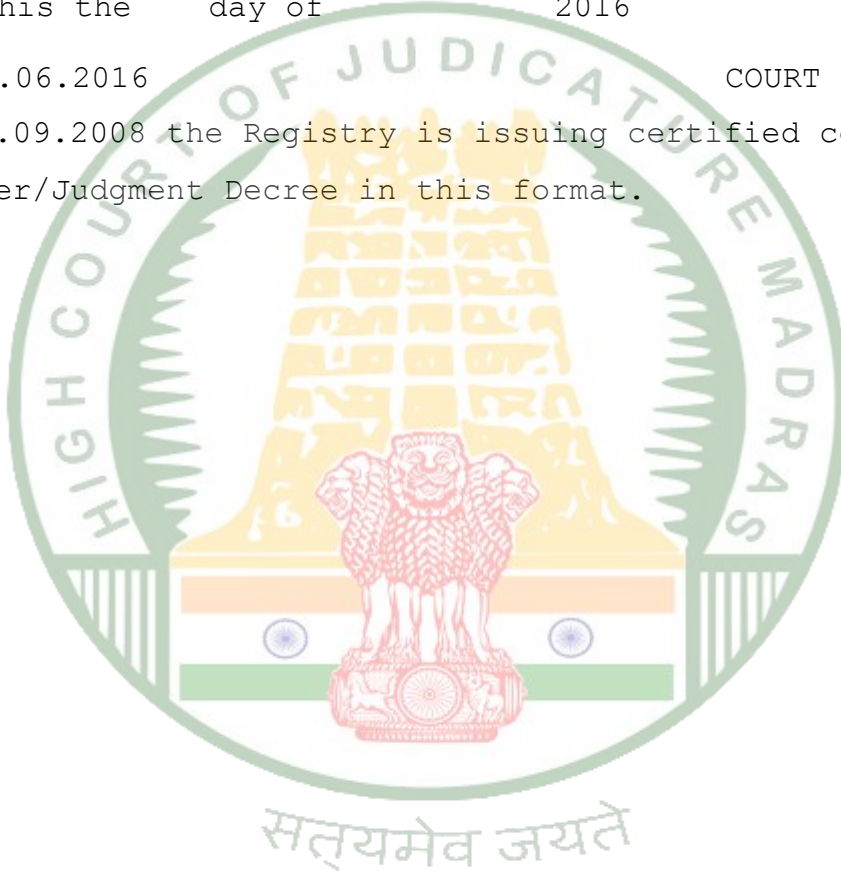
//Certified to be a true copy//

Dated this the day of 2016

S.s/.14.06.2016

COURT OFFICER

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



WEB COPY