

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2018

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THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.239 of 2009

APEX LABORATORIES PRIVATE LTD.
Alwarpet, Chennai - 600 018. ..Plaintiff

Vs.

Pegasus Farmaco India (P) Ltd.
1-3-183/40/B/1 SBI Colony
Gandhi Nagar,
Hyderabad-500 080 .. Defendant

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 CPC and Sections 134 and 135 of the Copy Right Act, 1957, praying to

- a) grant a permanent injunction restraining the defendants abovenamed by themselves, their servants, agents or anyone claiming through them from in any manner infringing the plaintiffs' Registered Trade Mark ZINCOVIT by using the offending trade mark ZIB along with the word ZINCOVIT or any other mark or marks which are identical and similar to the plaintiff's registered trade mark ZINCOVIT;
- b) grant a permanent injunction restraining the defendants abovenamed by themselves, their servants, agents or anyone claiming through them from in any manner infringing the plaintiffs' Copyrighted artistic work ZINCOVIT by using the offending artistic work ZIB along with the word ZINCOVIT or any other work or works which are identical and similar to the plaintiff's registered Copyright over the artistic work ZINCOVIT.
- c) grant a permanent injunction restraining the defendants, their servants or agents or anyone claiming through them from in any manner passing off of their pharmaceutical products bearing the offending trade mark and the artistic work ZINCOVIT as and for the celebrated pharmaceutical products of the plaintiffss bearing the Registered Trade mark and the copyrighted artistic work ZINCOVIT, either by manufacturing, selling or offering for sale or in any manner advertising the same.
- d) direct the defendants to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trade mark ZIB along with the word ZINCOVIT together with blocks and dyes for destruction.
- e) direct the defendants to render a justice a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trade mark ZIB along with the word ZINCOVIT and directing payment of such profits to the plaintiffs for the passing off committed by the defendants.

f) direct the defendants to pay to the plaintiffs the costs of the suit and

g) pass such further or other orders as may be deemed fit and proper in the circumstances of the case.

For Plaintiff : Mr.R.Sathish Kumar

For Defendant : Mr.V.Sivakumar

JUDGMENT

Mr.R.Sathish Kumar, learned counsel on record for sole plaintiff and Mr.V.Sivakumar, learned counsel on record for sole defendant are before this Commercial Division.

2. By consent of both the aforesaid learned counsel, the main suit itself is taken up and is being disposed of.

3. The main suit has been filed by the plaintiff company, complaining of infringement of trademark, infringement of copyright and passing off.

4. Other usual prayers regarding directions to surrender offending material, accounts, costs and residuary limb of prayer have also been made.

5. I deem it appropriate to extract the prayer paragraph in the plaint i.e., paragraph No.12, which reads as follows:

'a) grant a permanent injunction restraining the defendants abovenamed by themselves, their servants, agents or anyone claiming through them from in any manner infringing the plaintiffs' Registered Trade Mark ZINCOVIT by using the offending trade mark ZIB along with the word ZINCOVIT or any other mark or marks which are identical and similar to the plaintiff's registered trade mark ZINCOVIT;

b) grant a permanent injunction restraining the defendants abovenamed by themselves, their servants, agents or anyone claiming through them from in any manner infringing the plaintiffs' Copyrighted artistic work ZINCOVIT by using the offending artistic work ZIB along with the word ZINCOVIT or any other work or works which are identical and similar to the plaintiff's registered Copyright over the artistic work ZINCOVIT.

c) grant a permanent injunction restraining the defendants, their servants or agents or anyone claiming through them from in any manner passing off of their pharmaceutical products bearing the offending trade mark and the artistic work ZINCOVIT as and for the celebrated pharmaceutical products of the plaintiffs bearing the Registered Trade mark and the copyrighted artistic work ZINCOVIT, either by manufacturing, selling or offering for sale or in any manner advertising the same.

d) direct the defendants to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trade mark ZIB along with the word ZINCOVIT together with blocks and dyes for destruction.

e) direct the defendants to render a justice a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trade mark ZIB along with the word ZINCOVIT and directing payment of such profits to the plaintiffs for the passing off committed by the defendants.

f) direct the defendants to pay to the plaintiffs the costs of the suit and

g) pass such further or other orders as may be deemed fit and proper in the circumstances of the case.'

6. To be noted, after completion of pleadings and framing of issues, this suit was set down for trial. Both learned counsel before me i.e., this Commercial Division today submit that plaintiff's side evidence has been completed. One Mr.N.Krishnan, General Manager-Finance of the plaintiff company has deposed as P.W.1 and six exhibits i.e., Exs.P1 to P6 have been marked.

7. Thereafter defendant, instead of letting in evidence, has filed an affidavit dated 20.09.2018.

8. In the aforesaid affidavit, defendant has categorically submitted that they have stopped using the artistic work, in which plaintiff claims copyright. Relevant portion reads as follows:

'We have stopped using the alleged artistic work for the Trade mark ZIB as claimed by the Plaintiff in the above suit long back.'

9. It is in the light of the aforesaid affidavit and the stated position of sole defendant which emanates from the same, both learned counsel requested that the main suit itself be taken up for disposal.

10. Both learned counsel drew my attention to Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity), both learned counsel submitted that in the light of the aforesaid affidavit and stated position of the sole defendant that emanates from the same, a summary judgment can be passed, as there is no real prospect of the defendant successfully defending the claim qua trademark/copyright registrations and the passing off prayer, which are dovetailed and which together constitute the nucleus of this lis. It is also submitted that there is no other compelling reason why the claim of the plaintiff should not be disposed of without recording oral evidence in full.

11. Reference to Order XIII-A of amended C.P.C. has been made only to buttress and bolster the position that this Commercial Division is empowered to dispose of the main suit at the request of both learned counsel.

12. Reverting to the factual matrix of this case, suffice to say that the nucleus of the lis is constituted by a trademark registration and copyright registration, which have been marked as Exs.P2 and P3 respectively.

13. A perusal of Ex.P2 reveals that plaintiff has a registered trademark, bearing trademark No.487453 in Class 5 i.e., Pharmaceutical and Medicinal preparations for the mark 'Zincovit'.

14. Likewise, a perusal of Ex.P3 reveals that plaintiff has a copyright registration in the artistic work in the label of the cartons in which the aforesaid product is marketed. To be noted, according to Ex.P3, the title of the work is also 'Zincovit' and it has been registered as an artistic work. Artistic work registered under Ex.P3 is as follows:

15. I have perused the deposition of P.W.1 and I find that the same is cogent besides being synchronized with the pleadings in the plaint.

16. In the light of the stated position of the sole defendant, which has been alluded to supra, both learned counsel agree that infringement of trademark referred to supra does not arise. There is also no dispute or disagreement that plaint prayers contained in Sub-paragraphs (b) and (c) of prayer

paragraph i.e., paragraph No.12 [extracted and reproduced supra] deserve to be decreed, as it pertains to infringement of copyright and passing off arising out of the same.

17. In the light of the aforesaid trajectory of the fair stand taken by the sole defendant, learned counsel for plaintiff, on instructions, submits that he is giving up plaint prayers contained in Sub-paragraphs (a), (d), (e), (f) and (g) of the plaint i.e., plaint paragraph No.12, which is the prayer paragraph and which has also been extracted and reproduced supra.

18. After hearing both learned counsel and after perusing the pleadings as well as the aforesaid affidavit dated 20.9.2018 filed by the defendant besides the deposition of P.W.1 and exhibits marked through him, I am satisfied that the aforesaid request that this suit be decreed in terms of (b) and (c) supra deserves to be acceded to.

19. Suit is decreed on above terms. There shall be no order as to costs.

11.10.2018

Speaking order

Index : Yes

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M.SUNDAR, J.
vsm

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