

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 10TH DAY OF MAY 2017

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A.Nos.1079 and 1080 of 2016

and

A.No.262 of 2017

and

A.No.6339 of 2016

in

C.S.No.907 of 2016

M/s.Cotton House,
represented by its Partner,
Mr.R.Venugopal,
Old No.68, New No.145, L.B.Road,
Thiruvanmiyur, Chennai 600 041. ...Applicant/Plaintiff
(O.A.Nos.1079 and 1080 and 6339 of 2016)

Vs.

M/s.New Cotton House,
represented by its Proprietor,
Mr.Nijam Sintha,
No.25, L.B.Road, Adyar,
Chennai 600 020. ..Respondent/Defendant
(O.A.Nos.1079 and 1080 and 6339 of 2016)

O.A.No.1079 of 2016:

Original Application praying that this Hon'ble Court be pleased to grant an order of ad interim injunction restraining the Respondent, his partners servants agents men or anyone claiming through him from selling distributing, offering, advertising or using the mark 'NEW COTTON HOUSE' in any form or variation in English Language and or any other Vernacular Language or similar sounding names or any other mark deceptively similar to the Applicants mark 'COTTON HOUSE' with identical colour scheme get up and layout in the course

of their Trade /services and passing off goods or services or enabling others to pass off the goods or services as the goods of the applicant or as service provided by the applicant pending disposal of the suit.

O.A.No.1080 of 2016:

Original Application praying that this Hon'ble Court be pleased to grant an order of ad interim injunction restraining the Respondent, his partners, servants, agents, man or anyone claiming through or under him from in any manner infringing the registered Trademark / Service Mark of the applicant viz. 'COTTON HOUSE' in any form deceptively similar to the business name of the applicant pending disposal of the suit.

A.No.262 of 2017

M/s.New Cotton House,
represented by its Proprietor,
Mr.Nijam Sintha,
No.25, L.B.Road, Adyar,
Chennai 600 020.

....Applicant

Vs

M/s.Cotton House,
represented by its Partner,
Mr.R.Venugopal,
Old No.68, New No.145, L.B.Road,
Thiruvanmiyur, Chennai 600 041.

...Respondent

Application praying that this Hon'ble Court be pleased to vacate the exparte injunction granted in O.A.No.1079 and O.A.No.180 of 2016 dated 29.11.2016.

A.No.6339 of 2016:

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to visit the premises of the Respondent at No.25, L.B.Road, Adyar, Chennai 600

020 and such other premises in the control of the respondent and to seize and take into actual physical custody of all the infringing labels, banners, business materials, goods, invoices, books of accounts, bills, receipts, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationery and all other materials bearing the deceptive mark "NEW COTTON HOUSE' pending disposal of the above suit.

These Original Application along with application coming on this day before this court for hearing the court made the following order:

The suit has been filed for the following reliefs:-

(a) For a permanent injunction, restraining the defendant, his men, servants, agents officers, employees, legal representatives, successors-in-business, assigns or anyone claiming through or under him from in any manner infringing the registered Trade/Service Mark of the plaintiff viz., "COTTON HOUSE" or any other trademark deceptively similar to the registered service mark/trademark "COTTON HOUSE", as a trade/service mark or in any other manner whatsoever infringing the said registered trademark of the plaintiff;

(b) For a permanent injunction restraining the defendant his men, servants, agents, or anyone claiming

through them from marketing, distributing offering, advertising or using the Mark "NEW COTTON HOUSE" in any form or variation in English Language and or any other Vernacular Language or similar sounding names or any other mark deceptively similar to the plaintiff's mark "COTTON HOUSE" with identical colour scheme, get up and layout in the course of their Trade/services and passing off their goods or services or enabling others to pass off their goods or services as the goods and services of the plaintiff;

(c) For a mandatory injunction directing the defendant to deliver to the plaintiff all the business materials, goods, invoices, bills, receipts, books of accounts, cartons, advertisement materials, hoardings, letter-heads, visiting cards, office stationery and all or any other materials containing / bearing the Mark "NEW COTTON HOUSE" or any other deceptively similar mark or labels for destruction;

(d) directing the defendant to pay to the plaintiff a sum of Rs.26,00,000/- by way of damages for the acts of infringement and passing off;

(e) for a preliminary decree directing the defendant

to render an account for profits made by him by using the trademark "NEW COTTON HOUSE" or any mark similar to that of the plaintiff's trademark "COTTON HOUSE" and for a final decree to be passed in favour of the plaintiff for the amount of profits found to have been made by the defendant after rendering accounts; and

(f) for costs of the suit;

2. Along with the suit, the plaintiff has filed O.A.No.1079 of 2016 and O.A.No.1080 of 2016, seeking interim injunction. The defendant's Application No.262 of 2017 is to vacate the exparte injunction granted in the above Original Applications, dated 29.11.2016.

3. The applicant / plaintiff has filed an Application No.6339 of 2016, to appoint an Advocate Commissioner to visit the premises of the respondent at No.25 LB Road, Adyar, Chennai-600 020 and such other premises in the control of the respondent and to seize and taken into actual physical custody of all the infringing labels, banners, business materials, goods, invoices, books of accounts, bills, receipts, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationery and all other materials bearing the deceptive mark "NEW COTTON HOUSE", pending

disposal of the suit.

4. For sake of convenience, the parties herein are referred as per their status in the suit.

5. The facts in nutshell are as follows:-

The plaintiff was originally established as a sole Proprietorship in the year 2002, by its founder R.Venugopal, who had experience in the field of readymade garments. Later, on 01.04.2015, the Proprietorship concern was constituted as partnership firm and registered as Document No.655 of 2015 in the Office of the District Registrar of Firms, Chennai. The plaintiff firm has been registered under the Tamil Nadu General Sales Tax Act vide TNGST No.0923244 in the year 2002. The plaintiff uses its mark "COTTON HOUSE" as its domain name in website www.cottonhouse.co.in. The plaintiff firm provides exclusive gamut of men's wear, ladies dress etc. The plaintiff applied for registration of the trademark in Application No.1701371 and the same has been registered on 02.01.2013 by the Trademark Registry, Chennai under Certificate No.1085695 in Class 35 in respect of goods service to the retail shop of readymade garments and textiles. The plaintiff has made very many efforts and put in enormous handwork apart from spending substantial amount of Rs.62,95,131/- towards advertisement and promotions of the business for the

period from 2002 to 2015.

6. The plaintiff would further state that the plaintiff firm caters to the need of all the segments of society viz., the rich, middle class and lower middle class. The plaintiff is the prior adopter and user of the mark "COTTON HOUSE" from the date of inception of the business. The plaintiff has been continuously using the mark and thereby earned goodwill and reputation. The trademark of the plaintiff has acquired popularity and demand due to efficacy and reliability.

7. The plaintiff would allege that on 22.07.2016, the defendant with mala-fide intention opened its retail showroom in the same street under the name and style of "NEW COTTON HOUSE", which is an identical trademark of the plaintiff. By just adding the word "NEW" as a prefix, the defendant is using the deceptively similar mark of the plaintiff with the malafide intention to cause confusion and deception in the trade and mind of the public to make unlawful and illegal gains. The intention of the defendant in using the trademark/trade name deceptively and phonetically similar to the plaintiff's mark is illegal, as there is no justification for the adoption of the impugned trademark "NEW COTTON HOUSE". The defendant with mala-fide intention with a view to monetarily enrich himself, resulting in commercial

exploitation in the goodwill and reputation attached to the plaintiff.

8. It is further averred that the plaintiff and the defendant are in the same business of selling identical goods, products and providing the same service. The conduct of the defendant is nothing but fraud on the public calculated to deceive the customers of the plaintiff and to make them to believe that the defendant's business, services and the goods dealt with by him are connected with the plaintiff. The blatant act of the defendant is nothing, but, a mis-representation, which is bound to cause confusion amongst public and leading to passing off the defendant's trademark as that of the plaintiff's mark. Since the defendant is selling substandard goods that would further cause irreparable loss and injury to the reputation of the plaintiff.

9. The defendant filed a counter affidavit stating that the plaintiff "COTTON HOUSE" came into existence only on 01.04.2015, whereas, the defendant has been doing the business in the name of "NEW COTTON HOUSE" in various places of Chennai from 2007 onwards. The suit itself is liable to be dismissed on the ground of inordinate delay and laches. The plaintiff got acquainted with the fact that the defendant has been running the business in the

name of "NEW COTTON HOUSE" is now estopped from claiming any right at the belated stage.

10. It is further stated that the defendant never infringed the trademark of the plaintiff since the plaintiff and the defendant are dealing with several garments, groceries, plastic and other items of different brands. Neither the plaintiff nor the defendant have produced or manufactured any goods of similar nature. So, the plaintiff cannot claim right of trademark over the product of various goods of several companies and prayed for dismissal of the application.

11. The plaintiff filed a reply statement stating that the business of the plaintiff was commenced in the year 2002. The Deed of Partnership within the family members mentions about the amalgamation of three proprietary concerns and the constitution of the "COTTON HOUSE" by transferring the movable assets including the copyright of name owned by the deponent for mutual benefit of all the partners concerned, therefore, the plaintiff firm has every right to file the present suit. It is further stated that the plaintiff's trademark was registered and the Certificate of Registration was issued only on 02.01.2013. The suit for infringement could be filed only by the proprietary of the registered trademark and the suit filed in the year 2016 cannot be termed as

inordinate delay.

12. It is further stated that the defendant has shifted his business from Chintadripet to Adyar only on 22.07.2016, so question of delay or laches would never arise in the present case. The plaintiff has satisfied all ingredients for grant of interim injunction under Order 39 Rules 1 and 2 of CPC and therefore, the plaintiff is entitled for an order of interim injunction.

13. Mr.S.Rajasekar, learned counsel for the plaintiff would submit that the plaintiff firm "COTTON HOUSE" was established as a sole Proprietor in the year 2002 at Thiruvananthapuram to deal with readymade garments and allied products. The firm was constituted by a partnership, dated 01.04.2015. The word "COTTON HOUSE" is a coined word, not found in the dictionary, chosen by the plaintiff with an intention to register the trademark in the minds of the customers and the public. The service mark "Cotton House" has gained immense goodwill and reputation. The sale of the plaintiff's product have steadily increased. In 2003, the sale turnover of the plaintiff was Rs.7,11,605/- and in the year 2014-15, the figure was Rs.22,36,01,041/-, correspondingly, the profit of Rs.2,95,329/- in 2002-03 has raised to Rs.2,88,40,472/- for the year 2014-15 and the advertisement expenses raised from Rs.31,600/- in 2002-03

to Rs.10,46,919/- in 2014-15.

14. The learned counsel would further submit that the mere comparison of the trademark and service mark would reveal that the defendant had unscrupulously imitated the mark of the plaintiff by adopting "NEW COTTON HOUSE", which is identical and similar to the registered mark of the plaintiff. The get up of "NEW COTTON HOUSE" is also deceptively similar to the plaintiff mark. The defendant adopted the word "New" which is written in a small font as a prefix to the plaintiff's registered trademark is an imitation in all respects.

15. It is further contended that the defendant in unequivocal terms admitted that he has commenced the business under the name "NEW COTTON HOUSE" only from 2007 onwards; that the documents produced by the plaintiff would show that the plaintiff is a prior use of the trademark and on the other hand, the documents produced by the defendant would reveal that he was never in continuous business in Adyar and he has changed the shop in several times and opened the latest show room at No.25 LB Road, Adyar, Chennai-20, which is hardly half a kilometer away from the plaintiff's show room on 22.07.2016; that after filing the suit, it is learnt through the counter affidavit that similar shops at

various places were opened by the defendant and all the shops were opened only recently. The learned counsel relying on the decision reported in **2004 (3) SCC 90 [Midas Hygiene Industries Pvt. Ltd and another Vs. Sudhir Bhatia and others]** and **AIR 1990 Delhi 19 [Hindustan Pencils Private Limited vs. India Stationery Products Company]**, submitted that in the case on hand, there is no delay and laches on the part of the plaintiff in filing the suit and mere delay in bringing an action is not a ground to refuse to grant interim injunction.

16. It is further submitted that the contention of the defendant that the plaintiff itself is infringing the trademark of the third party cannot be accepted. The plaintiff is a registered proprietor of the trademark "COTTON HOUSE" under Class 35, but a similar name has been registered by an application, dated 30.12.2004, by one T.Mohammed Rafeaque, Nilambur, Mallapuram, Kerala under Class 25. The plaintiff has started his business in the year 2002 and there was no objection when the plaintiff's trademark was registered in Class 35. So, the defense taken by the defendant can never stand the test of law in view of the judgment reported in **ILR (2009) 111 Delhi 758 [Coolways India vs. Princo Air Conditioning and Refrigeration]**.

17. Per contra Mr.M.Liagat Ali, learned counsel for

the defendant would urge that both the plaintiff and the defendant are using similar trademark for more than 10 years and if an interim injunction is granted on merits, it will amount to decision of the suit itself and in that event, irreparable loss and hardship would be caused to the defendant. The learned counsel further submitted that the entire pleadings and the trial of the suit may be expedite instead of deciding the main issue in the interim stage itself. The trademark was registered in the name of R.Venugopal on 02.01.2013 and the trademark has not been changed to any other person in the Trademark Registry. Since the partnership firm is a separate entity, registered on 01.04.2015, the plaintiff has no locus standi to file the suit. It is further contended that Section 33 of the Trademarks Act, stipulates 5 years period to initiate action against any infringement and in the judgment reported in **(1994) 2 SCC 448**, the injunction application was rejected, since the suit was brought with a delay of four years on the ground of acquiescence. Section 33 of the Act also recognizes the right of a prior user of a trademark. So, even the plaintiff is the registered owner of the trademark cannot restrain the defendant, who is a prior user of a trademark.

18. It is further submitted that the defendant is doing the business in the name and style of "NEW COTTON

HOUSE" for more than 10 years in the City in several places and employed more than 200 persons. The defendant has also spent huge amount and the present suit is filed on business rivalry and jealous, so the plaintiff is not entitled for interim injunction. The learned counsel has also relied upon the following the judgments in support of his contentions:-

(1) **AIR 1983 NOC 14 DELHI [Aryavart Overseas Private Ltd., New Delhi vs. Kay Aar Biscuits Private Limited, Delhi]**

(2) **1988 (34) DLT 227 [Jain Rubber Industries v. Crown (P.) Ltd.]**

(3) **(1994) 2 SCC 448 [Power Control Appliances vs. Sumeet Machines Pvt. Ltd.]**

(4) **AIR 1986 Delhi 343 (1) [Shri Swaran Singh Trading as Appliances Emporium v. M/s.Usha Industries (India) New Delhi]**

(5) **AIR 1993 Madras 120 [Power Control and Appliances Co. and another v. Sumeet Machines Pvt. Ltd]**

(6) **AIR 1988 Delhi 282 [P.M.Dissels Pvt. Ltd., v. Thukral Mechanical Works]**

19. Heard both and perused the materials available on record.

20. The question that arises for consideration in

the applications as to whether the plaintiff has established prima face case for grant of interim injunction.

21. There is no quarrel with regard to the proposition that registered proprietor of the trademark cannot interfere / disturb the business of the mark of the prior user. In the case on hand, the plaintiff has averred that he has been continuously adopting the mark "COTTON HOUSE" since 2002. To fortify his case, the plaintiff has produced the documents:-

(i) Registration Certificate issued by CTO (Form-D1), dated 28.08.2002, (ii) Registration Certificate issued by CTO (CST), dated 28.08.2002, (iii) Proceedings of the Commercial Tax Officer, Thiruvananthapuram, dated 28.08.2002, (iv) Assessment Orders from 15.09.2003 to 20.02.2014, (iv) Profit and Loss account for the plaintiff for the financial year 2002-2015. On the other hand, It is specifically pleaded by the defendant that the defendant commenced the business in the name of the trademark impugned in the year 2007 and continues the business since then. Hence, the contention of the defendant, he is the prior user cannot be countenanced.

22. It is not in dispute that one of the partners of the plaintiff, viz., R.Venugopal applied for registration

of the trademark "COTTON HOUSE" on 20.06.2008 and registration certificate came to be issued on 2nd January 2013 and the same is valid till 20.07.2018. According to the plaintiff on 01.04.2015, a deed of partnership was entered into with the family members of Mr.Venugopal, thereby three proprietary concerns have amalgamated and all movables including trademark owned by R.Venugopal were transferred to the plaintiff firm. This Court in similar facts in **Narmada Chemicals (P). Ltd. Vs. Siva Sakthi Soap Works**, observed that the applicant company has prima facie proved that they are having the registered trademark. Whether such assignment is valid is a question that can be gone into at the time of trial and on that score, injunction cannot be refused. I am of the considered view that the decision is squarely applicable to the case on hand. Further, it is seen that maintainability of the suit on this ground was not raised in the counter, but during the hearing it was sought to be argued, as the plaintiff is not the registered proprietor, the suit could not be maintained.

23. It is next contended that the defendant had imitated the trademark of the plaintiff by adopting the name "NEW COTTON HOUSE", which is identical and similar to the registered mark of the plaintiff. The defendant has also used the same colour combination.

24. It is an admitted fact that the defendant has incorporated the whole of the plaintiff's registered trademark and adopted the word "NEW" as a prefix. Hon'ble Supreme Court in the judgment reported in **AIR 1969 (2) SCC 727 [Ruston and Hornsby Ltd., vs. Zamindara Engineering Co.,** has held that adding "India" to the respondent Trademark RUSTON is of no consequences. In **AIR 1970 SC 146 [K.R.Chinna Krishna Chettiar vs. Sri Ambal and Co.,]** adding of SHRI as a prefix of AMBAL does not make any change and the mark of the defendant was considered to be deceptive and infringement of trademark of the plaintiff. The Gujarat High Court in similar facts, granted interim injunction following the decisions of the Supreme Court in the case of **Nanavati Soap Vs. Shanthi Kutir Khadi Gram Udhog.**

25. It is to be noted that the plaintiff uses capital letters in white colour for the English word "COTTON HOUSE" and red colour for Tamil word on a blue background, whereas the defendant used red colour for the English word COTTON and blue colour for the English word "HOUSE" by adding "NEW" as a prefix in a small font. Considering the above undisputed facts and in the light of the categorical pronouncements of Apex Court, I find force in the submission of the learned counsel for the

plaintiff that the impugned trademark of the defendant is deceptively similar and the defendant has infringed the registered trademark of the plaintiff.

26. The defendant has objected the claim of the plaintiff mainly contending that the defendant has been carrying on the business from 2007 and as per Section 33 of the Trademarks Act, the present suit is liable to be dismissed on the ground of delay. The learned counsel for the defendant has also relying on the following decisions in support of his contention:-

(1) AIR 1983 NOC 14 DELHI [Aryavart Overseas Private Ltd., New Delhi vs. M/s.Kay Aar Biscuits Private Limited, Delhi]

"(E) Trade and Merchandise Marks Act (43 of 1958), Sections 28, 106 - Relief of injunction who can claim.

To claim relief of injunction under Section 28 read with Section 106 of the Act, the plaintiff must be registered proprietor of the trademark. Filing of the applications for the registration of the trademarks, however, does not create any right in their favour and no injunction can be granted on that basis. The fact that the plaintiffs were the owners of the copyrights is of the consequence."

(2) 1988 (34) DLT 227 [Jain Rubber Industries v. Crown (P.) Ltd.]

"4. Under the provisions of Section 28 of the Trade Marks Act, the registered owner of a trade mark, when the registration is validly granted has the exclusive right to use the said trade mark. One of the exceptions to this rule is contained in Section 33 which, inter alia, provides that if another person is using the same or identical trade mark earlier in the point of time to the user or the registration of the trade mark by the registered proprietor then, because of the earlier user, the registered proprietor cannot prevent such a user."

(3) (1994) 2 SCC 448 [Power Control Appliances vs. Sumeet Machines Pvt. Ltd.]

"42. The plea of quasi-partnership was never urged in the pleading. As regards copyright there is no plea of assignment. The High Court had failed to note the plea of honest and concurrent user as stated in Section 12(3) of 1958 Act for securing the concurrent registration is not a valid defence for the infringement of copyright. For all these reasons we are unable to support the judgments of the High Court under appeal. We reiterate that on the material on record as is available at present the denial of injunction, once the infringement of trade mark, copyright and design is established, cannot be supported.

Pending suit, there will be an injunction in favour of the appellants (the plaintiffs). All the civil appeals will stand allowed. No cost."

(4) In **AIR 1986 Delhi 343 (1) [Shri Swaran Singh Trading as Appliances Emporium v. M/s.Usha Industries (India) New Delhi]**, the Division Bench of Delhi High Court has observed that the Court has to protect the registered trademark and the delay in seeking relief is normally not a bar. However, if it was a case of similar as opposed to the same mark, the concurrent user coupled with a delay might be a good ground for refusing an injunction.

(5) In **AIR 1993 Madras 120 [Power Control and Appliances Co. and another v. Sumeet Machines Pvt. Ltd]**, this Court has taken the similar view.

(6) **AIR 1988 Delhi 282 [P.M.Dissels Pvt. Ltd., v. Thukral Mechanical Works]**, in that case, the plaintiff was the registered proprietor of the trademark "Fieldmarshal" in respect of diesel oil engines and the defendant was also the registered proprietor of trademark "Fieldmarshal", but in respect of centrifugal pumps etc., The Delhi High Court has taken the view that since both are registered proprietors of identical trademark, the plaintiff is not entitled for interim injunction, during

the pendency of the suit.

27. Section 33 of the Trademarks Act is extracted below for easy reference:-

"Effect of acquiescence:- (1) Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark, being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark -

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used, unless the registration of the later trade mark was not applied in good faith.

(2) Whether sub-section (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark, or as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark may no longer be invoked against his later trade mark."

A plain reading of the above Section would show that it would apply to the registered proprietors of trade marks. Sub Section (1) and (2) of Section 33 deals with the rights of the proprietors of earlier trademarks and subsequent trademarks. However, indisputably in the

instant case, the defendant is not a registered proprietor of a trademark, so, he cannot seek the help of Section 33 to oppose the case of the plaintiff. Further, it is not admitted by the plaintiff, they are aware of the use of the impugned trademark by the defendant for a continuous period of five years.

28. In the case on hand, the trademark of the plaintiff was registered on 02.01.2013. With regard to cause of action, it is specifically stated that the defendant opened a showroom on 22.07.2016 in the name and style of "NEW COTTON HOUSE" at No.25, LB Road, Adyar, Chennai near to the plaintiff showroom, for filing the suit. In the plaint, nowhere, the plaintiff admitted that the defendant has been carrying on business in the name of "NEW COTTON HOUSE" from 2007. Further, no material has been placed by the defendant to show that he has been doing business from 2007 at No.25, LB Road, Adyar with the knowledge of the plaintiff.

29. The plaintiff also relies on the pamphlets issued by the defendant for opening the shop at LB Road, in June 2016. The plaintiff has also enclosed the pamphlets at their typed-set at Page Nos.210 and 211, which has not been denied by the defendant. In the decision referred by the learned counsel for the plaintiff reported in **(1994) 2 SCC 448 [M/s.Power**

Control Appliances and others vs. Sumeet Machines P. Ltd.,], 1997 (1) SCC 99 [*Bengal water Proof Limited Vs. Bombay Waterproof Manufacturing Company and another*], 2005 (31) PTC 451 [*Hasnmkhrai and Co. Vs. Raj Tea & Co.*, ILR (2007) (1) Delhi 409 [*Ansul Industries Vs. Shiva Taboco Company*], ILR 2009 III Delhi 758 [*Anjani Kumar Goenka vs. Goenka Institute of Education and Research*] and the Division Bench of this Court in (2002) 24 PTC 646 [*Needle Industries (India) Limited Vs. Sanjay Jaiswal*], have taken the consistent view that mere delay in initiating action does not on that score alone disentitle the owner of the mark from seeking an injunction on the ground of passing off.

30. In (1994) 2 SCC 448, the decision relied on by the learned counsel for the respondent does not help the case of the respondent. In that case, the Hon'ble Supreme Court, after considering a number of earlier judgments has granted interim injunction in favour of the plaintiff. In view of the subsequent decisions of the Supreme Court referred by the learned counsel for the plaintiff and the Division Bench of this Court, referred supra, with great respect, I am not able to follow the judgments referred by the learned counsel for the respondent.

31. In view of my findings supra, that the defendant

has infringed the registered trademark of the plaintiff and passing off the goods as that of the plaintiff, I am of the opinion that the plaintiff has made out a strong prima-facie case, for granting interim injunction.

32. Considering the averments made in the petition and the submissions made by the learned counsel for the plaintiff, I am of the opinion, in order to find out whether the defendant is selling the goods by using the deceptively similar trademark of the plaintiff, Advocate Commissioners have to be appointed.

33. Accordingly, (1) Mrs.M.Nirmala Murugan, Advocate (Cell No.9677063787) having office at Woman Lawyer Association, High Court Buildings, Chennai-600 104 and (ii) Mr.C.A.Mohan Kumar, (Cell No.9787704646) having office at No.247, Additional Law Chambers, High Court, Madras, are appointed as Advocate Commissioners. The Advocate Commissioners shall visit the premises of the respondent and to seize and take into actual physical custody of all the infringing labels, banners, business materials, goods, invoices, books of accounts, bills, receipts, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationery and all other materials bearing the deceptive mark "NEW COTTON HOUSE".

34. The applicant / plaintiff in A.No.6339 of 2016,

is directed to pay a sum of Rs.50,000/- (Rupees fifty thousand only) to each of the Advocate Commissioners as initial remuneration. The Advocate Commissioners are entitled to seek police protection, if necessary, from the concerned local jurisdictional police. The Advocate Commissioners shall file their reports with regard to execution of the warrant.

35. Post Application No.6339 of 2016 on 07.06.2017.

36. Accordingly, both the Original Applications filed by the plaintiff in O.A.Nos.1079 and 1080 of 2016 are allowed and the vacate stay filed by the defendant in Application No.262 of 2017 is dismissed.

sd/.M.K.K.S.J

11.05.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/11.05.2017

COURT OFFICER

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