

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.No.250 of 2009

M/s. Siva Coffee Bar
Rep. by its Prop. V.Shanmugam
39, Second New Street,
Kitchipalayam,
Salem - 15.

.. Plaintiff

vs

M/s. Sri Sivaa Coffee Bar
33-C, K.K.Complex,
Meyannur Main Road,
Salem - 636 004.
Partnership firm - Rep by its
Partner Muthusamy

.. Defendant

Civil Suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC and Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999, seeking Judgment and Decree against the defendants on the following terms (a) permanent injunction restraining the defendant by himself / themselves, their men, servants, agents, distributors, stockists, representatives, partners, directors, stockist, representatives, partners, directors, successors or any person claiming under them from in any manner infringing the registered trade mark Siva Cofee Bar with the device SCB of the plaintiff by use of the said Trade Mark or any deceptively similar Trade Mark like Sri Sivaa Coffee Bar either with or without the device / associated art work or the alphabet SCB / SSCB or any deceptively similar inscription either in isolation or together with the subject Trade Mark or in any manner whatsoever in respect of goods and service dealt in by the plaintiff; (b) directing the defendant by himself / themselves, their men, servants,

agents, distributors, stockist, representatives, partners, directors, successors or any person claiming under them to deliver up for destruction of all advertisement materials such as letter heads, visiting cards, envelopes, name boards and all and sundry documents, materials carrying the infringing trade mark, with or without said art work of the plaintiff and for costs.

For Plaintiff : Mr.K.Rajasekaran

For Defendant : No appearance (set exparte)

J U D G M E N T

This suit has been filed for permanent injunction restraining the defendant and their men from in any manner infringing the registered trade mark Siva Cofee Bar with the device SCB of the plaintiff by use of the said Trade Mark or any deceptively similar Trade Mark like Sri Sivaa Coffee Bar either with or without the device / associated art work or the alphabet SCB / SSCB or any deceptively similar inscription either in isolation or together with the subject Trade Mark and directing the defendant to deliver up for destruction of all advertisement materials such as letter heads, visiting cards, envelopes, name boards etc., and for costs.

2. The case of the plaintiff as disclosed in the plaint is as follows:

(i) The plaintiff is in the business of providing service of snack bar, hotel and restaurant, food outlet and been in the business

having their name and style as Siva Coffee Bar. The Trade Mark has also been registered with the Trade Mark Registry. Thus the plaintiff is the registered owner of their Trade Mark "Siva Coffee Bar" along with their device or logo SCB superimposed on one upon another. The plaintiff also hold copyright registration for the artistic work in their label. The sales turnover per annum comes to Rs.15 lakhs and the plaintiff spend Rs.3.50 lakhs towards advertisement.

(ii) The plaintiff in the last 32 years has developed its line and runs as many as over 29 outlets in Salem Town and District alone. It came to the knowledge of the plaintiff that defendant had started imitating the registered Trade Mark with the prefix of 'Sri' and adding an alphabet 'A' in Siva. The defendant by adopting mark of the plaintiff in a deceptive manner, creates confusion in the minds of consumers who have imperfect recollection of memory. The defendant with malafide intention has made an application with the Trade Mark Registry after receipt of the notice from the plaintiff. Therefore, the plaintiff has come forward with the present suit.

P.KALAIYARASAN, J

tsvn

3. The defendant was called absent and set ex parte. The Proprietor of the plaintiff has been examined as P.W.1 and Exs.P.1 to P.17 have been marked. The photocopy of the Trade Mark Certificate has been filed as Ex.P.1. When this Court directed the plaintiff to file the original, the original Trade Mark Certificate has been filed. The photographs of the name board of the defendant is marked as Ex.P.17.

4. The plaintiff in his evidence reiterated the version stated in the plaint. Through the oral and documentary evidence, the plaintiff has made out a case. Therefore, the plaintiff is entitled to the relief as prayed for.

In fine the suit is decreed as prayed for with costs.

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Speaking order

Index : Yes / No

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