

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

CORAM

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Civil Suit No.724 of 2008

Physique India Ltd.,
B-2A, Gem Plaza,
66, Infantry Road,
Bangalore - 560 001,
Represented by its Director,
Mr.Gopal Mohan Nair.

... Plaintiff

Vs.

Physique

... Defendant

The suit has been filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S. Rules and Sections 27, 134 and 135 of the Trade Marks Act, 1999, praying for a judgment and decree against the defendant [a] directing the defendant to surrender to the plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing deceptively similar Trade Mark Physique or other deceptively similar trade mark used in the pouches and packets in

respect for Sports and Playthings, Gymnastics & Sporting Articles for personal use; [b] directing the defendant to render an account of profits made by them by the use of the impugned trademark physique on the goods referred and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts; and [c] directing the defendant to pay to the plaintiff the costs of the suit.

For Plaintiff : Mr.C.Daniel and Cladys Daniel
 For Defendant : M/s.Satish Parasaran

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JUDGMENT

The suit has been filed by the plaintiff praying for a judgment and decree [a] directing the defendant to surrender to the plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing deceptively similar Trade Mark Physique or other deceptively similar trade mark used in the pouches and packets in respect for Sports and Playthings, Gymnastics & Sporting Articles for personal use; [b] directing the defendant to render an account of profits made by them by the use of the impugned trademark physique

on the goods referred and to decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts; and [c] directing the defendant to pay to the plaintiff the costs of the suit.

2. In this case, the plaintiff has filed an Application No.3262 of 2008 seeking to grant leave to sue the defendant on the file of this Court with respect to infringement of registered Trade Mark on the file of this Court. This Court, by an order dated 22.04.2008, has granted leave to the plaintiff. The defendant has filed an Application No.4885 of 2011 in C.S.No.724 of 2008 before this Court seeking to revoke the leave granted by this Court in Application No.3262 of 2008. After hearing both sides, this Court, by an order dated 25.11.2011, had dismissed the Application No.4885 of 2011. As against the dismissal order passed by the learned Single Judge of this Court, the defendant has preferred an appeal in O.S.A.No.417 of 2012 before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench of this Court, by an order dated 24.08.2015, has set aside the order dated 25.11.2011 passed by the learned Single Judge refusing to revoke the leave granted and the operative portion of the order passed in

O.S.A.No.417 of 2012 reads as follows:-

"9. The result of the aforesaid is that the impugned order is set aside and the application filed by the appellant in A.No.4885 of 2011 seeking revocation of the leave granted by order dated 22.04.2008 is allowed with all consequences thereof. No costs. Consequently, M.P.Nos.1 of 2012 and 1 of 2013 are closed."

3. In view of the above said order passed by the Hon'ble Division Bench of this Court, since there is no cause of action arose against the defendant to file the suit before this Court, the suit is liable to be dismissed. Accordingly, this Civil Suit is dismissed. No costs.

08.09.2015

Index : Yes
Internet : Yes
Jrl

G.CHOCKALINGAM, J.

Jrl

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