

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.231 of 1999

1.Aquapump Industries,
Rep.by its Managing Partner
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore-641 034.

2.Aquasub Engineering,
rep.by its Managing Partner
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore-641 034.

.. Plaintiffs

Vs.

Texmo Industries,
G.N.Mills Post,
Coimbatore-641 029.

&

170, Thambu Chetty street,
Chennai-600 001.

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules and Sections 27, 105 and 106 of the Trade & Merchandise Marks Act, 1958 praying to

a) grant permanent injunction restraining the defendants by themselves, their servants, agents, distributors or any one claiming through them from manufacturing, selling, advertising and offering for sale in any media and use the same in invoices, letter heads and visiting cards in relation to:

(1) Motors, which run on single-phase current with capacities ranging between ¼ H.P. (One-fourth Horse Power) and 1 H.P. (One Horse Power).

(2) Deepwell Jet Pumps, Jet mono-blocks, multistage Jet Pumps and mono-blocks of any capacity which run on single-phase current.

(3) Centrifugal Pumps and mono-blocks upto and including 1 H.P. (One Horse Power), which run on single-phase current.

(4) Lateral channel pumps and lateral channel mono-blocks of any capacity which run on single-phase current.

(5) Submersible mono-blocks of any capacity, which run on single-phase current.

(6) Reciprocating Pumps for domestic use, which run on single-phase current.

(7) Any other type of Pump or mono-block including self-priming centrifugal pumps and mono-blocks, which run on single-phase current used for domestic purposes.

(8) Submersible Motors, Submersible Pumps and Submersible Pumpsets (excluding Submersible Monoblocks presently manufactured by Defendants).

(9) Components and spares for the above products.

By using the expression "TEXMO" or by displaying the device as shown in the document No.30 either as their logo or trade-mark in relation to the sale of those goods or used it in any manner as trade-mark or in any manner infringing the plaintiffs four Registered Mark Nos.315049(SP-I), 315049(SP-II) and 315050 (SP-I) & 315050 (SP-II):

b)grant permanent injunction restraining the defendants by themselves, their servants, agents, distributors or any one claiming through them from manufacturing, selling or offering for sale, using the Plaintiff's trade-mark "TEXMO" in the manner in which it is shown in the name-plate filed as document No.16 and advertised the device mark shown in Document No.30 through newspaper, hoardings pamphlets as their logo or trade-mark or in manner using the same as trade-mark for selling.

(1) Motors, which run on single-phase current with capacities ranging between ¼ H.P. (One-fourth Horse Power) and 1 H.P. (One Horse Power).

(2) Deepwell Jet Pumps, Jet mono-blocks, multistage Jet Pumps and mono-blocks of any capacity which run on single-phase current.

(3) Centrifugal Pumps and mono-blocks upto and including 1 H.P. (One Horse Power), which run on single-phase current.

(4) Lateral channel pumps and lateral channel mono-blocks of any capacity which run on single-phase current.

(5) Submersible mono-blocks of any capacity, which run on single-phase current.

(6) Reciprocating Pumps for domestic use, which run on single-phase current.

(7) Any other type of Pump or mono-block including self-priming centrifugal pumps and mono-blocks, which run on single-phase current used for domestic purposes.

(8) Submersible Motors, Submersible Pumps and Submersible Pumpsets (excluding Submersible Monoblocks presently manufactured by Defendants).

(9) Components and spares for the above products.

as the goods of plaintiffs and pass-off those goods as and for the goods of Plaintiffs are enabling others to pass-off.

(ii) directing the Defendants to surrender to the Plaintiffs all the goods namely, packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade-mark "TEXMO" or the device with the trade-mark "TEXMO" in respect of goods referred in paragraph (i) & (ii).

(iii) for a preliminary decree in favour of the plaintiffs, directing the defendants to render an account of profits made by them by the use of the trade-mark "TEXMO" on the good referred in paragraph (i) & (ii) and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts:

(iv) direct the defendant to pay the cost of the suit.

For Plaintiffs : Ms. Bhuvaneswari
for Ms. Gladys Daniel
For Defendant : Mr. Prem Chander

JUDGMENT

Ms. Bhuvaneswari, representing Ms. Gladys Daniel, counsel on record for plaintiffs is before this Commercial Division.

2. Mr. Prem Chandar of M/s. Anand & Anand (Law Firm) for sole defendant is before this Commercial Division. M/s. Anand & Anand (Law Firm) has entered appearance for the sole defendant by way of change of vakalat in the place of Mr. T.S. Baskaran.

3. To be noted, there are two plaintiffs and one defendant.

4. It is submitted by both the learned counsel before me that the parties to this suit have entered into a Mediation Agreement before the Tamil Nadu Mediation and Conciliation Centre, vide Mediation agreement dated 21.02.2017, in Mediation case No.1151 of 2013.

5. To be noted, this suit was referred to the Mediation Centre by this Court, vide order dated 29.08.2013.

6. The Mediation Agreement placed before me reads as follows:

"MEDIATION AGREEMENT"

Date: 21/02/2017

Mediation Case No : 1151/2013
Case Details : C.S.No.231/1999
Referred by : The Hon'ble Mr. Justice R.Sudhakar
Date of Order : 29/08/2013
Parties Name : Aquapump Industries,
Rep. By its Managing Partner,
Mr.Ramaswamy Kumaravelu
Thudiyalur Post, Coimbatore-34
.. Plaintiffs
Texmo Industries,
G.N.Mills Post,
Coimbatore-29. .. Defendant

Counsel Name : Mr.C.Daniel, Advocate for the
Plaintiff's
Mr.T.S.Baskaran, Advocate for the
Defendant

Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

This Mediation Agreement is being entered into on this the 21st day of February 2017.

Between

1. Aquapump Industries a Partnership firm represented by its

Managing Partner, Mr. Ramaswamy Kumaravelu having address at Thudiyalur Post, Coimbatore-641 034 their heirs, assigns and successors in interest.

2. Aquasub Engineering, Partnership firm represented by its Managing Partner Mr. Ramaswamy Kumaravelu having address at Thudiyalur Post, Coimbatore-641 034 on the one part their heirs, assigns and successors in interest.

And

Texmo Industries, Partnership firm (currently comprising of: 1. Damayanti Ramachandran Trust 2. Mrs. Damayanti Ramachandran, & 3. The R. Ramachandran Trust for Arjunan) represented by its Managing Partner Mrs. Damayanti Ramachandran at G.N. Mills Post, Coimbatore 641 029 on the other part their heirs, assigns and successors in interest.

It is submitted the Plaintiffs and the defendant in order to settle all the matter amicably requested this Hon'ble Court to refer the matter to mediation and this Hon'ble Court was pleased to order this matter to be posted for mediation.

It is submitted the Plaintiffs and the Defendant have resolved to settle all disputes between the parties both with respect to the subject suit and also outside the scope of the suit on the following terms. Accordingly this Hon'ble Court may be pleased to decree this suit in terms of the Mediation Agreement:

That the Plaintiffs and Defendant hereby agree to settle the present proceeding and the other disputes on the following terms and conditions:

I. The Plaintiffs and the Defendant agree to abide by the Settlement Agreement dated 24th May 1990 and agree to use the trademark TEXMO in class 7 as per the family agreement dated 24th May 1990, marked as Annexure-A hereto

II. The Plaintiffs and the Defendant agree to abide the present mediation agreement.

III. The Defendant has no objection to the use of the trademark TEXMO with or without prefix and suffix by the Plaintiffs in respect of goods mentioned in Schedule I & II of the settlement Agreement dated 24th May 1990 and The Plaintiffs have no objection to the use of the trademark TEXMO with or without prefix and suffix by the Defendant in respect of goods mentioned in Schedule III of the Settlement Agreement dated 24th May 1990.

IV. The Plaintiffs shall own, hold and register in its name the mark TEXMO with or without prefix and suffix in respect of goods and services falling under classes 5, 8, 13, 15, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39, 40, 41, 43, 44 & 45 and to hold the common law rights therein.

V. The Defendant shall own, hold and register in its name the mark TEXMO with or without prefix and suffix in respect of

goods and services falling under classes 1, 2, 3, 4, 6, 9, 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 35, 37 & 42 and to hold the common law rights therein. The Defendant shall own, hold and register in its name the mark TEXMO and TEXMO INDUSTRIES as their trading style/name.

VI. The Plaintiffs and the Defendant shall have the right individually to take legal action against third parties who violate, infringe, falsify or misuse the trademark TEXMO irrespective of classes in any manner whatsoever.

VII. The Plaintiffs shall withdraw all the opposition proceedings made against the trademark TEXMO / TEXMO TARO filed under application Nos. 819813, 819814, 1333616, 1333617, 1333618, 1333619, 1333620, 1333621, 1646256 & 1646257 subject to amending the classification of goods to reflect the exact goods as mentioned in Schedule III of the settlement agreement dated 24th May 1990. The same is set out as Annexure E hereunder.

VIII. The Plaintiffs and the Defendant resolve to avoid any future disputes, differences, disagreements which may prejudicially affect or hamper the peace, harmony, honour, prestige and proprieties of the Plaintiffs and Defendant and all disputes be amicably dealt with in terms of this agreement set out here so as to ensure continued peace between the parties.

IX. The Defendant shall withdraw the applications as set out in the Annexure B. The Plaintiffs shall withdraw the Oppositions in Annexure C.

X. The Plaintiffs shall withdraw the Rectification Applications before intellectual property as set out in Annexure D.

DISPUTES OUTSIDE THE PURVIEW OF THE PRESENT SUIT

A. 58 Acres 3.5 Cents of land at Coimbatore District, Periyanaickenpalayam Sub Registrar office, Gudalur Village having Survey Nos. 659, 660, 661, 662, 664, 776, 777, 778, 779, 1026, 1027, 1028, 1029, 1030, 1031, 1032 & 1033 will be registered in the name of Mrs. Damayanti Ramachandran, Mr.Arjunan Ramachandran & Mr.Shivan Ramachandran. The original title deeds will be handed over to Mrs. Damayanti Ramachandran.

B. The Race Course House at New No.16, Old No.20, ATD Street, Race Course, Coimbatore 641 018 will be registered in the name of Mrs.Damayanti Ramachandran, Mr.Arjunan Ramachandran & Mr.Shivan Ramachandran. The original title deeds are already with Mrs. Damayanti Ramachandran.

C. The Ooty House in adress with Door No.32, 33 Church Hill, Havelock Road, will be registered in the name of Mr.R.Kumaravelu. The Original title deeds are already in possession of Mr. R.Kumaravelu.

D. The parties agree to hand over all original documents of properties falling to their shares as set out in Clauses A-C above in the following manner. The original title deed pertaining to the race course house are already with Mrs.Damayanti Ramachandran. The Original title deed pertaining to 58 Acres 3.5 cents of land and the Original Partition deed pertaining to the property will be handed over to Mrs.Damayanti Ramachandran during the execution of the partition deed before the Sub Registrar's Office at Coimbatore within 31.03.2017 or within such extended time mutually agreed upon.

E.The parties have also drawn up an agreement to partition of the properties listed above in Clauses A to C marked as ANNEXURE-F hereunder and agree that the partition deed would be finalized and registered before the Registrar of Land Records in Coimbatore within 31.03.2017 or which such extended time mutually agreed upon and updated the same before the Hon'ble Madras High Court within 15 days of such registration to enable the Hon'ble Court to draw up the final decree in the present suit.

F.That all Criminal proceedings filed against Mrs. Damayanti Ramachandran or against employees/agents/distributors of the Defendant will be withdrawn by the Plaintiffs or by the Complainant especially CC No.3083/99 and nay other criminal matter pending between the parties within 15 days from the Decree before this Hon'ble Court.

G. That all trademark oppositions, rectifications and other proceedings pending before Trademark Registry and Intellectual Property Appellate Board will be withdrawn by the respective parties within 15 days from the date of Decree before this Hon'ble Court.

ARBITRATION

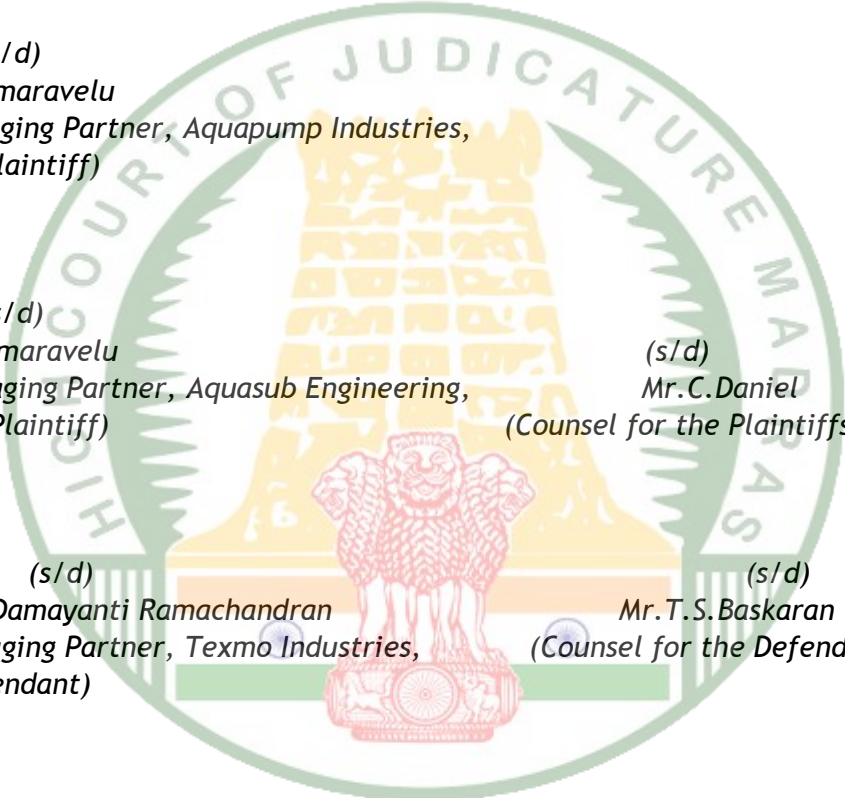
XI. Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement or the subject matter thereof as to the interpretation, operation, or effect of any clause in this agreement shall be referred to the arbitration in accordance with the Arbitration and Conciliation Act, 1996 and a retired High Court Judge mutually agreed by both the parties shall act as an arbitrator for settling the disputes between the parties. The principal place of arbitration is at Chennai.

XII. That Civil Suit No.231 of 1999 shall be decreed in terms of the Mediation Agreement. That parties have mutually agreed to settle all disputes and in and by the subject agreement, even those falling outside the purview of the suit.

XIII. It is therefore humbly prayed that the present mediation agreement may be recorded and a decree be passed in favour of the Plaintiffs and the Defendant by this Hon'ble Court, incorporating the terms of the Mediation Agreement.

XIV. That the Plaintiffs and Defendant agree to give up the other reliefs claimed by them in the present suit.

Dated at Chennai on this the 21st day of February 2017.



(s/d)
R.Kumaravelu
Managing Partner, Aquapump Industries,
(1st Plaintiff)

(s/d)
R.Kumaravelu
Managing Partner, Aquasub Engineering,
(2nd Plaintiff)

(s/d)
Mr.C.Daniel
(Counsel for the Plaintiffs)

(s/d)
Mrs.Damayanti Ramachandran
Managing Partner, Texmo Industries,
(Defendant)

(s/d)
Mr.T.S.Baskaran
(Counsel for the Defendant)"

7. From the Mediation Report placed before me, it is clear that litigants on both sides have appeared with their respective counsel before the Mediation Centre for execution/recording the above extracted/reproduced Mediation Agreement.

8. Both the learned counsel before me also confirm that parties/litigants had appeared before the Mediation Centre on 21.02.2017 for

execution/recording of the aforesaid Mediation Agreement dated 21.02.2017.

9. Therefore, I dispense with the presence of the parties before this Commercial Division for recording this Mediation Agreement, by acceding to the dispense with presence of litigants prayer made before me by both counsel.

10. Both the learned counsel make a request that the Mediation Agreement may please be treated as a Memorandum of Compromise and request for a decree in terms of the aforesaid Mediation Agreement/Memorandum of Compromise.

11. There shall be a decree in this suit in terms of the aforesaid Mediation Agreement dated 21.02.2017. It shall be treated as a Memorandum of Compromise.

12. The aforesaid Mediation Agreement dated 21.02.2017, shall form part of the decree in this suit.

13. To be noted, the aforesaid Mediation Agreement dated 21.02.2017 is also a compromise and that is being recorded by this Court. Therefore the provisions of Rule 3 of Order XXIII of Code of Civil Procedure, 1908 (hereinafter

referred to as 'CPC' for brevity) will apply to this decree. I deem it appropriate to extract Rule 3 of Order XXIII of CPC, which reads as follows:

3. Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit].

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

(Underlining made by this Court to highlight/supply emphasis)

14. Extracting Rule 3 of Order XXIII of CPC and highlighting/emphasising relevant portions of Rule 3 has become necessary as the aforesaid Mediation Agreement dated 21.02.2017, which has been recorded as Memorandum of Compromise in this suit includes subject matters which do not form part of this suit. No costs.

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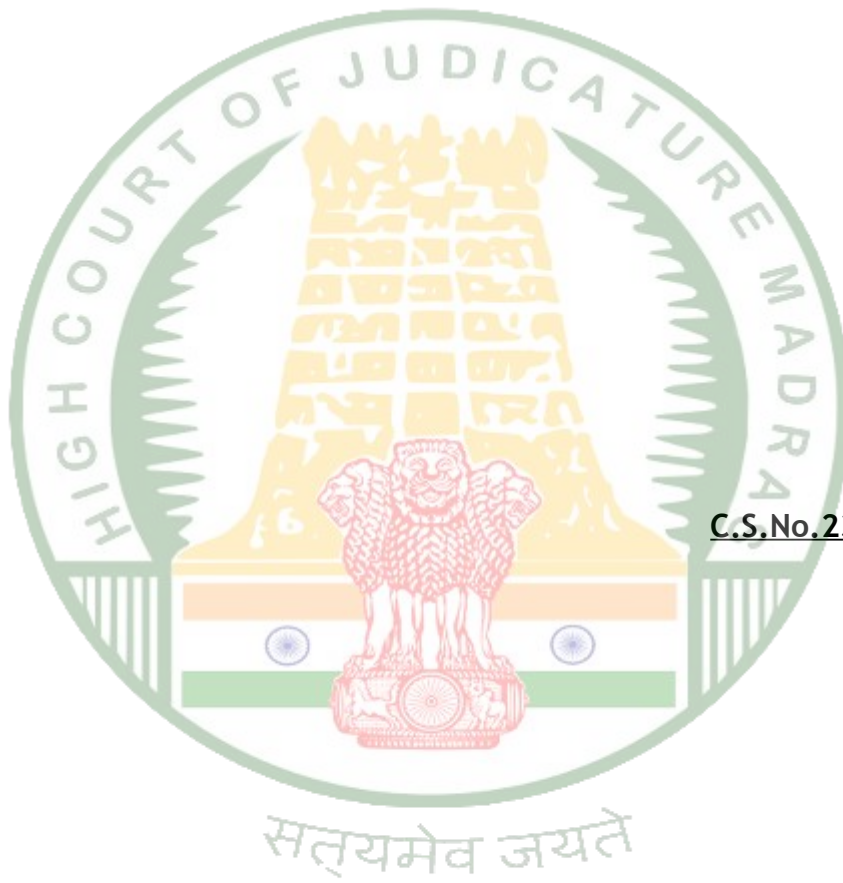
Speaking/Non-Speaking order

Index : Yes/No

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M.SUNDAR, J.

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