

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. Nos.298 and 299 of 2011
and M.P.Nos.1 and 1 of 2011

M/s.Aravind Laboratories
Rep. by its Partner, Mr.T.Devanathan.

... Appellant in both OSAs.

-vs-

Modicare,
All Towers, 2nd Floor,
Greens Road, Thousand Lights,
Chennai 600 006, Tamil Nadu, India.

... Respondent in both OSAs.

Appeals filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the common order dated 05.07.2011 made in O.A.Nos.518 and 519 of 2010 in C.S.No.460 of 2010 on the file of original side of this Court.

For Appellant : M/s.C.Danial and Gladys Daniel

For Respondents : Mrs.Jyothisana
for Mr.R.Parthasarathy

J U D G M E N T

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

The appeals are directed against the interlocutory order dated 05.07.2011 declining injunction. The suit is of the vintage 2010. Summon was sought to be served four years later in 2014 and the written statement has not seen the light of the day. So much for the suit proceedings !

2.It is trite to say that the rights of the parties are determined only in a suit and an order on an interlocutory

application only makes an interim arrangement pending trial of the suit and does not become a decision in the suit itself. There appears to be some mistaken belief in this context. We have also put to learned counsel for parties the judgment of the Hon'ble Supreme Court in Wander Limited and another v. Antox India Pvt. Ltd., reported in 1990 (Supp) SCC 727, as to the approach to be adopted by the appellate Court in such matters.

3.Learned counsel for the appellant, faced with the aforesaid position, agrees that nothing would be required to be said in the appeals, but seeks to raise an aspect arising from some observations of the learned Single Judge and claims that when this order is cited as a precedent, it creates some complication.

4.Firstly, an interim arrangement is not really a decision in the suit from point of view of it being treated as a precedent. Secondly, the contention of the learned counsel for the appellant is predicated on something which she submits was never based on any pleas advanced in Court, but has been opined by the learned Single Judge on his own verification. This is in the context of the registered trade mark bearing no.447700 on 03.01.1986, it has been opined in para 28, that has only the word 'Ramdev'. It is the submission of the learned counsel for the appellant that though on the website it is so, actually the trade mark was advertised in the Trade Mark Journal both for the word 'Ramdev' as well as for 'device of a horse driven by a man holding a flag'. It is, thus, the submission that this is how the registration ultimately takes place as a composite mark. The final registration of the composite mark is also not before us. We are, thus, of the view that this issue is now irrelevant for purposes of the present case and we have, thus, just recorded the submission of the learned counsel for the appellant as urged before us.

5.Learned counsel for the parties state that the following agreed directions may be passed:

- (a) The written statement be filed by the respondent within two (2) weeks;
- (b) Replication be filed within two (2) weeks thereafter;
- (c) The suit be listed for framing of issues before the learned Single Judge on 24.10.2016;
- (d) The parties to file documents in their power and possession and thereafter, the matter be listed before the Master for exhibiting of documents on 21.11.2016;
- (e) Learned counsel for parties agree that in order to expedite the trial, the evidence be recorded by a retired Judicial Officer as the Local Commissioner and the costs and routine expenses shall be borne equally by both the parties.

(f) Mrs. Hemalatha Daniel, a retired Judicial Officer, is appointed as the Local Commissioner for recording evidence. Parties state, in all probability, will have one witness each. The fee of the Local Commissioner is fixed at Rs.50,000/- apart from out of pocket expenses.

(g) The Court Commissioner will endeavour to conclude the recording of evidence within a maximum period of four (4) months from the first date fixed before her.

(h) On conclusion of evidence, the matter be placed for directions before the learned Single Judge for fixing the date for final arguments.

6. Original Side Appeals are, accordingly, dismissed in the aforesaid terms, leaving the parties to bear their own costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

sra

To

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

Copy to:

Mrs. Hemalatha Daniel
No.48/65, Mathalankulam Street,
Tiruvannamalai.

1 cc to M/s. Daniel & Gladys, Advocates, sr.52439
2 ccs to M/s. Satish Parasaran, Advocate, sr.52482, 52921

O.S.A. Nos. 298 and 299
of 2016

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