

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM

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

C.S.No.217 of 2016

and

O.A.Nos.293, 294 and 295 of 2016 and A.No.1973 of 2016

Apollo Hospitals Enterprise Ltd
rep. by its Authorised Signatory ... Plaintiff

Vs

Sai Apollo Medicals ... Defendant

Plaint filed under Order VII Rule 1 of CPC, Order IV
Rule 1 of O.S. Rules r/w Sections 27, 28, 29, 134 and 135
of the Trade Marks Act, 1999.

For Plaintiff : Mr.Vineet Subramani

For Defendant : Mr.R.Kalyan Kishen Singh

JUDGMENT

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The plaintiff has filed the suit, seeking 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", "Apollo Clinic" and "Apollo Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" 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 their services as that of the Plaintiff's by either using the Plaintiff's trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" 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" "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" "Apollo Pharmacy", or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark "Apollo", "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.Learned counsel appearing for both sides submitted that both the parties have arrived at a settlement between themselves and they filed a 'consent terms' signed by the parties and attested by their respective learned counsel before this Court.

3.Learned counsel appearing for the plaintiff as well as for the defendant submitted that the suit may be decreed in accordance with the 'consent terms' filed on 20.06.2016. The relevant paragraph of the said 'consent terms' read as under:

11. In the above circumstances, the parties jointly pray that this Hon'ble Court may be pleased to dispose CS No.217 of 2016 as follows:

11.1 That it be declared the Plaintiff is the sole, exclusive and absolute owner of

the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

11.2 That it be declared no person is entitled to use the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" in relation to any goods or services without the prior permission of the Plaintiff.

11.3. That it be declared the use by any person other than the Plaintiff of the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" constitutes an unauthorised and illegal use of the said marks and an infringement of the registered trademarks thereof.

11.4. That it be held the Defendant had infringed the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" and had committed passing off of its goods and services as those of the Plaintiff leading to confusion in the minds of the public.

11.5. Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner infringing the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or indirectly or by using

any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

11.6. Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner passing off goods and services by using the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or indirectly or by using any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

11.7. Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner using the mark/name or doing business under the name and style of "Sai Apollo Pharmacy".

11.8. That the Defendant be directed to destroy all materials in its possession that bear the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital"

either directly or indirectly or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

11.9. That the Defendant shall be liable to pay damages without contest for any use of the trademarks "Apollo", "Apollo Pharmacy and "Apollo Hospitals" by the Defendant after the date of entering into this consent terms.

11.10. No costs."

4. Accordingly, the suit stands decreed in accordance with the 'consent terms' as stated above and the consent terms filed on 20.06.2016 shall form part of the decree. No costs. Consequently, connected applications are closed.

sd/.M.M.S.J

22.06.2016

//Certified to be a true copy//

Dated this the day of 2016.

R.s/21.12.2016

COURT OFFICER

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