

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.25 of 2011

M/s.Aloha India
(A Division of K.K.Academy (P) Ltd.,
a Company incorporated under the
Companies Act, 1956 and represented herein by its
Authorised Signatory Mr.N.Jayakumary
"Deccan Heritage"
No.521, First Floor
Anna Salai, Nandanam
Chennai

... Plaintiff

Vs.

Brilliant Academy
represented herein by its Partners
Mr.Rajesh R Gohel and Ms.Niyati N Gohel
A/13, Zamzhar Apartment
Bhavya Park
Bopal – Ahmedabad

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, read with Section 134 of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 seeking permanent injunction restraining the defendant, their men servants agents or anyone claiming through or under them from in any manner infringing the plaintiffs' Trade Mark "ALOHA" by using the offending Trade Mark ALOHA or any other mark or marks which

are identical or similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark ALOHA by offering mental arithmetic and abacus system of education books, study materials, compact disks or in any manner advertising the same, permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiffs' Copyright over the Trade Mark "ALOHA" its course materials, books, study materials etc., by using the offending Trade Mark ALOHA or any other mark or marks which are identical or similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark "ALOHA" by offering mental arithmetic and abacus system of education books, study materials, compact disks or in any manner advertising the same, permanent injunction restraining the defendant, their men, servants agents or anyone claiming through or under them from in any manner passing of their services or course programs or books and materials as that of the plaintiff's by using the offending Trade Mark "ALOHA" as and for the celebrated course program of the plaintiff's Trade Mark "ALOHA" or by using any other Trademark which is similar or deceptively similar to that of the plaintiff's said trade mark, directing the defendants to render a true and faithful account of the profits earned by them though the business under the offending trademark "ALOHA" and directing payment of such profits to the plaintiff by way of damages for passing off committed by the defendants, directing the defendants to surrender to the plaintiff the entire stock of books, register of accounts, abacus, blocks, course materials etc with Trade Mark "ALOHA" together with cartons, printed matters, brochures, sign boards, name board etc., bearing the offending Trademark for destruction and for costs of the suit.

For Plaintiff : Ms.N.Devi

For Defendant : Set ex parte

JUDGMENT

Learned counsel on record for the plaintiff Ms.N.Devi is before the Court.

2. Before hearing the learned counsel for plaintiff, I wanted to satisfy myself that this suit will qualify to be heard by this Commercial Division.

3. A perusal of the plaint averments and the submissions made by the learned counsel for plaintiff in this regard reveal that the suit is one for alleged infringement of trademark and alleged infringement of copyright. To be noted, suit pertains to alleged infringement of registered trademark. Therefore, in the light of Section 134 (1) of Trademarks Act, 1999 and Section 62(2) of Copyright Act, this suit qualifies to be heard by this Commercial Division under first proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), (hereinafter referred to as Act 4 of 2016).

4. Having expressed the intention of this Commercial Division to exercise jurisdiction, I heard the plaintiff's counsel and acceded to the request of the plaintiff's counsel, the details of which are as follows.

5. It is submitted by the learned counsel for the plaintiff that she has instructions from the plaintiff to withdraw the suit.

6. As only a very minimal amount has been paid as Court fee, it is submitted that no orders regarding refund of Court fee is required. Learned counsel on record for the plaintiff has also made an endorsement regarding withdrawal in the Court bundle.

This is i.e., C.S.No.25 of 2011 is dismissed as withdrawn. No costs.

सत्यमेव जयते

13.12.2017

Speaking/Non-Speaking order

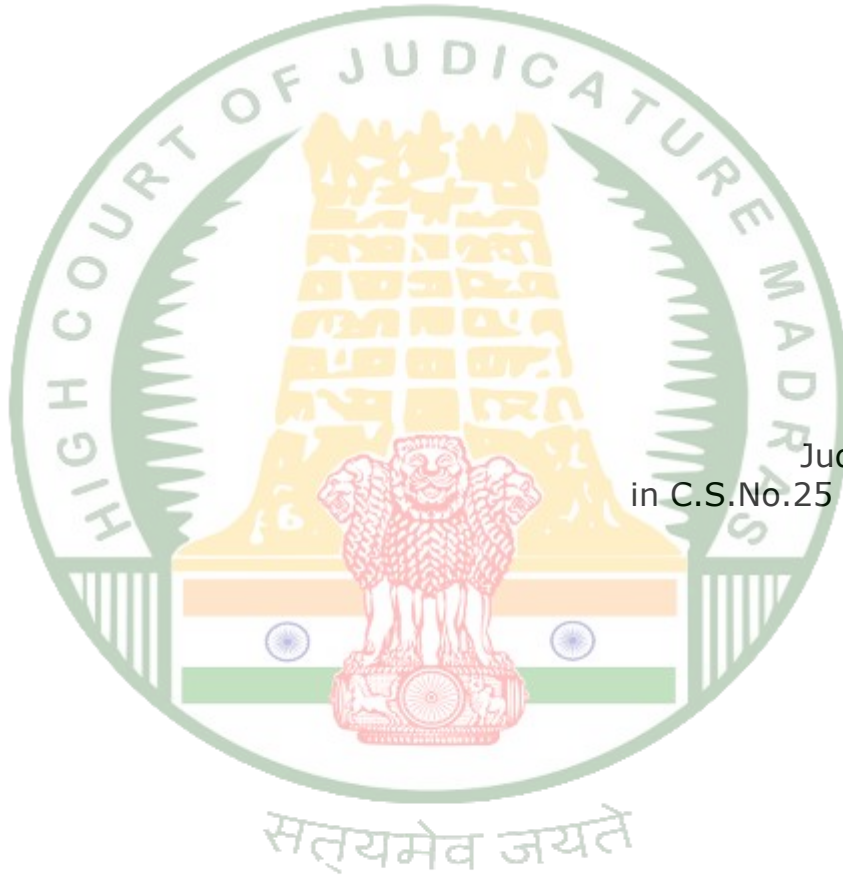
Index : Yes/No

gpa

WEB COPY

M.SUNDAR, J.

gpa



Judgment
in C.S.No.25 of 2011

WEB COPY

13.12.2017