IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.03.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN**

C.S.No.827 of 2009

1. Mr.Sailesh Kumar
   S/o. Late Ishwar Das Gupta
   Partner
   M/s. Prakash Glass and Rubber Works
   Survey No.240, Plot No.7-4-96/2,
   Peddammagadda, Ganganpahad,
   Dist. Rangareddy - 501 323
   Andhra Pradesh.

2. Mr.Kapil Kumar
   S/o. Omprakash Gupta
   Partner
   M/s. Prakash Glass and Rubber Works,
   Survey No.240, Plot No.7-4-96/2,
   Peddammagadda, Gaganpahad,
   Dist. Rangareddy - 501 323,
   Andhra Pradesh.

3. M/s. Prakash Glass and Rubber Works
   A Registered Partnership Firm,
   Survey No.240, Plot No.7-4-96/2,
   Peddammagadda, Ganganpahad,
   Dist. Rangareddy - 501 323,
   Andhra Pradesh,
   Rep. by its Managing Partner
   Mr.Sailesh Kumar. .. Plaintiffs

vs

Mr.Sadiq Hussain
Trading as M/s. Hyderabad Safety Glassworks,
H.No.22-1-696/G, Angoor Ghar,
Noorkhan Bazaar, Hyderabad - 500 024
Andhra Pradesh. .. Defendants

Civil Suit filed under Order IV Rule 1 of the High Court Original Side Rules and Order VII Rule 1 of the Civil Procedure Code, 1908 read with Sections 27, 134 and 135 of the Trade Marks Act, 1999 seeking (a) to grant a permanent injunction, restraining the defendant by itself, its servants, agents, distributors, or anyone claiming through them from using the plaintiff's registered Trade Mark as the Company name, or in any media and use the same in public issue, invoices, letter heads and vising cards, goods or any other trade literature or by using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the plaintiff's registered Trade Marks ATUL PUF or ATUL JUF or in any manner infringing the plaintiffs' Registered Trade Mark No.1195219;

(b) directing the defendants to surrender to the plaintiffs all the invoices, letter heads and visiting cards, goods or any other trade literature and all other materials containing / bearing the name ATUL JUF.

(c) for a preliminary decree in favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the plaintiff's registered Trade Mark as the Company name and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts.

(d) directing the defendant to pay to the plaintiffs the coasts of the suit.

For Plaintiffs : M/s. Gladys Daniel

For Defendant : No appearance (Exparte)

J U D G M E N T

The suit has been filed seeking permanent injunction restraining the defendants and their men from using the plaintiffs registered Trade Mark or any other Trade mark which is any way visually, phonetically or deceptively similar to the plaintiffs registered Trade Mark "ATULPUF" or "ATULJUF "or in any manner infringing the plaintiffs Registered Trade Mark No1195219 and to surrender all the invoices, letter heads, etc., bearing the name "ATULJUF" and also to render an account of profits made by them.

2. The plaintiffs are engaged in the manufacture and sale of different types of windscreen glass for automobiles. Since 2001, the plaintiffs conceived and adopted the unique trademark ATULPUF with respect to their goods. The Trademark ATULPUF has been registered with the authorities as per the Act and thus the plaintiffs became the registered Proprietors of the trade mark ATULPUF in respect of the goods namely (a) Toughened and laminated glasses (b) Glass & Glassware (c) Wooden scrap, (d) Windscreen glasses. The plaintiffs have acquired enormous goodwill in respect of the goods on which the ATULPUF Trade Marks are affixed throughout India. The Turn over of the plaintiffs with respect to the above mentioned goods have grown from 2.19 crores in 2002-2003 to 16.14 crores in 2008-2009.

3. The plaintiffs came to know about the identical goods being

put on the market under a structurally, phonetically and deceptively similar trade mark ATULJUF by the defendant. The plaintiffs caused a notice through their counsel dated 29.01.2005 to the defendant. The defendant sent a vague and evasive reply. The defendant also filed an application for registration of Trade Mark ATULJUF and the same was resisted by the plaintiffs. The defendant has adopted the deceptively similar mark ATULJUF to the plaintiffs registered Trade Mark ATULPUF solely for the purpose of exploiting the commercial goodwill. Therefore, the plaintiff has come forward with the suit.

4. The defendant was called absent and set exparte. The first plaintiff has been examined as P.W.1. Ex.P.1 to Ex.P.12 were also marked. The plaintiffs registered Trade Mark certificate is marked as Ex.P.2. The copy of the Trademark journal advertisement given by the defendant is marked as Ex.P.8. The reply given by the defendant to the notice issued by the plaintiff is also marked as Ex.P.6. The reply given by the defendant is only evasive and not to the points raised by the plaintiffs. Through the evidence of P.W.1 and the documents marked through him, the plaintiffs have established their case. The balance of convenience is also in favour of the plaintiffs. Therefore, the plaintiffs are entitled to the reliefs as claimed for.

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

22.03.2017

Index : Yes / No

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P.KALAIYARASAN, J

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