

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.726 of 2014

Apollo Hospitals Enterprise Ltd.,
rep. By its Authorised Signatory ... Plaintiff

Vs

Popular Apollo Pharmacy
rep. By its Director ... Defendant

Plaint filed under Order VII Rule 1 of the Civil Procedure Code and Order IV Rule 1 of the Original Side Rules r/w Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999.

For Plaintiff :Mr.Vineet Subramani

For Defendant :Mr.D.Kulasekaran

JUDGMENT

The suit has been filed for the following reliefs:

(a) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner infringing the plaintiff's registered

trade mark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital";

(b) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off goods and services as that of the plaintiff's by either using the plaintiff's trade mark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital";

(c) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name/mark "Apollo" and "Apollo Pharmacy" by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated or pharmaceutical services rendered by the defendant;

(d) The defendant be directed to surrender to the plaintiff all materials, media etc., whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy";

(e) The defendant be directed to render accounts of profits of the defendant in favour of the plaintiff to examine and ascertain the profits made by the defendant, and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the defendant by using the mark "Apollo" and "Apollo Pharmacy" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy" towards damages as and when ascertained to be awarded to the plaintiff and against the defendant on account of use of the offending trade mark;

(f) Award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only);

(g) An order for costs of the proceedings.

2. When the matter is taken up for hearing, learned counsel appearing for the defendant submits that the licence has been surrendered and the shop has also been closed. Thus it is submitted by both the counsel that nothing survives for adjudication and the suit may be decreed with respect to permanent injunction alone.

3. In such view of the matter, there shall be a judgment and decree for

(a) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner infringing the plaintiff's registered trade mark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital";

(b) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off goods and services as that of the plaintiff's by either using the plaintiff's trade mark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any structurally, visually,

phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital"; and

(c) Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name/mark "Apollo" and "Apollo Pharmacy" by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated or pharmaceutical services rendered by the defendant;

No costs.

Sd/ M.M.S.J

30.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/06.02.2017

COURT OFFICER

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