

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A.No.1067 of 2018
and
C.M.P.Nos.8774 & 8775 of 2018

1. Narasu's Sarathy Enterprises Pvt. Ltd.,
Rep. by its Managing Director
Mr.M.V.Balasubramaniam,
Having office at No.16-A, Court Road,
Johnsonpet,
Hasthampatty P.O.,
Salem - 636 007.
 2. R.P.Sarathy
 3. B.Latha
 4. M.V.Balasubramaniam
 5. B. Janavi
 6. B. Dhiraj
 7. M.V.Srinivas
 8. S.Sudha
 9. R.Andal
 - 10.V.Gunasekaran
 - 11.Maheswari Sekar
- Appellants

Versus

M/s.Sri Narasu's Coffee Company Pvt. Ltd.,
Rep. by its
Managing Director Mr.P.Sivanantham,
Having Office at No.16, Court Road,
Johnsonpet,
Hasthampatty P.O.,
Salem - 636 007.

... Respondent

Civil Miscellaneous Appeal filed against the exparte order dated 17.04.2018 in I.A.No.119 of 2018 in O.S.No.111 of 2018 on the file of the II Additional District Judge at Salem.

For Appellants : Mr.M.S.Bharath
for Mr.K.Raja Sekaran

For Respondent : Mr.P.H.Arvind Pandian, Sr. Counsel
for Mr.I.Arokiasamy

JUDGMENT

Aggrieved over the exparte order of injunction dated 17.04.2018 in I.A.No.119 of 2018 in O.S.No.111 of 2018 on the file of the II Additional District Judge at Salem, the defendants have come before this Court with this Civil Miscellaneous Appeal.

2.1 Seamless are the ways in which the two sides litigate. They have shown extraordinary stamina for litigation and the present one is one in the sequence. Broadly the dispute is over use of the trade mark "Narasu's" with device mark with a lady sipping coffee within a circle.

2.2 At the outset I expressed to the counsel appearing on either side on my disinclination to hear this case, since I, as the Principal District Judge, Salem, had an occasion to hear the parties litigating again on the use of the trade mark in another litigation. The parties however, insisted that the present matter is founded on an entirely different cause of action and that they have no objection to me hearing them.

3. The litigation is chiefly between the father and son. Alongside the father stays his daughters, sons-in-law and few others. The first litigation was laid in C.S.No.291/2007, wherein the respondent herein claim his exclusive right to use of the trade mark and the device mark stated above. In an interim order passed by this Court, the zone of use of the trade mark and the device mark by the warring parties has been broadly segregated whereby the respondent herein was permitted to use the trade mark for his coffee business, whereas the appellants herein are permitted to use it for wheat products and other things, which are spelt out in the very order. This interim order was challenged by the respondent herein in OSA.No. 234 to 237 of 2008 and the First Bench of this Court vide its order dated 29.08.2016 has confirmed the interim order passed in OA.No.424/2007, 425/2007, 426/2007 and 427 of 2007. The First Bench also provided a schedule as to how the main suit itself has to progress but then that schedule is seen flouted both in letter and spirit.

4. Be that as it may, the respondent herein is seen claiming exclusive right to the word "Narasu's" apart from that is related to his Coffee business based on a "Comma (,)" that appeared on the first line of the order of the learned Single Judge in the interim order in CS.No.291/2007, and in a case instituted before the Principal District Court, Salem, I have directed the respondent herein to approach the High Court to obtain clarification on the matter. No clarification however, appeared to have been sought to interim Order of the learned Single Judge's passed in CS.No.291 of 2007. Even in some of the

subsequent cases both the District Court as well as this Court has directed the parties to follow the interim order in O.A.Nos.424 to 427 of 2007 in CS.No.291 of 2007.

5. In these circumstances, the appellant herein began manufacture and sale of Vermicelli again under the brand name "Narasu's" along with the device mark stated above. This was objected to by the respondent herein who would now institute O.S.No.290 of 2017 before the Principal District Court, insisting that "Vermicelli" as a product is not covered in the order of the learned single Judge in the aforesaid OA.Nos.424 to 427 of 2007 in CS.No.291 of 2007. There was a prayer for interim injunction and this was opposed by the appellants herein. When respondent sought an interim Order of injunction to restrain the defendants in that suit from using the trade and device marks for their product Vermicilli, the learned District Judge Vide his Order dated 15.03.2018 has only directed the parties to follow the Order of the learned Single Judge of this Court referred to earlier. This suit is still pending.

6. Be that it may, the present appellant began to manufacture "Vermicelli" again using the same trade and device marks but with a different colour scheme for its packing. Instead of approaching the very Court where the earlier litigation in OS.No.290 of 2017 was laid the respondent appeared to have found a fresh cause of action to institute a fresh suit in O.S.No.111 of 2018. This is before the Second Additional District Court in Salem.

7. Broadly speaking, the pleadings in O.S.111 of 2018 appeared substantially similar to one in O.S.290 of 2017 and so are the prayers. Again in this, the respondent had filed I.A.No.119/2018 seeking order for interim injunction and the learned Second Additional District judge for reasons best known to him thought it fit not to follow the earlier Orders passed in O.S.290 of 2017, but opted to pass an exparte order of interim injunction Vide its order dated 17.04.2018. Mysterious are the ways but then it is best left at that. Now, responding to the notice issued by the Court the appellants herein have entered appearance before the Second Additional District Court, and the matter now stands posted to 19.06.2018.

8. Mr.M.S.Bharath, learned counsel appearing for the appellants submitted that the learned District Judge has hurried to pass an exparte order of injunction, over-looking the sequence of orders passed earlier both by the District Court as well as by another Single Judge of this Court in O.A.No:858 to 860 of 2011 in C.S.698 of 2011, in which all the parties were repeatedly directed to follow the order of the learned Single Judge in O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007.

9. The learned Senior Counsel Mr.P.H.Aravind Pandian appearing for the respondent would argue that when once the appellant has entered appearance before the trial court which has passed the Order of interim injunction in O.S.No.290 of 2017, instead of appealing against the same, the appellant herein ought to contest it before the said Court. He added that the fresh suit in O.S.111 of 2018 happened to be filed essentially because the colour scheme of the packing material of "Vermicelli" manufactured by the appellants was changed since the interim Order passed in O.S.290 of 2017.

10. This Court now wants to clarify certain aspects:-

- On a careful reading of the order of Mr.Justice. V.Ramasubramanian in O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007, it is not seen anywhere that colours scheme of the packing is an aspect ever in dispute.
- The order of the learned District Judge in O.S.No.290 of 2017 is succeeded, in that, parties were merely directed to abide by paragraph No.15 (a) and 15 (b) of the Order of Mr.Justice V.Ramasubramanian. Whether "Vermicelli" is a product included in 15 (b) or not, does not appear to have been decided even prima facie by the learned District Judge in O.S.No.290 of 2017.

11. Turning to the impugned Order of the Second Additional District Judge is concerned, both the Orders of this Court passed in O.A.424-427 in C.S.291 of 2007 and in O.A.No:858 to 860 of 2011 in C.S.698 of 2011 have been produced along with the plaint in O.S.111 of 2018. In other words the learned District Judge had an occasion to know what this Court has done, and indeed the Orders too refer to it. However, the learned Judge leans to Document No:46 appended to the plaint, which is a packing material of vermicelli, and says that it prima facie establishes that the earlier Orders are violated. Is it not necessary for the District Judge to indicate pointedly the very aspect in the earlier Orders that he believes has been violated? If he means thereby the colour scheme of the packing material, then it is only too evident that colour scheme has been beyond the scope of all the various litigation between the parties. Mysterious are his ways and this Court opts to leave it at that.

12. Turning to the merit, since the appellants have already entered appearance in O.S.111 of 2018, and since the Order is only an exparte order of injunction passed it is necessary that they participated in the proceedings before the trial Court and put forth their defence.

13. Now, the learned counsel for the appellants made two additional submissions

(a) To suspend the order of the learned District Judge passed in I.A.no.119 of 2018 in O.S.No.111 of 2018 till such time.

(b) The Court where the present matter is pending will not have jurisdiction in-as-much as the subject matter of the litigation falls within the domain of Commercial Court Act wherein the Principal District Court is notified as the competent Court under the Act.

14.1 As to first of the two points raised, this Court, inasmuch as it has directed the parties to the Court below to contest, it may not be appropriate to suspend the order at this juncture.

14.2 As to second, this Court finds merit in the same and therefore the case has to necessarily go to the file of the Principal District Court, Salem. Following directions too are now made:

- a) The transferee Court (the Principal District Court, Salem) will now take up the matter on 05.06.2018, on which date the appellants are directed to file its counter to I.A.No.119 of 2018 in O.S.No.111 of 2018.
- b) The District Court is also directed to transfer to its file other similar cases that will fall within the domain of Commercial Court Act to its file. Anyone of the parties may provide the list of cases to the Principal District Court on 05.06.2018.

15. Before winding up these appeal, this Court records its strong disapproval to the strategy of the parties in ignoring the pendency of C.S.291 of 2007 and C.S.468 of 2011 before this court, and keep filing similar suits before the District Court, Salem. Both sides are cautioned that their conduct may well amount to misuse, if not abuse of judicial process. Courts are intended to resolve disputes, and are not meant to be used, misused or abused as vehicles for settling personal scores. If any issue touching on the use of trade mark is required to be resolved, why cannot the parties approach this Court where C.S.291 of 2007 is pending? And, why aren't they not showing enough interest to proceed with the suits now pending before this Court?

16. In conclusion, this Civil Miscellaneous Appeal is disposed

of as directed in paragraphs 12 and 13 above. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Vacation Officer

//True copy//

Sub Assistant Registrar

dpq

To

The II Additional District Judge
Salem.

Copy TO

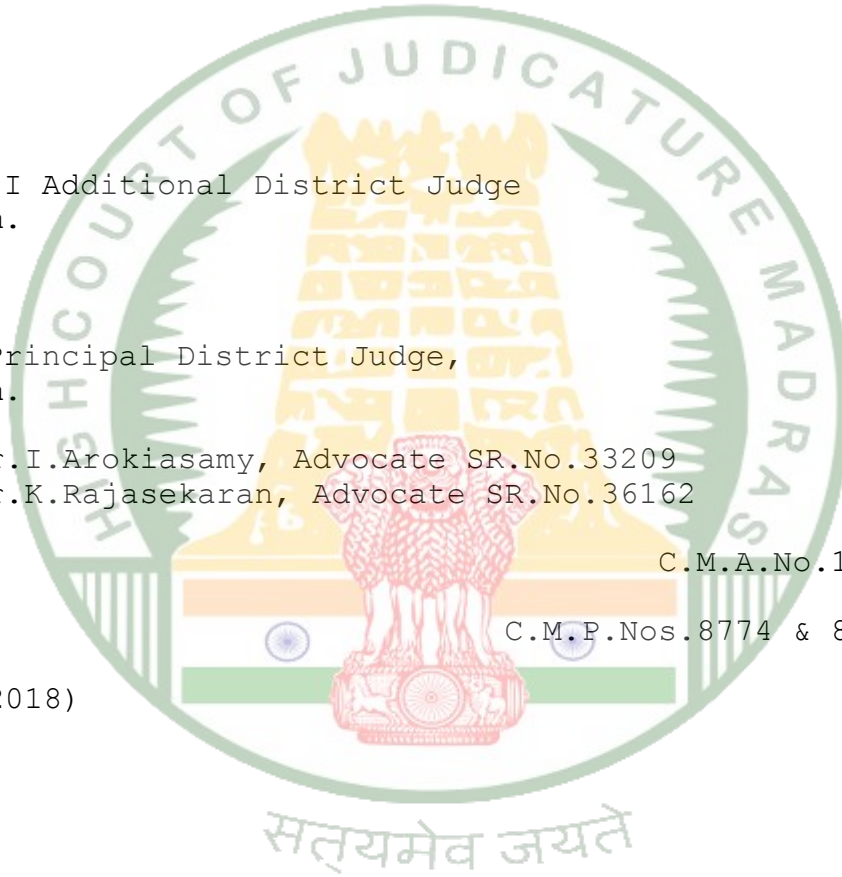
The Principal District Judge,
Salem.

+2cc to Mr.I.Arokiasamy, Advocate SR.No.33209
+1cc to Mr.K.Rajasekaran, Advocate SR.No.36162

C.M.A.No.1067 of 2018
and

C.M.P.Nos.8774 & 8775 of 2018

GMR (CO)
GN (22/05/2018)



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