

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.669 of 2017

and

O.A.No.829 of 2017

1.M.Kumaaravel

2.M/s.Vel Chakra Coffee Private Limited,
represented by its Director M.Kumaaravel,
No.16/31, Kandappa Chetty Street,
Kothawal Bazaar,
Chennai-600 001. .. Plaintiffs

Vs.

1.Balasubramaniam

2.Pushpalatha

Both carrying on the business in the name
and style of "Ashok Nagar Madras Coffee House"
No.77/64, Near Apollo Pharmacy,
Sriji Apartment, R.R.Colony Road,
12th Avenue, Ashok Nagar,
Chennai-600 083.

(Amended as per order dated 9.10.2017
in A.No.6159 of 2017

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC read with Sections 134 and 135 of the Trade Marks Act, 1999 seeking judgment and decree by granting permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off their hotel, restaurant, coffee shop, snack bar as that of the plaintiffs' by using the offending Trade Mark "Ashok Nagar Madras Coffee House" by using any

other trademark which is identical or similar or deceptively similar or colourable imitation of the plaintiffs' trademark "Madras Coffee House" and directing defendants to render true and faithful account of the profits earned by them through the sale of goods and service bearing the offending trademark and directing payment of such profits to the plaintiffs by way of damages for passing off committed by the defendants and by directing defendants to surrender infringing display boards, blocks, bill books and other materials and to pay the plaintiffs the cost of the suit.

For Plaintiffs : Mr.V.Vijayshankar

For Defendants : Ms.K.M.Vatsala

JUDGMENT

This suit has been filed by the plaintiffs claiming that they are one of the leading entities in Hotel and Restaurant services and are carrying on business in the name and style 'Madras Coffee House'.

2 It is further submitted by the plaintiffs that they have applied for registration of Trademark 'Madras Coffee House' and the same is pending. Pending registration of the Trademark, it is alleged by the plaintiffs that defendants have been passing off the plaintiffs' service by using the name 'Madras Coffee House – Ashok Nagar' or 'Ashok Nagar Madras Coffee House'. In sum and substance, this is a suit alleging passing off.

3 Pending suit, an interlocutory application inter-alia seeking a restraint order qua alleged passing off by defendants has been moved by the plaintiffs and an order of ex-parte injunction was granted on 1.9.2017 by this

Court. The injunction is operating until today.

4 Both the defendants are represented by learned counsel Ms.K.M.Vatsala who took me through the counter affidavit filed by the defendants in the aforesaid interlocutory application.

5 Reacting to the counter affidavit, Mr.Vijayshankar, learned counsel appearing for the plaintiffs pointed out that the defendants have categorically averred in paragraph 17 of the counter affidavit that they have stopped carrying on business in the name and style 'Ashok Nagar Madras Coffee House' or 'Madras Coffee House – Ashok Nagar' at two specific addresses and the two specific addresses are as follows :

- “a)No.5, Ratan Building, 10th Avenue, Ashok Nagar, Chennai.
- b)Old No.46, New No.43, 47th Street, 9th Avenue, Ashok Nagar, Chennai-83.”

6 It was submitted by Mr.Vijayshankar that plaintiffs would be satisfied if the aforesaid portion of paragraph 17 and paragraph 19 are recorded. Relevant portion of paragraph 17 and paragraph 19 read as follows:

“17. x x x x x x x x x x

“No.5, Ratan Building, 10th Avenue Ashok Nagar, Chennai”

which was vacated as early as in September 2016. Thereafter the alleged Franchisee was run at Old No.46, New No: 43, 47th Street, 9th Avenue, Ashok Nagar, Chennai-83 which was also closed on 04.03.2017 (SARFAESI proceedings). Only these two shops were

run by getting supply of raw materials and goods from the Applicants. Both the shops had a name board as “Madras Coffee House- Ashok Nagar”. After March 2017, the respondents have not been using the alleged Trade Mark.....”

19. In fact the Applicants/Plaintiffs have introduced a fresh cause of action by way of Amendment. However, the Interim Orders are not binding on the respondents since they are not carrying on business under the trade mark “Madras Coffee House” or “Ashok Nagar Madras Coffee House”.

7 It was also brought to the notice of the court by Ms.K.M.Vatsala, learned counsel for defendants that they are not using 'Madras Coffee House' per se and that they are using only 'Ashok Nagar Coffee House'. To support her claim, a photograph showing the sign board of defendants together with their logo has been placed before this court and the same is as follows :



8 It was submitted by the learned counsel for the plaintiffs that this puts an end to the entire controversy. It was further submitted in his usual fairness by Mr.Vijayshankar, learned counsel for plaintiffs that the prayer portion in the plaint is contained in paragraph 20 of the plaint and in the light of quietus being given to the controversy between the parties at lis, plaintiffs would give up two limbs of the prayer in the plaint, i.e., paragraphs 20(B) and 20(C).

9 In the light of all that have been set out supra, both the learned counsel submitted that the main suit itself can be disposed of without resorting trial, i.e., oral and documentary evidence.

10 In the light of the submissions made by both learned counsel, the plaint prayer 20(B) and 20(C) are given up. The suit is decreed with regard to the plaint prayer in paragraph 20(A) alone on the above terms. In the light of the trajectory of the litigation, there shall be no order as to costs. Consequently, connected application is closed.

11 This Commercial Division places on record its appreciation of the fair approach taken by both the learned counsel resulting in quick disposal of the main suit.

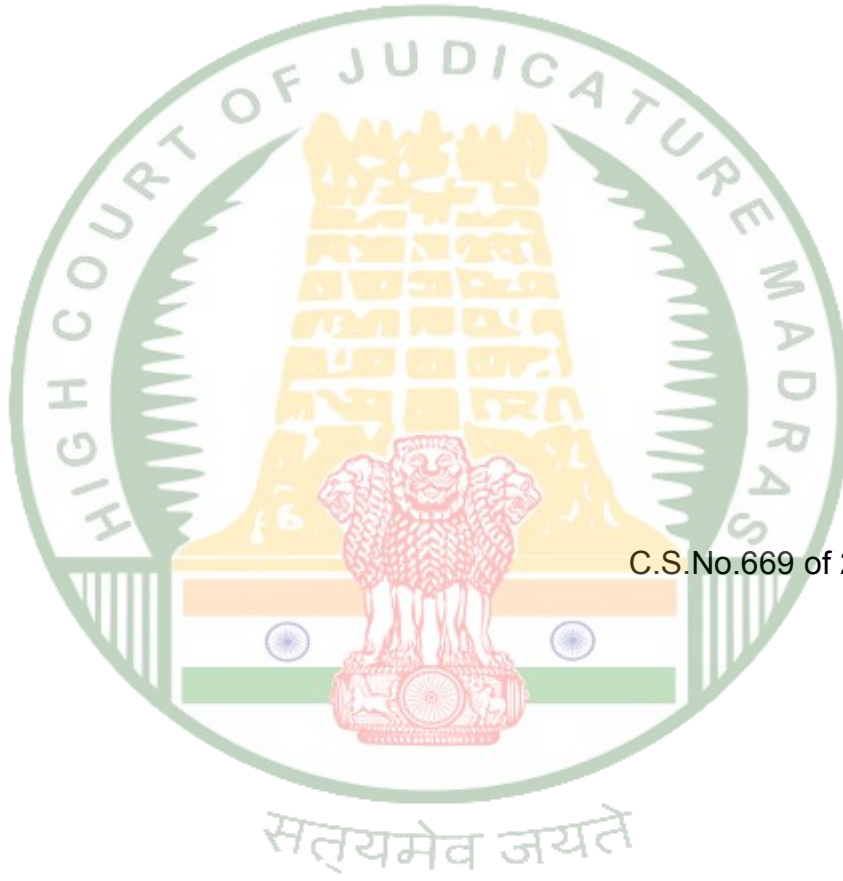
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M.SUNDAR, J.

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