

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2016

CORAM

THE HONOURABLE MRS. JUSTICE **PUSHPA SATHYANARAYANA**

C.S.No.1134 of 2009

M/s.A.M.R.Rathinasabapathy and Bros.,
Represented by its Proprietor
Mr.R.Chandrakumar
(Amended as per order dated 15.07.2015
in A.No.4641 of 2015 and time extended dated
on 19.01.2016)
727, Periakulam Road,
Theni - 625 531 ... Plaintiff

Vs.

M/s.K.V.Traders
No.10, Flag Staff Street,
Royapuram,
Chennai 600 013 ... Defendant

PRAYER: Plaint under Order IV Rule 1 of O.S. Rules r/w.
Order VII Rule 1 of C.P.C. r/w.Sections 27 and 134 of the
Trade Mark Act, praying for (a) grant a permanent
injunction restraining the defendants, their men, agents,
servants, proprietors, partners, dealers, distributors,
stockists or anyone acting or claiming under them from
passing off the defendant's goods under the Trade Mark
'MAHARAJA' with or without any logo or device as and for
the goods of the plaintiff carrying the Trade Mark
"MAHARAJA" or in any other manner whatsoever.; b)
directing the defendants to deliver to the plaintiff all
the products, preparations, dies, blocks, articles,

literatures, advertisements, letterheads, key chain, stickers, cartons, labels, papers, polythene bags, other bags and all other objects bearing and containing the trade mark deceptively similar to the plaintiff which are in the defendant's possession or to the authorised representative of the plaintiff for destruction; c) to pass a preliminary decree in favour of the plaintiff directing the defendants to render accounts of profits made by them by use of the impugned trade marks or other similar marks thereof and a final decree be passed in favour of the plaintiff for the amount of profits found to have been earned by the defendants, after the latter has rendered accounts; and d) directing the defendant to pay the liquidated damages of Rs.15 lakhs (Rupees fifteen lakhs) to the plaintiff for the unlawful act complained of; and e) costs of the suit;

For Plaintiff : Mr.K.Rajasekaran

For Defendant : Mr.P.Gnanasekaran

JUDGMENT

The plaintiff and the defendant have filed a memo of compromise dated 08.03.2015 as per the following terms:

- 1. The plaintiff and the defendant have arrived at a settlement on the following terms and conditions and the plaintiff is represented by its proprietor*

R.Chandrakumar and the defendant is a partnership firm represented by its partner P.Vadivel Murugan.

2. The defendant admit and acknowledge that the plaintiff is prior adopter and the proprietor of the Trademark MAHARAJA, for various types dhal and filed application in No.1353770 in Class 30 for manufacture and sale of dhal and undertake not to any time resort to any proceedings in relation thereto including applying for opposition and rectification thereto before the appropriate forum.

3. The defendant undertake not to use the Trade Mark "MAHARAJA" [word per se] along with or without the Artistic work as a trademark in respect of any kind of dhal or advertise their goods using the Trademark MAHARAJA with immediate effect in relation to any existing company/firm or to be incorporated in the future. The undertaking shall also bind all the successors in interest of the defendant of whatever nature.

4. The defendant undertake to this Hon'ble Court not to advertise directly or indirectly or use the mark, or any other variation of the mark, artistic

work and / or trade Mark "MAHARAJA" in their pamphlets, catalogues, professional materials, labels, cartons, packing materials or in any other manner whatsoever and destroy the existing labels and other materials with immediate effect.

5. The defendant hereby undertake that the application for registration of their mark MAHARAJA that they have filed before the Registrar of Trade Marks, Chennai under No.801656 in class 30 is already abandoned and also undertake not to file any such applications for any similar trademarks as that of the plaintiffs at any time in future.

6. The defendant undertake to change their label and trademark to "MAANRAJA" the copy of the label is annexed as annexure A [English] Annexure [Tamil] with this compromise memo and immediately from the date of compromise the defendant will change their trade mark label as annexed. The size of the picture and the work should be in the same ratio when the trade mark label is printed in the Gunny Bag, cartons, packing materials, graffiti, advertisements, wall paintings or in any other manner and the size of the picture and the other words should not be reduced.

7. The defendant are to pay damages and will be liable for Civil and Criminal action for the violation or infringement of plaintiff's rights including the agreed terms under this Memo of Compromise and the defendant agree to undertake to bear the costs and exemplary damages of the same in such a contingency if any arises in future.

8. The defendant undertakes that if they are found to be in possession of any violative goods carrying the infringing trade mark MAHARAJA or any other deceptively similar trade mark, the goods can be impounded by the plaintiff at the cost of defendant.

9. Subject to the above undertaking tendered by the defendant, the plaintiff gives up their claim for costs of the proceedings and suit may be decreed in respect of relief claimed in para 14[A] of the plaint.

2. The above said terms of compromise are recorded. There will be a decree in terms of the above

said compromise. The memo of compromise shall form part of the decree. No costs.

sd/.P.S.N.J

10.08.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/28.01.2017

COURT OFFICER

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



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