

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.No.367 of 2010

Narayana Pearls Gems & Jewels

Rep. by its Proprietor

K.V.Narayana

Sudha's Paradise,

Shop Nos.6 & 7, 121 (62), Pondy Bazaar,

Opp. Maya's Plaza,

T.Nagar, Madras - 600 017.

.. Plaintiff

vs

Om Narayana Perals

Rep. by its Proprietor

K.V.Narendra Kumar,

No.47, Gandhi Road,

Vellore - 632 004.

.. Defendant

Civil Suit filed under Sections 29 and 52 of the Trade Marks Act, 1999 read with Order VII Rule 1 of the Civil Procedure Code, seeking Judgment and Decree (a) for grant of a permanent injunction restraining the defendant by themselves, their servants, agents or any one claiming through them from adopting and / or using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' as the defendant's trade name / trading style or part of its trade name / trading style or in any of its manufacturing activities, goods, bills, invoices, price lists, name tags, calendars, name boards, sign boards, packing materials or complimentary items, advertisements in newspapers, magazines, television, hoardings, websites, internet etc;

(b) for permanent injunction restraining the defendant by themselves, their servants, agents or any one claiming through them from in any manner passing off their goods as that of the plaintiff's by using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' or any of its colourable imitations or variations including 'Om Narayana Pearls' either as a trade mark or trading style or part of its trade mark or trading style for any of its manufacturing and / or marketing activities;

(c) directing the defendant to render a true and proper account of profits earned by them through the manufacture and sale of the products using the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style and directing the defendant to pay to the plaintiff the said profits so earned by them using the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style.

(d) directing the defendant to pay to the plaintiff a sum of Rs.10 lakhs being the liquidated damages for use of the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style together with interest at 24% per annum from the date of plaint till date of payment ;

(e) directing the defendant to surrender to the plaintiff the entire stock of unused plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style, labels, cartons, boxes and any other materials, blocks, advertisements, with literature and any other materials containing and consisting of the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style for destruction;

(f) directing the defendant to pay to the plaintiff the cost of the

suit.

For Plaintiff : Mr.S.Kasirajan

For Defendant : No appearance (Exparte)

J U D G M E N T

The suit has been filed for permanent injunction restraining the defendant or claiming through them from adopting and or using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' as the defendant's trade name / trading style or or in any of its manufacturing activities and also for a permanent injunction restraining the defendant and their men from in any manner passing off their goods as that of the plaintiff's by using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' and also directing the defendant to render true and proper accounts and to surrender to the plaintiff the entire unused stock of plaintiff's Trade mark and also for damages.

2. The brief facts of the plaint are as follows :

(i) The plaintiff is a trader carrying on business under the name and style of 'Narayana Pearls Gems & Jewels' after obtaining necessary Certificate of Registration of Trade Mark, as per the provisions of law from the Registrar of Trade Marks, Mumbai w.e.f 01.01.2001. Following such registration of Trade Mark, the plaintiff

alone is entitled to carry on the business under the name and style Narayana Pearls Gems and Jewels.

(ii) The defendant is carrying on business under the name and style of 'Om Narayana Pearls' without obtaining any valid certificate of Registration of the Trade Mark from the office of the Registrar of Trade Marks in four centres in Vellore. The defendant's business under the above name and style is similar to or an imitation to the plaintiff's registered Trade Mark 'Narayana Pearls Gems & Jewels'. The defendant is deliberately causing immense damage to the reputation and good will gained by the plaintiff in the past so many years throughout India and in abroad, by selling sub-standard Pearls and Gems including jewels and further, causing heavy business loss to the plaintiff.

(iii) The plaintiff's business under the name and style of 'Narayana Pearls Gems and Jewels' is a reputed one among the general public in India and abroad, where the public believe that a high quality items of Gems and Jewels can be purchased from such centre at Madras. During the passage of time, the registered Trade Mark 'Narayana Pearls Gems and Jewels' has become highly distinctive of the plaintiff's goods, distinguishing their goods from

those of others in the trade.

(iv) The plaintiff has spent several lakhs of rupees in popularising their registered trade mark all these years through various media such as Newspapers, Magazines, Television, Radio and sponsored programmes. The plaintiff issued a legal notice, dated 10.03.2009 calling upon the defendant to stop forthwith his business activity under the name and style of 'Om Narayana Pearls', which is illegal and unfair practise. The defendant acknowledged the said legal notice and sent unconvincing reply, dated 25.03.2009. Therefore, the present suit.

3. Evidence and Analysis :

The plaintiff has been examined as P.W.1 and 17 Exhibits have been marked. P.W.1 retreats the version in the plaint in his proof affidavit. The Certificate of Registration of Trade Mark and renewal certificate is marked as Ex.P.2. The Income Tax Return is marked as Ex.P.4. Ex.P.11 (series) are the original photographs of the defendant's commercial centre. Ex.P.15 and Ex.P.16 are the advertisements issued by the plaintiff.

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4. Through the above evidence of P.W.1 and the documents, the

plaintiff has made out a case. The balance of convenience is also in favour of the plaintiff. As far as the relief of damages is concerned, there is no evidence to assess the damages caused to the plaintiff by the defendant by using the name 'Om Narayana Pearls'. Therefore, excepting the relief of damages, the plaintiff is entitled to the other reliefs as prayed for.

In the result, the suit is decreed as prayed for with costs as indicated above.

12.04.2017

Speaking order

Index : Yes / No

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