

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.35 of 1997

and

O.A.No.45 of 1997

B.Kannan, Prop.

Hema Enterprises

4, Abhiramni Nagar 2nd Street

Virugambakkam

Madras 600 092 .. Plaintiff

Vs.

1. Om Sakthi Enterprises

rep. by its partners:

2. Jayasankar

3. Thiruvavukkarasu

4. Deivasigamani

.. Defendants

This Civil Suit is preferred, under Order VII Rule 1 of OS rules read with Order VII Rule 1 of CPC 1908 read with Sections 27, 105 and 106 of the Trade & Merchandise Marks Act, 1958, seeking for permanent injunction restraining the defendants by themselves, their servants, agents or any person or persons claiming through them from in any manner passing off their seedless dates (M.O.2) as and for the seedless dates of the plaintiff's (M.O.1) by using the trade mark which are deceptively similar to the plaintiff's mark; to direct the defendants to surrender to the plaintiff the entire stock of unused offending labels together with blocks and dies of destruction; to direct the defendants to render a true and faithful accounts of the profits earned by them through the sale of the SUN BRAND SEEDLESS DATES and the offending SUN BRAND trade mark and directing the payment of such profits to the plaintiff by way of damages for the passing off committed by the defendants and for costs.

For Plaintiff : Ms.Swathi

For Mr.R.Thiagarajan

For Defendant : No Appearance

JUDGMENT

This suit is listed under the caption for 'FINAL DISPOSSAL' today (11.09.2018).

2.Read this in conjunction with and in continuation of earlier proceedings of this Commercial

Division dated 07.08.2018 and 28.08.2018 which read as follows:

"Proceedings of 07.08.2018

This matter is listed under the caption 'for dismissal'. Mr.R.Thiagarajan, learned counsel on record for the plaintiff is before this court. Learned counsel express his regret for non appearance in the previous hearings. Learned counsel submits that there is some difficulty in getting instructions from the Plaintiff and he seeks time to write to the Plaintiff and report one way or the other to the court in the next listing.

Registry to remove the caption 'for dismissal' and list this matter on 28.08.2018.

Proceedings of 28.08.2018:

The learned counsel for the plaintiff submits that they have difficulty in getting further instructions from the plaintiff and seeks time to report this court one way or other after writing to the plaintiff. List this matter on 11.09.2018."

3. The aforesaid proceedings are telltale qua trajectory of this suit.

4. Today learned counsel for plaintiff submits that they have no instructions from the plaintiff. Learned counsel reports 'No instructions' . Learned counsel submits that no instructions is being reported after making all due and diligent efforts including writing to the plaintiff.

5. In the light of the earlier proceedings, trajectory of this suit and the learned counsel for plaintiff reporting 'No Instructions' today, this suit is dismissed for default/Non-Prosecution. There shall be no Order as to costs. Consequently, the connected interlocutory application is closed.

11.09.2018

Speaking/Non-Speaking order

Index : Yes/No

gpa/kan

M.SUNDAR, J.

gpa/kan

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