

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

Civil Suit No.504 of 2015

N.Ranga Rao & Sons Private Ltd.,
PB No.52, Vani Vilas Road,
Mysore-570 004

And also at
25-B, Industrial Estate,
Ekkaduthangal,
Chennai-600 097.

... Plaintiff

Vs.

Kanti Devi,
Propreitrix, Chamundi Agarbathi Works,
54/4, N.P. Lane, 4th Cross,
Binny Mill Road, Cottonpet,
Bangalore-560 053,
Karnataka.

Also at
No.10/1-2, 6th Cross, Magadi Road,
8th Main, Bhuvaneshwari Nagar,
Bangalore-560 023.

... Defendant

Plaint filed under Order VII, Rule 1 of Civil Procedure Code read with Order IV, Rule 1 of Original Side Rules and Section 28, 29, 134 and 135 of the Trademarks Act, 1999 and Section 55 & 62 of the Copyright Act.

Prayer – (a) granting permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered trade mark "CYCLE BRAND THREE IN ONE" wit the unique and distinctive colour

scheme and get up by using the identical and offending trade mark "THREE IN ONE" with the identical and/or deceptively similar colour scheme and get up or any other mark or marks which are in way identical, deceptively similar to or a colourable imitation of the plaintiff's registered trade mark "CYCLE BRAND THREE IN ONE", either by manufacturing or selling or offering for sale or in any manner advertising the same; (b) granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered copyright in the artistic work "CYCLE BRAND THREE IN ONE" with the unique and distinctive colour scheme and get up by using the identical and offending artistic work "THREE IN ONE" with the identical and/or deceptively similar colour scheme and get up or any other mark or marks which are in anyway identical, deceptively similar to or a colourable imitation of the plaintiff's registered copyright "CYCLE BRAND THREE IN ONE" either by manufacturing or selling or offering for sale or in any manner advertising the same; (c) granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its "Incense Sticks" bearing the offending trademark "THREE IN ONE" as and for the plaintiff's celebrated products including Incense Sticks and Dhoop Sticks bearing the plaintiff's registered trademark and copyrighted artistic work "CYCLE BRAND THREE IN ONE" with the unique and distinctive colour scheme and get up either by manufacturing or selling or offering for sale or in any manner advertising the same; (d) directing the defendant to render a true and faithful account of the profits earned by the defendant through the sale of its products, including the products bearing the offending trade mark "THREE IN ONE" and direct payment of such profits to the plaintiff for the passing off committed by the defendant; (e) directing the defendants to surrender to the plaintiff the entire stock of unused offending labels bearing the offending trademark "THREE IN ONE" along with the blocks and dyes for destruction and for costs.

For Plaintiff : Mr.Rajesh Ramanathan

For Defendant : Mr.R.Satish Kumar

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JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)
The plaintiff has filed the suit for infringement of its registered trademark "CYCLE BRAND THREE IN ONE" with the unique and distinctive colour scheme by the defendant, who is alleged to be using the identical and the offending trademark "THREE IN ONE" with identical/ or deceptively similar colour scheme. A relief of permanent injunction is sought for infringement of the trademark as also the copyright and passing off in respect of its product "Incense Sticks", apart from claiming the account of the profits and to surrender the unused offending labels.

2. In the course of hearing of the appeals against the interlocutory orders, the parties have been able to resolve the disputes in the suit itself and have filed the common Memorandum of Compromise entered between the parties in Court both in respect of the appeals and the suit. The common Memorandum of Compromise is taken on record in the suit. Along with the common Memorandum of Compromise, Annexures "A" & "B" have been filed, which are the two labels.

3. In terms of the common Memorandum of Compromise, the defendant has agreed forthwith cease to use and shall not

manufacture/market the products or in any manner use the offending label as found in Annexure "A" or any other label similar to the plaintiff's "CYCLE BRAND THREE IN ONE" label as found in Annexure "B". The defendant has agreed to suffer a decree for permanent injunction in terms of the prayers 29(a), 29(b) and 29(c) of the plaint and the plaintiff in turn agreed to give up the other reliefs found in the plaint being prayers 29(d), 29(e) and 29(f), leaving the parties to bear their own costs. The authorised representatives of the plaintiff and the defendant are present in Court.

4. We have perused the common Memorandum of Compromise and see no legal impediment in its enforcement, which is given the mark "A" and the two labels as mark "B" & "C".

5. The original suit stands decreed in terms of the common Memorandum of Compromise. The marks "A", "B" & "C" will form part of the decree sheet. Decree sheet be drawn accordingly. No costs.

(S.K.K., CJ.) (M.S, J.)
10.01.2017

Index : Yes/No
Internet : Yes/No

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The Hon'ble Chief Justice
and
M.Sundar, J

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