

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.Nos.228 and 229 of 2015

Mankind Pharma Limited
236, Okhla Industrial Estate,
Phase III,
New Delhi 110020. .. Appellant in both O.S.As/
I Defendant/Applicant

versus

Sun Pharma Laboratories Limited
187, St. Mary's Road,
Alwarpet, Chennai 600018.
rep. by its Authorised Signatory
Ms.Chandra Nahata .. Respondent in both O.S.As/
Plaintiff/Respondent

Appeals filed under Order 36 Rule 9 of Original Side Rules
read with Clause 15 of the Letters Patent Act, against the fair
and decretal order dated 19.03.2015 passed in A.Nos.431 and 432
of 2015 in C.S.No.847 of 2014.

For Appellant .. Mr.T.V.Ramanujam
in both the OSAs Senior Counsel for Mr.T.D.Selvan Babu
For Respondent .. Mr.P.S.Raman
in both the OSAs Senior Counsel for Mr.Arun C Mohan

J U D G M E N T

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

The original plaintiff/respondent, pharmaceutical company
has sued the first defendant/appellant, as also the second
respondent/ C & F agent as the second defendant on account of
the use of identical trademark by the appellant in respect of
identical products. The trademark of the first
respondent/original plaintiff is 'ADMENTA' and the appellant
is using 'ADMENSIA'.

2. The original plaintiff has filed an interlocutory application for injunction and interim orders were granted in favour of the original plaintiff. The appellant, as defendant, moved for vacating the stay and also raised objection about the territorial jurisdiction of the Court.

3. The impugned order has dealt with the issue of territorial jurisdiction and opined in favour of the original plaintiff.

4. We have heard the learned counsel for the parties on different dates and even today.

5. We are not touching the merits of the controversy because that is still pending consideration before the learned single Judge. Suffice to say that the cause of action paragraph is paragraph-19 and the issue of territorial jurisdiction has been dealt with in paragraph-20 of the plaint.

6. Paragraph-20 reads as under:

"20. The plaintiff is having its office and carries on business at Chennai, within the jurisdiction of this Hon'ble Court. The cause of action for infringement of registered trademark has arisen within the jurisdiction of this Hon'ble Court. Therefore, the plaintiff is statutorily entitled to file the suit for infringement of its registered trademark under Section 134 of the Act before this Hon'ble Court, where the plaintiff carries on their business. Further, the 2nd defendant, who is the clearing and forwarding agent of the 1st defendant is also carrying on its business at Chennai within the jurisdiction of this Hon'ble Court. Therefore, the entire cause of action in respect of infringement and passing off has arisen at Chennai and this Hon'ble Court has jurisdiction to try and entertain the suit."

7. The aforesaid thus shows that the plaintiff is seeking the jurisdiction of the Madras High Court on the original side on the basis of the plaintiff being located at Chennai.

8. Section 134 of the Trade Marks Act, 1999 in a sense is an exception to the provisions of Section 20 of the Civil Procedure Code, 1908 where they permit institution of the suit on the basis of the location of the office of the plaintiff which is not in doubt.

9. The defence of the appellant really is that there are no sales at all within the jurisdiction of this Court and thus, the

original plaintiff should not be permitted to sue in Chennai.

10. We had posed certain questions emerging from the arguments to be factually answered by the appellant in our order dated 11.07.2016.

11. An affidavit was filed affirmed on 21.07.2016.

12. The questions posed by this Court and the answers are as under:

(i) Whether the appellant as on date, has a branch office in Chennai?

Answer: The appellant does not have any branch office in Chennai.

(ii) Whether M/s.Moti Chandra Associates partnership continues to be a Clearing and Forwarding (C & F) Agent of the appellant?
Answer: Yes.

(iii) Whether there is any other C & F agent of the appellant in Chennai?
Answer: No.

(iv) Whether the product in question was being sold through any C & F agent or local office by the appellant in Chennai at any point of time?
Answer: No.

(v) In which specific regions, is the product 'ADMENSIA' being sold by the appellant?
Answer: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Jharkhand, Kashmir, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Telangana, Uttar Pradesh, Uttaranchal and West Bengal regions till the ad interim injunction was granted.

13. However, on the next date of hearing on 25.07.2016, learned counsel for the first respondent brought to our notice an extract downloaded from the Commercial Tax Department website showing the appellant giving a local address to obtain the TIN Number. On this, learned counsel for the appellant wanted to verify the position and has now filed an affidavit affirmed on 09.08.2016. It is admitted that the TIN Number has been obtained by the appellant which could be only for local sales. The relevant portion of the affidavit reads as under:

'I State that, the premises located at 11 (old No.6), Appakannu Street, Lakshmipuram, Royapettah, Chennai 600014, under which the TIN Number 33090781668 is registered is a

corresponding address of the C & F agent Moti Chandra & Associates, used solely for the purposes of official communications of their entity. I further state that, the C & F agents have obtained the TIN Number in the name of my company with respect to the same premises at 11 (old No.6), Appakannu Street, Lakshmipuram, Royapettah, Chennai 600 014, Tamil Nadu as a part of business arrangement so that, goods are provided to them on STN (Stock Transfer Note) and NOT on invoice.''

14. We are not satisfied with the explanation sought to be given by the appellant of the aforesaid. Naturally, the first respondent as original plaintiff has taken a preventive measure of filing the suit, but it is quite obvious that the plea of the appellant that they have no presence within the jurisdiction of this Court nor sales cannot be accepted. The appellant is in a sense holding back facts and is forthcoming before the Court in piecemeal disclosures, when specific queries have been posed. The appellant as such brought to the notice of the court that the appellant have obtained a TIN number, and to say that the C & F agent has obtained the TIN number of the appellant is neither here nor there.

15. In view of the aforesaid factual position read with Section 34 of the said Act, we cannot fault the impugned order of the learned single Judge holding that the court would have the territorial jurisdiction to proceed with the suit and that the plaint cannot be rejected at the threshold.

The appeals accordingly stand dismissed, leaving the parties to bear their own costs.

Sd/-

सत्यमेव जयते Assistant Registrar(CS VII)

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Sub Assistant Registrar

ksr

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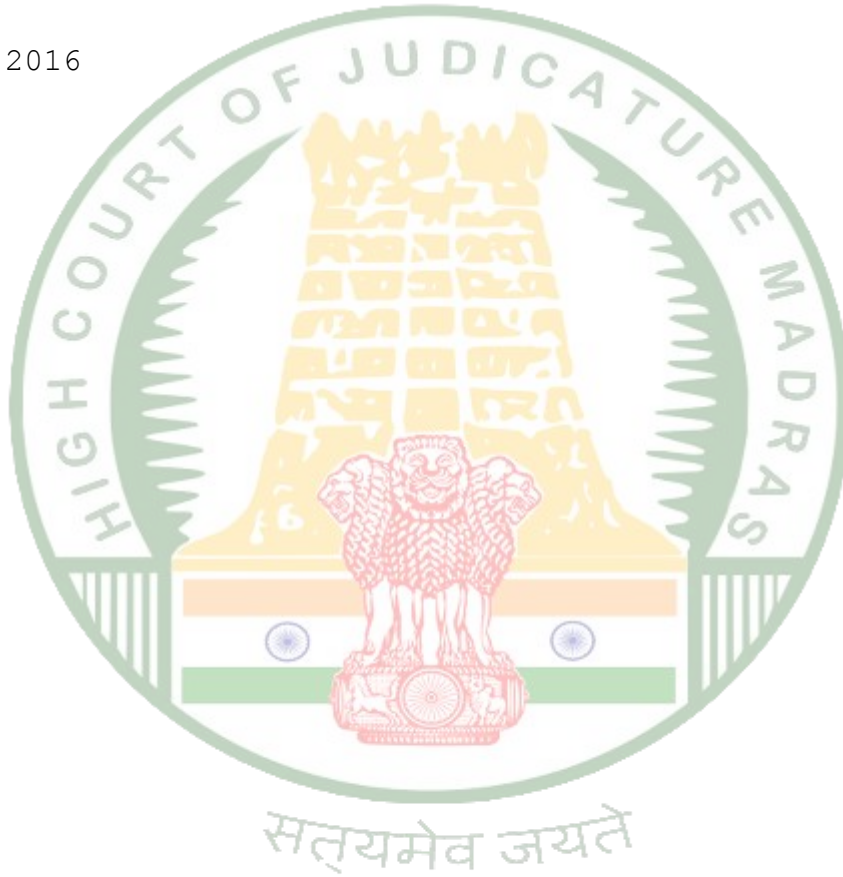
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

1 cc to Mr.T.D.Selvan Babu, Advocate, sr.46761

1 cc to M/s.Arun C.Mohan, Advocate, sr.46961

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kra 02.09.2016



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