

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-10-2018

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

C.S.No.321 OF 2015

M/s.Kalanjiyam Cut Piece ... Plaintiff

-vs-

M/s.Kalanjiyam Dresses ... Defendant

Suit under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 of Original Side Rules and Sections 11,29,134 and 135 of Trade Marks Act,1999.

For Plaintiff : Mr.Ashok Kumar J.Daga

For Defendant : Set ex parte.

JUDGMENT

There is a sole plaintiff and a sole defendant in this suit.

2. The sole defendant, after being duly served with suit summons, has not chosen to come before this Court and therefore, the sole defendant was set ex parte. After the sole defendant being set ex parte, this suit was set down for recording ex parte evidence before Additional Master-II and ex parte evidence was recorded on 31.08.2018.

3. Today, the suit is listed for arguments and Mr.Ashok Kumar Daga, learned counsel on record for the sole plaintiff, is before this Commercial Division and he advanced arguments in the main suit.

4. Before I advert to the facts of the case, it is necessary to examine the jurisdiction of this Commercial Division qua this suit.

5. A perusal of the plaint, read in conjunction with the submissions made by the learned counsel for plaintiff, reveals that this suit pertains to complaints of infringement of registered trade marks of plaintiff and passing off and injunctive reliefs qua such infringement/passing off, besides usual prayers for delivery of offending materials, accounts, costs and residuary prayer, constituting the prayer paragraph in the plaint.

6. In the light of the abovesaid narrative, it becomes clear that this suit pertains to complaints of alleged infringement and passing off. In view of Section 134 (1) of the 'Trade Marks Act,1999' ('TM Act' for brevity), this Commercial Division has jurisdiction to entertain the suit, under first proviso to Section 7 of 'The Commercial Courts Act,2015' ('said Act' for brevity).

7. In the light of the jurisdiction of this Commercial Division being exercised under first proviso to Section 7 of said Act, specified value is of no relevance is learned counsel's further say.

8. I now revert to the trajectory of the main suit. As adverted to supra, the sole defendant remained ex parte and ex parte evidence was recorded before Additional Master-II on 31.08.2018.

9. The facts of the case in a nut-shell may be necessary for appreciating this judgment.

10. This suit pertains to three registered trade marks bearing numbers 690216, 1548035 and 1548038. All the three registered trade marks pertain to KALANJIYAM. The aforesaid three trade marks i.e., registered trade marks constitute the nucleus of this suit and therefore, the same shall be referred to as "Suit TMs" for convenience and clarity.

11. It is the case of the plaintiff that sometime in the year 2012, plaintiff came to know that defendant is using an identical/deceptively similar mark and is marketing similar products i.e., in the name and style of KALANJIYAM.

12. Plaintiff, therefore, issued a legal notice, dated 04.09.2012, and it is the submission of the learned counsel for plaintiff that defendant neither replied nor complied.

13. Therefore, the instant suit was presented in this Court on 15.04.2015.

14. I have already set out the trajectory of this suit and, in this suit, ex parte evidence has been recorded. This Commercial Division is informed that the plaintiff is a partnership firm and one of its partners Mr.Mohammed Mohideen has deposed as P.W.1 before Additional Master-II on 31.08.2018 and six documents viz., Exs.P-1 to P-6 have been marked through him.

15. Exs.P-1, P-2 and P-3 pertain to the aforesaid three registered trade marks, which constitute the Suit TMs. Ex.P-1 is certificate for Registered Trade Mark No.690216. This is in class 24. Trade mark type is 'Device'. Word Mark is KALANJIYAM CUTPIECE. Details as in Ex.P-1 are as follows :

Trade Mark No.: 690216

Date of Registration : 11/12/1995

Certificate No.: 260721

Certificate Date : 14/05/2003

Registration is valid up to : 11/12/2019

Goods & Descriptions : (Class : 24) TEXTILE PIECE GOODS

Device Mark is as under :

16. Ex.P-2 is certificate for Trade Mark No.1548035. This is in class 25. Trade Mark type is 'Device'. Word Mark is KALANJIYAM (TAMIL LABEL). Details as in Ex.P-2 are as follows :

"Goods & Descriptions : (Class : 25) BRASSIERS, CHUDIDHARS, SLIPS, TOPS, PETTY COAT, SKIRT, PANT, NIGHTEE, FALLS, SHIMMIES, PANTEES, JEANS, MIDI, BANIAN, CHAPPALS AND ALL OTHER TYPES OF READY MADE GARMENTS"

Date of Registration : 10/04/2007

Certificate No.: 777451

Certificate Date : 09/03/2009

Registration is valid up to : 10/04/2027

Device Mark is as follows :

17. Ex.P-3 is certificate for Trade Mark No.1548038. This is in class 24. Trade Mark type is 'Device'. Word Mark is KALANJIYAM (TAMIL LABEL). Details as in Ex.P-3 are as follows :

"Goods & Descriptions : (Class : 24) ALL KINDS OF TEXTILE PIECE GOODS INCLUDING DHOTIES, SHIRTINGS, SUITINGS, LUNGIES, BED SHEETS, SAREES, BLOUSE MATERIALS, TOWELS, CHUDHITHAR MATERIALS, WOVEN INTERLININGS, COTTON TEXTILES ; BED/TABLE/PILLOW COVERS AND OTHER CLOTHING MATERIALS Associated with TM No.1548038"

Date of Registration : 10/04/2007

Certificate No.: 774873

Certificate Date : 03/03/2009

Registration is valid up to : 10/04/2027

Device Mark is as follows :

18. To prove his case, the plaintiff has filed a huge bunch of purchase invoices from 25.04.1979, wherein and whereby, the plaintiff has purchased goods from various sources from the year 1979. To be precise, the earliest invoice is dated 25.04.1979 and the last invoice is dated 03.11.2005. This has been marked as Ex.P-4 through Mr.Mohammed Mohideen, P.W.1. Legal notice, dated 04.09.2012, i.e., cease and desist notice has been marked as Ex.P-5 and the Postal Receipt, dated 08.09.2012, evidencing despatch of the same, has been marked as Ex.P-6. As already stated supra, learned counsel for the plaintiff would submit that Ex.P-5, legal notice, has been duly served on the

defendant but the defendant neither replied nor complied.

19. I have perused the deposition of Mr.Mohammed Mohideen, who, I am informed, is a partner in the plaintiff firm. The deposition is cogent and it is in harmony with the pleadings in the plaint. In other words, the deposition buttresses the pleadings in the plaint and it is synchronised with the pleadings in the plaint.

20. Offending mark of defendant is □ KALANJJIYAM DRESSES. Defendant is dealing in same products/goods as that of plaintiff.

21. In the light of the aforesaid narrative, I am convinced that plaintiff has proved its case and is, therefore, entitled to all six limbs of prayers made in the prayer in paragraph 37.

22. With regard to sub-paragraph (f) of paragraph 37 i.e., residuary limb of prayer, I examined the same in the light of amended Section 35-A of amended 'The Code of Civil Procedure,1908' ('CPC' for brevity), as amended by said Act.

23. Now that there is no cap with regard to compensatory costs, I am convinced that this is a fit case for awarding compensatory costs. The reason is, the trajectory of this suit, which has been alluded to supra. The defendant has been put on notice vide Ex.P-5 i.e., cease and desist notice, which is dated 04.09.2012. The defendant neither replied nor complied. Thereafter, the suit itself was presented on 15.04.2015, as the alleged infringement and passing off continued unabated. Even after service of suit summons, the defendant has not chosen to come before this Court, thereby compelling the plaintiff to carry this litigation for a period of more than three years, by expending time, energy and money.

24. In the light of the defendant's conduct of not responding to the cease and desist notice as also the suit summons herein and in the light of time, energy and expenses incurred by the plaintiff, I am convinced that this is a fit case for awarding compensatory costs under Section 35-A of CPC, as amended by said Act. Accordingly, I award compensatory costs of Rs.2,00,000/-.

25. To be noted, this compensatory costs is under the residuary prayer limb i.e., sub-para (f) of paragraph 37 and therefore, this is in addition to costs that have been awarded under sub-paragraph (e) of prayer paragraph 37 of the plaint. With regard to costs awarded under paragraph 37 (e), plaintiff is entitled to file bill costs in the usual course.

26. As the suit claim has been proved, this Civil Suit is decreed with costs and compensatory costs, as mentioned supra. Consequently, the connected O.A.Nos.430 and 431 of 2015 are closed.

01-10-2018

Index : Yes/No

Internet : Yes/No
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M.SUNDAR,J.

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