

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CS.No.380 of 2009

OA.No. 442 of 2009

M/s. Mysore Tarpaulins by its Proprietor
Mr.Y.Veerabhadra, Mysore - 570 001

Plaintiff

Vs.

M/s. Mytarpaulins, by K.Pradeep Singh
Mysore - 570 001

Defendant

PRAYER: This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules read with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 for the reliefs as stated therein.

For Plaintiff : Mr.K.Rajasekaran

For Defendant : M/s.ARR Associates

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendant:-

- a) granting perpetual injunction restraining the defendant, their proprietor/partner, men, distributors, stockiest, servants, agents, retailers, representatives, or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in goods identical or deceptively similar under the trademark and /or trading style "MYTARPAULINS" or any other trademark and/or trading style resembling the plaintiff's registered trade mark "MYSORE TAURPAULINS" or any other mark which is identical or deceptively similar to the plaintiff's registered trade mark "MYSORE TAURPAULINS" so as to infringe the Trade Mark of the plaintiff,

- b) directing the defendant 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 and in the defendants possession to the authorised representatives of the plaintiff for destruction;
- c) to pass a preliminary decree in favour of the plaintiff directing the defendant 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 defendant, after the latter has rendered accounts; and
- d) directing the defendant to pay costs of this suit.

2. The Plaintiff had come to this court, seeking the reliefs as stated above, on the ground that by virtue of its trademark MYSORE TAURPAULINS, it had been using the same over the years and had built up good will and reputation. The Defendant had opened a shop under the name MYTARPAULINS. It is stated that this was with a mala fide intention to infringe the mark and reputation of the Plaintiff. The Plaintiff has further stated that the cause of action arose at Chennai where the Plaintiff's mark had been registered and thereafter, from the year 2009, when the Defendant had started imitating the Plaintiff's registered trademark MYSORE TARPALINS by the use of the trademark MYTARPAULINS. Subsequently, among the documents filed by the Plaintiff, the Plaintiff has filed a bill copy of the Defendant dated 23.3.2009.

3. On a careful perusal of the pleadings, it is revealed as is seen in the short cause title that the Plaintiff and the Defendant are engaged predominantly in business at Mysore out of the jurisdiction of this court. In this

regard, the decision of the the Honourable Full Bench of this Court reported in **2014-6-CTC-577 (Duro Flex Limited Vs. Duroflex Sittings Systems)** can be referred to with much advantage. In the said decision, in paragraph 44 and 49, it had been determined as follows:-

“44. We are in agreement with the submission for the learned counsel for the respondents that the mere registration of the trademark at Chennai would not create the complete cause of action at Chennai. The registration of the mark is a fact, but cause of action would consist of a bundle of facts. Thus, more than one fact would have to be taken into account to determine the location of a particular trademark which connects the trademark to the place.

Again in paragraph 49, the Full Bench had given their conclusion as follows:

49. We thus conclude on this question by observing that the fact that the situs of the registration of trademark is with the Trademark Registry at Chennai by itself would not be sufficient to give rise to cause of action to institute the suit in the Madras High Court, though it may be a factor to be taken into account, among the bundle of facts, for purposes of determining the situs of the cause of action. The legal view to the contrary expressed in the various judgements referred to by the learned counsel for the appellant thus stands over-ruled.

4. The above conclusion was with respect to the first question raised before the Full Bench, namely, (i) whether the situs of the Trade Mark Registry in Chennai and the name being on its register would itself give rise to cause of action to institute a suit in the Madras High Court. It is, thus, seen that in accordance with the principles laid down by the Honourable Full Bench of this Court in the decision cited supra, even though the trademark of the Plaintiff had been registered at Chennai, since their business is predominantly at Mysore, I hold that the plaint should be returned to the Plaintiff to be filed in the court of competent jurisdiction. If any issue arises with respect to limitation, I

C.V.KARTHIKEYAN, J.

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further hold that the Plaintiff is protected under Section 14 of the Limitation Act, 1963. Consequently, the plaint is returned to the Plaintiff for re-presentation. Time for re-presentation of the plaint before the competent court is on or before 28.3.2017. Accordingly, this civil suit is closed. No costs. Consequently, connected application is also closed.

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