

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.611 of 2017

Rais Arif Meman
trading as I Ads & Events,
No.25, 3rd Floor, Nehru Road,
Kammanahalli,
Bangalore,
Karnataka-560 084.

... Plaintiff

Vs.

M/s.Prompt Trade Fair Pvt. Ltd.,
621, Mount Road,
3rd Floor, Sire Mansion,
Thousand Lights,
Chennai-600 006.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of CPC read with Sections 27, 134 and 135 of the Trade Marks Act, 1999 seeking judgment and decree by granting perpetual injunction restraining the defendant, by themselves, their directors, men, servants, agents, dealers, distributors, stockists, wholesalers, retailers, representatives or any one claiming under them from in any manner passing off and enabling others to pass off the defendant's services as and for the plaintiff's services by use of the trademark INDIAN FURNITURE MARKET or any other mark identical or deceptively similar to the plaintiff's trademark INDIAN FURNITURE MARKET in their advertisements, exhibition, trade fairs, any other manner of displaying furniture in public or in any manner whatsoever; (b) the defendant be ordered and decreed to pay to the plaintiff a sum of Rs.10,00,000/- as damages for acts of passing off committed by the

defendant by marketing of services bearing the trademark INDIAN FURNITURE MARKET; (c) the defendant be ordered to surrender to plaintiff for destruction of all materials bearing the trademark INDIAN FURNITURE MARKET or any trademark similar to plaintiff's trademark INDIAN FURNITURE MARKET; (d) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark INDIAN FURNITURE MARKET and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts, (e) for costs; and (f) pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.

For Plaintiff : Mr.Arun C.Mohan

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Mr.Arun C.Mohan, learned counsel on record is before this commercial division on behalf of the sole plaintiff. Mr.R.Sathish Kumar, learned counsel on record for the sole defendant is before this commercial division.

2 This suit has been listed before this commercial division for the first time and therefore, I heard both learned counsel on jurisdiction of this commercial division, before examining the suit on merits.

3 Both learned counsel, i.e., Mr.Arun C.Mohan for sole plaintiff and Mr.R.Sathish Kumar for the sole defendant, made a common submission in unison that this commercial division will have jurisdiction to entertain this suit under first proviso to Section 7 of the Commercial Courts, Commercial

Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as 'Act 4 of 2016' for the sake of brevity, clarity and convenience).

4 Both learned counsel submitted that the suit is one pertaining to a complaint of passing off of plaintiff's trademark. The trademark of the plaintiff which is subject matter of this suit is 'INDIA FURNITURE MARKET'. The plaint is predicated on the ground that plaintiff started using the aforesaid mark from March 2016 and the first endeavour of the plaintiff itself was a huge success. Plaint is further predicated on the ground that while plaintiff started using the mark from March 2016, defendant started using the same mark, i.e., 'INDIA FURNITURE MARKET' for identical services somewhere from August 2017 and is riding on the popularity of plaintiff's mark. To be noted, the plaintiff's mark is not a registered mark under the Trade Marks Act, 1999. I am informed that plaintiff had applied for registration of the mark and that the same is pending. Therefore, this suit is a complaint of passing off, a common law action, will fall under section 134(1)(c) of the Trade Marks Act, 1999. It is the further common submission of both learned counsel that in the light of Section 134(1), this commercial division will have jurisdiction to entertain this suit irrespective of its value, in the light of first proviso to Section 7 of Act 4 of 2016.

5 I have perused the plaint and as mentioned supra, I have also heard both learned counsel. I have no difficulty in accepting the submission and holding that this commercial division has jurisdiction to entertain this suit.

As alluded to supra, this commercial division is exercising jurisdiction over this

suit under first proviso to Section 7 of Act 4 of 2016.

6 Now that this commercial division exercises jurisdiction over this suit, I turn to the merits of the matter. Along with the suit, plaintiff took out an application being O.A.No.754 of 2017 with a prayer for interim injunction to restrain the defendant from passing off their aforesaid mark. For the purpose of clarity, I deem it appropriate to set out again that the mark is 'INDIA FURNITURE MARKET' and this is a service mark. The service is organizing trade fairs exclusively for furnitures. This mark for this service which is the subject matter of this suit is hereinafter referred to as 'said mark' for the sake of convenience and clarity.

7 The defendant entered appearance in the aforesaid interlocutory application and filed a counter affidavit, wherein it was stated by the defendant on oath in his sworn affidavit that they have proposed to change their name / brand from 'INDIA FURNITURE MARKET' to 'INDIA FURNITURE BAZAAR'. Recording the submission, the interlocutory application was disposed of on 21.09.2017.

8 Today, there is no disagreement between both learned counsel before me that the defendant has in fact changed their name / brand to 'INDIA FURNITURE BAZAAR'.

9 The aforesaid averment of the defendant that they would change their mark from 'INDIA FURNITURE MARKET' to 'INDIA FURNITURE BAZAAR' has been articulated in paragraph 8 of the counter affidavit in the abovementioned O.A.No.754 of 2017 and I deem it appropriate

to extract the same, which reads as follows :

“8)Finally, I submit that in future we have proposed to name/brand Furniture Expo either under the name “INDIA FURNITURE BAZAAR” or “INDIA FURNITURE EXPO” for furniture segment, but not under the name “INDIA FURNITURE MARKET”. Therefore we affirm that we will not use such trade descriptive or common or generic expo name “INDIA FURNITURE MARKET” claimed by the applicant/plaintiff as his exclusive proprietary right, while organizing expo for furniture segment.”

10 Today, the aforesaid averment is reiterated and as mentioned supra, it is also not in dispute between the counsel that defendant has actually changed their name / brand to 'INDIA FURNITURE BAZAAR'.

11 In the light of the aforesaid narrative, learned counsel for plaintiff submits that the main suit itself can be disposed of without resorting to oral evidence.

12 There is provision for summary judgment under amended Code of Civil Procedure, 1908 ('CPC' for brevity) as amended by Act 4 of 2016. A chapter captioned 'Summary Judgement' has been introduced in CPC by Act 4 of 2016. Order XIII-A Rule 1 and sub-Rule (1) thereunder empowers this commercial division to pass summary judgment without recording oral evidence. I deem it appropriate to extract Order XIII-A Rules 1 and 2, which read as follows :

“1.Scope of and classes of suits to which this Order applies.--(1)This Order sets out the procedure by which court may decide a claim pertaining to any Commercial Dispute

without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include--

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counter-claim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.--An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit."

13 Rule 2 supra provides for an applicant to make an application for summary judgment. In the instant case, there is no separate application, but an oral request is made in the hearing today by learned counsel for plaintiff.

14 I treat this as request for summary judgment without insisting on a formal application. The reasons for doing so / adopting such a course are twofold and they are as follows :

(a) The first reason is learned counsel for sole defendant does not oppose such a course and he does not insist on a separate application being filed.

(b)The second reason is Rule 3 sub clause (b) which sets out that the court can give summary judgment against the plaintiff or defendant on a claim in a suit, if there is no other compelling reason why the claim should not be disposed of before recording oral evidence.

I deem it appropriate to extract the entire Rule 3 of Order XIII-A. Order XIII-A Rule 3 reads as under :

“3.Grounds for summary judgment.--The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that --

(a)the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b)there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”

15 The prayer paragraph in the plaint is paragraph 20 and I deem it appropriate to extract the entire paragraph 20, which reads as follows :

“20.The plaintiff, therefore, prays that this Hon'ble Court may be pleased to grant a judgment and decree on the following terms:

a.a perpetual injunction restraining the defendant, by themselves, their directors, men, servants, agents, dealers, distributors, stockists, wholesalers, retailers, representatives or any one claiming under them from in any manner passing off and enabling others to pass off the defendant's services as and for the plaintiff's services by use of the trademark INDIAN FURNITURE MARKET or any other mark identical or

deceptively similar to the plaintiff's trademark INDIAN FURNITURE MARKET in their advertisements, exhibition, trade fairs, any other manner of displaying furniture in public or in any manner whatsoever;

b.the defendant be ordered and decreed to pay to the plaintiff a sum of Rs.10,00,000/- as damages for acts of passing off committed by the defendant by marketing of services bearing the trademark INDIAN FURNITURE MARKET

c.the defendant be ordered to surrender to plaintiff for destruction of all materials bearing the trademark INDIAN FURNITURE MARKET or any trademark similar to plaintiff's trademark INDIAN FURNITURE MARKET;

d.a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark INDIAN FURNITURE MARKET and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts.

e.for costs; and

f.pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render Justice."

16 In the light of the narrative supra and in the light of the discussion set out above, it follows indisputably that plaint sub paragraph (a) of paragraph 20 can be decreed. With regard to plaint sub paragraphs b,c,d,e and f of paragraph 20, learned counsel for plaintiff very fairly submits that in the light of the stand taken by the defendant and in the light of the main suit itself being disposed of in the light of the stand taken by the defendant, the plaintiff has no hesitation in giving up the aforesaid five prayers contained in

sub paragraphs b to f.

17 Therefore, there shall be a summary judgment in this suit, wherein and whereby paragraph 20(a) of the plaint prayer shall stand decreed and the prayers in paragraphs 20(b) to 20(f) of the plaint shall stand given up. Counter affidavit dated 30.8.2017 filed by the defendant in the suit in O.A.No.754 of 2017 shall form part of this decree.

18 This suit is disposed of on the above terms. There shall be no order as to costs.

22.01.2018

Index : Yes/No

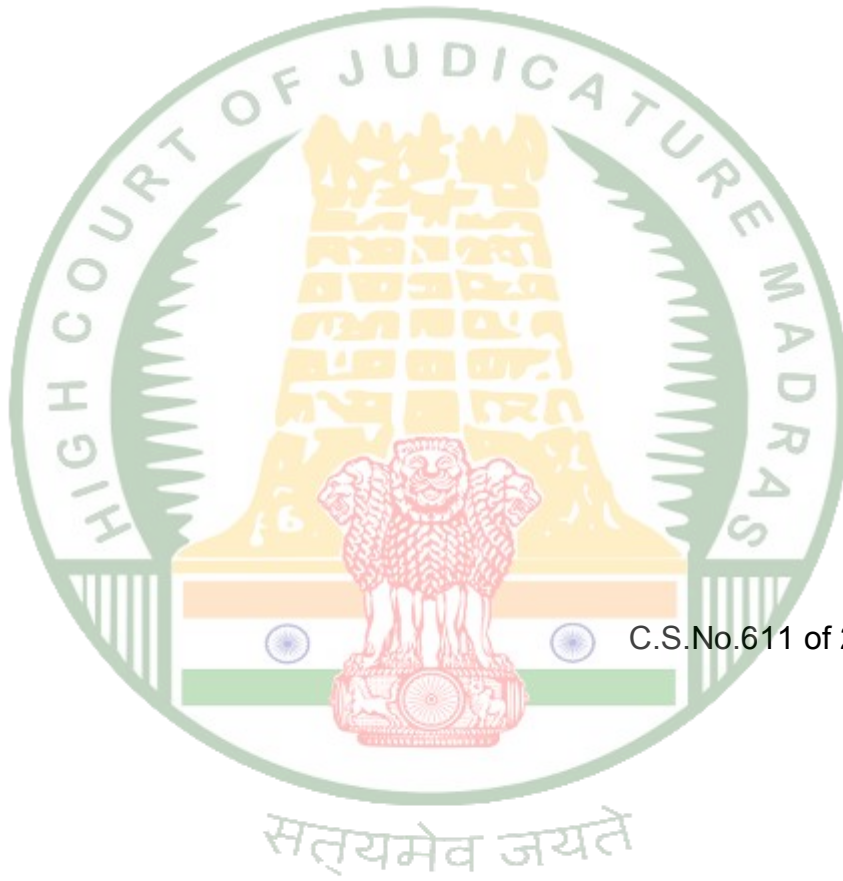
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M.SUNDAR, J.

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