

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 05th DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

O.A. Nos.1272 & 1273 of 2017

in

C.S. No.981 of 2017

M/s.Adyar Ananda Bhavan Sweets and Snacks,
rep. by its Partner Mr.K.T.Venkatesan,
Muthulakshmi Bhavan, No.9, M.G.Road,
Shastri Nagar, Adyar,
Chennai-600 020

... Applicant/Plaintiff
(in O.A. Nos.1272 & 1273 of 2017)

-Versus-

Sree Keerthi Bhavan,
No.2, Apparsamy Koil Street,
Thiruvottiyur, Chennai-600 019. ... Respondent/Defendant
(in O.A. Nos.1272 & 1273 of 2017)

O.A. No.1272 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction, restraining the respondent, its men, agents and servants from in any manner passing off its business as that of the applicant's by using the name 'Adyar Ananda Bhavan' with or without a similar logo or by any other identical or deceptively similar name as

that of the applicant, with or without any deceptively similar or similar logo as that of the plaintiff in its registered mark bearing No.1225607 or any of the other names and logos for which registration has been applied for by the plaintiff pending disposal of the above suit.

O.A. No.1273 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction, restraining the respondent, their men, agents or persons acting on their behalf, from in any manner infringing the applicant's right in its trademark bearing No.1225607 in respect of its business under the name 'Adyar Ananda Bhavan' by running a restaurant with identical name and logo or in any manner similar name and logo to that of the plaintiff pending disposal of the above suit.

These Original Applications coming on this day before this Court for hearing, the court made the following order:-

The sole respondent in both these applications has been duly served vide private notice which this Commercial Division had permitted to be taken out by order dated 22.12.2017 and the affidavit of service has been placed before me. From the affidavit of service dated 04.01.2018 and the annexed postal acknowledgement card it is noticed that the

sole respondent has been duly served on 26.12.2017 . It shall form part of the case file. No one has entered appearance on behalf of the sole respondent. There is no representation for the sole respondent today. Name called out thrice, none appears before this Court. Therefore I shall be disposing off these applications on merits on the basis of available records and in the light of the submissions of the applicant as the sole respondent has not chosen to appear / enter appearance before this Court inspite of being served. I have heard Ms.Archana, learned counsel appearing on behalf of the applicant on merits.

2. Sole plaintiff in the main suit is the sole applicant herein in both the applications. Lone defendant in the main suit is the lone respondent herein in both the applications.

3. The parties in these two applications are referred to by their respective ranks in the main suit for the sake of convenience and clarity. To be noted, this is a common order in these two applications.

4. Nucleus of the main suit is a registered Trademark being Trade Mark No.1225607 in Class-30 of which the plaintiff is the proprietor/owner. This Trademark is a device mark, which is hereinafter referred to as 'said mark' for the sake

of convenience and clarity. Effective date of registration of said mark is 21.08.2003. It has been renewed on 21.08.2013 and is valid upto 21.08.2023. Further to be noted, Certificate Number is 424920. As mentioned earlier, the said mark is a device mark in Class 30. To be noted, Class 30 is, class 30 of the relevant schedule under the Trade Marks Act, 1999 (hereinafter referred to as 'TM Act' for brevity). The goods in class 30, qua said mark are food items, sweets, snacks and savouries.

5. I have perused the plaint averments as well as the averments in the affidavit filed in support of these two applications. In the light of said averments and supporting documents placed before me in the case file, as mentioned supra, I have also heard Ms.Archana, learned counsel for plaintiff.

6. It is the case of the plaintiff that somewhere in August 2017, they came to know that the sole defendant is infringing the said mark and committing acts, which tantamount to passing off qua said mark.

7. It is further submitted that the plaintiff commenced business way back in 1988 as a Confectionery and grew in volume, in terms of range of goods/service and ultimately, is today a huge entity with turnover of over Rs.800 crores. It is also submitted that the said mark of the plaintiff has

gained large reputation and attained exclusivity. These submissions have been noticed.

8. Be that as it may, on coming to know about alleged infringement and passing off of by the sole defendant qua the said mark (to be noted defendant is carrying on business in the same line of activity) in August 2017, the plaintiff caused a cease and desist notice dated 24.08.2017. I am informed that the sole defendant was duly served, but has not chosen to send a reply.

9. I have compared the two marks i.e., the said mark, which is the trademark of the plaintiff as well as alleged offending/infringing mark of the sole defendant. Trademark of the plaintiff as well as alleged offending/infringing mark as placed before me are as follows:



Plaintiff's Trademark



Offending/Infringing Trademark

10. To be noted, I have not made a side by side comparison, but I have compared the same by applying the established principle in this regard. The established principle is, see the mark of the plaintiff, take it away from the sweep of your eye, thereafter see the alleged offending mark of the defendant little later and ask yourself the question as to whether a man of average intelligence with ordinary prudence and imperfect recollection will be lulled into the belief that what he is seeing now is what he saw earlier. I have no hesitation in saying that the answer in the instant case is in affirmative. I hasten to say that this is a *prima facie* view of this Court for the purpose of grant of interim injunction and will not sway further hearing in the main suit, which will be heard and disposed of independent of the *prima facie* view that has been expressed herein. At the risk of repetition and for the purpose of abundant clarity. I deem it appropriate to record that this *prima facie* view is recorded only for the purpose of making clear what weighed in the mind of the Court for granting ex parte injunction in the two applications. Further to be noted the aforesaid comparison of said mark and alleged offending mark is as laid down in ***Parle Products (P) Ltd. Vs. J.P. and Co., [(1972) 1 SCC 618]***. I deem it appropriate to extract paragraph 9 of the said judgment which reads as follows :

"9. It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluko Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our

opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it. "

11. To be noted, the two marks extracted supra are in black and white, but I have had the benefit of seeing the two marks in colour in the hearing.

12. There shall be orders of interim injunctions as prayed for in the two applications.

13. Prayers in these two applications are acceded to and these applications stand allowed.

14. Though obvious, it is made clear that the views expressed in this order are for the limited purpose of disposing of these two interlocutory applications and will not have any bearing in the disposal of the main suit. In other words, if the sole defendant chooses to enter appearance in the main suit and contest the same, the main suit will be decided and disposed of without being swayed by the views expressed herein and the contents of this order.

Sd/-M.S.J

05.01.2018

//Certified to be a true copy//

Dated this the day of 2019
JJ 22/01/19

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.