

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2016

CORAM

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

C.S.No.665 of 2013

and

O.A.No.744 of 2013

M/s.ZARI rep by its Partner
Ms.Anju Shankar

... Plaintiff

vs.

M/s.Zari Silk India Pvt. Ltd
10/11, Narayan Singh Circle,
Jaipur - 302 004.

... Defendant

Civil Suit is filed under Order VII Rule 1 of the
Civil Procedure Code r/w Order IV Rule 1 of the Original
Side Rules r/w Section 142 of the Trade Marks Act, 1999.

For Plaintiff : Mr.Arun C. Mohan

For Defendant : Mr.K.Prem Chander

JUDGMENT

The present suit has been filed for the
following reliefs:

the defendant through its counsel vide legal notice dated 12.09.2013 is unjustified and groundless.

(b) a perpetual injunction restraining the defendant by itself, its servants, agents, distributors, importers, stockists, clearing and forwarding agents, successors, assigns or any and/or all of them from in any manner threatening the plaintiff herein, directly or indirectly in any manner by notices, advertisements, circulars, etc., regarding use of the mark ZARI and thereby interfere and/or harm the business of the plaintiff in any manner whatsoever.

(c) direction to the defendant to compensate the plaintiff a sum of Rs.1,00,000/- or such other amount as this Hon'ble Court may determine after the records are produced for the damages sustained on account of the unjustified and groundless threats made by the defendant.

(d) an order as to costs of the proceedings.

2.The suit has been filed by the plaintiff inter alia seeking to invoke Section 142(1) of the Trade Marks Act, 1999. However, under Section 142(2), the rigour of Section 141(1) would not apply, if the registered proprietor of the trade mark acting in pursuance of sub section 1 of Section 52 of the Act with due diligence commences and prosecutes

the action against the person threatened for infringement of the trade mark.

3. Admittedly, in the case on hand, the defendant is a registered mark holder for the mark "Zari" in Class 25, 27, 35 and 40. The defendant also initiated the suit before the District Court, Jaipur in C.S.No.1982 of 2013. Initially, an order of injunction was obtained in I.A.No.1143 of 2013. It appears that the said suit for infringement has already been decreed.

4. It is also to be noted that the very leave sought for in the present suit has become infructuous. Thus, the basis upon which the present suit has been filed is no longer available. As the aforesaid facts are not in dispute, the present suit has been dismissed. However, dismissal of the present suit will not stand in the way of the plaintiff herein to work out the remedy against the judgment and decree rendered by the District Court, Jaipur, if so advised. No costs. Consequently, connected application is closed.

Sd/ M.M.S.J
03.08.2016

//Certified to be a true copy//
Dated this the day of 2017