

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.01.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.704 of 2017
&
O.A.No.898 of 2017

M/s. Fibroflex (India) Private Ltd.,
Rep. By its Director,
Mr. R.Kamakoteeswaran,
New No.69, (Old No.5) Greams Road,
Thousand Lights,
Chennai-600 006.

.. Plaintiff

Vs.

V.Venkatesan

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 of the Code of Civil Procedure, read with Order IV Rule 1 of Original Side Rules to grant permanent injunction restraining the Defendant, his employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "FibreLux" with the tag line "Natural Fibre, Natural Sleep, Rubberised Coir Mattresses, Pillow & Cushions" or any other name/mark deceptively similar to Plaintiff's mark "FIBROFLEX" containing the words "Rubberised Cior Mattresses, Pillow & Cushions". In any manner whatsoever, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URL's, e-mail addresses, screen names, user names, website contents (whether or not visible), transportation vehicles, documents, reports, data, invoices, receipts, stationery and on any other materials and things on which they are using mark "FibreLux" or anything similar to Plaintiff's mark, "FIBROFLEX", under Class 20, as provided under Certificate No.83275 dated 06.01.1996; To grant damages for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) or such higher sum as may be ascertained to have achieved through the illegal use of the offending trademark "FibreLux" and such other damages as may be quantifies by appropriate evaluation of the Defendant's books of account during the course of the

present proceedings; To grant order of delivery up of any brochures/printed material and/or any material which contributes ultimately to the infringement of Plaintiff's Trademark and for cost of the suit.

For Plaintiff : Mr.S.R.Raghunathan

For Defendant : Mr.R.Thirugnanam

JUDGMENT

Mr.S.R.Raghunathan, counsel on record, is before the Court on behalf of the sole plaintiff. Mr.R.Thirugnanam, learned counsel is before the Court on behalf of the sole defendant.

2. On behalf of the plaintiff, which is a Private Limited Company, Mr.R.Kama Koteeswaran, a Director in the plaintiff company is present. To be noted, Mr.R.Kama Koteeswaran has verified and signed the plaint. The sole defendant is an individual and Mr.Venkatesan Kaliyaperumal, S/o.Kaliyaperumal is present in Court.

3. Both the learned counsel and their respective clients submit that they have entered into a memorandum of compromise dated 24.01.2018 and prayed that this suit be decreed in terms of the memorandum of Compromise.

4. The unnumbered last paragraph in the plaint at Pages 10 and 11 of the plaint is the prayer paragraph.

5. I have perused the Memorandum of Compromise. In sum and substance, prayer in Sub-paragraph (a) of the plaint prayer paragraph is to be decreed. Prayers in sub-paragraphs (b), (c), (d) and (e) of the plaint prayer paragraph are given up by the plaintiff. This is, contents of the Memorandum of Compromise in a nutshell.

6. There shall be a decree in this suit C.S.No.704 of 2017 in terms of the afresaid Memorandum of Compromise dated 24.01.2018, which reads as follows:

1. The plaintiff instituted the instant suit against the Defendant seeking following reliefs:

(a) To grant permanent injunction restraining the Defendant, his employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark, "Fibrelux" with the tag line "Natural Fibre, Natural Sleep, Rubberised Coir Mattresses, Pillow & Cushions" or any other name/mark deceptively similar to Plaintiffs mark "FIBROFLEX" containing the words "Rubberised Coir Mattressses, Pillow & Cushions", in any manner whatsoever, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URL's, e-mail addresses, screen names, user names, website contents (whether or not visible), transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "Fibrelux" or anything similar to plaintiffs mark, "FIBROFLEX", under Class 20, as provided under Certificate No.83275 dated 06.01.1966.

(b) To grant damages for a sum of Rs.15,00,000/-(Rupees

Fifteen Lakhs only) or such higher sum as may be ascertained to have been achieved through the illegal use of the offending trademark 'FibreLux' and such other damages as may be quantified by appropriate evaluation of the Defendant's books of account during the course of the present proceedings;

(c) To grant order of delivery up of any brochures/printed material and/or any material which contributes ultimately to the infringement of Plaintiff's Trademark.

(e) for cost of this suit;

(e) pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case thus render justice.

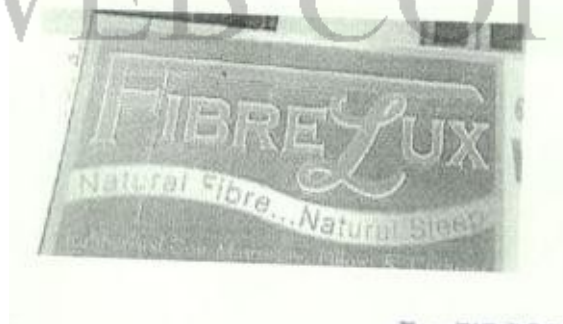
2. By order dated September 18, 2017 this Hon'ble Court was pleased to grant an interim injunction.

"restraining the Defendant from using the trademark, trade name and trading style featuring the mark "FibreLux" with the tag line "Natural Fibre, Natural Sleep, Rubberised Coir Mattress, Pillow & Cushions" or any other name/mark deceptively similar to Plaintiff's mark "fibroFlex".

3. In the light of the above order dated September 18, 2017 of this Hon'ble Court the Defendant had:

(a) changed the trade mark name and trade mark style of his goods from "FibreLux" to "DreamLux".

Before the interim order:



After the interim order:



4. The defendant agrees and acknowledges that the Plaintiff is the registered proprietor of the trademark "Fibroflex" as detailed below and has exclusive statutory rights by virtue of such registrations and proprietary and common law rights on account of Prior, long and extensive use of the trademark FIBROFLEX to the exclusion of others. The Plaintiff applied for the trademark under class 20 vide Application No.212203 dated 07.10.1962. The same was accepted and certificate was granted as Registration No.83275 on 06.10.1966. The plaintiff had even renewed the trademark on 27.08.2015 vide Application No.RLC/187685.

5. The Defendant agrees and undertakes that he shall not use "FIBRELUX" or any other mark similar thereto as a trade mark, trade name, or in any other manner, in relation to any of his products, service and business, especially in relation to manufacturing and distribution of mattress, in present or future.

6. The Defendant agrees and undertakes that he shall not use "Fibrelux" or any other mark similar thereto in any of their advertising/ marketing/ promotional material in any form or domain, including hoardings, letter heads, invoices or any other material used in respect of his business, especially in relation to manufacturing and distribution of mattress.

7. The Defendant undertakes that he shall not proceed with the present application pending before the trademark registry for the trademark name and style "FIBRELUX" and that never in the future make an application either by himself or through his agents before the Trademarks Registry for registration of a trade mark or Copyright Office for any work which is in any manner identical or similar to or comprises Plaintiff's trademark "FIBROFLEX".

8. The Defendant has agreed to carry on with their business under the name and style of "DreamLux" and also proceed with the registration of trademark. The Plaintiff has no objections regarding usage of the said mark by the Defendant. Further the Plaintiff shall not raise any objection for the registration of the Trade Mark of "DREAM LUX".

9. The Defendant submits to Judgment and Decree as prayed for in terms of prayer (A) of the plaint as follows:

(a) A permanent injunction restraining the Defendant, his employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark, 'FibreLux' with the tag line "Natural Fibre, Natural Sleep, Rubberised Coir Mattresses, Pillow & Cushions" or any other name/ mark deceptively similar to Plaintiffs mark "FIBROFLEX" containing the words "Rubberised Coir Mattresses, Pillow & Cushions" in any manner whatsoever, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URL's, e-mail addresses, screen names, user names, website contents (whether or not visible), transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "FibreLux" or anything similar to Plaintiff's mark, "FIBROFLEX", under Class 20, as provided under Certificate No.83275 dated 06.01.1966.

10. All the aforesaid undertakings will be binding henceforth on the said Defendant, successors-in-business, legal representatives and assignees.

11. The Plaintiff do not claim any amounts towards costs of this suit.

12. Should the Defendant be found to be in breach of the present Memorandum of Compromise at any future date, the Plaintiff shall be entitled to cost incurred by such breach and will also have the right to institute legal proceeding against him for damages.

13. Subject to the aforesaid express undertaking by the Defendant, the Plaintiff agrees to give up the other relief Viz Prayer (b) to (d) claimed by them in the plaint.

14. It is therefor prayed that the present memorandum of Compromise may be recorded, and a decree may be passed by this Hon'ble Court, incorporating the memo of compromise in the decree and thus render justice.

7. The aforesaid Memorandum of Comprise shall form part of the decree. No costs. Consequently, the connected application is closed.

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24.01.2018

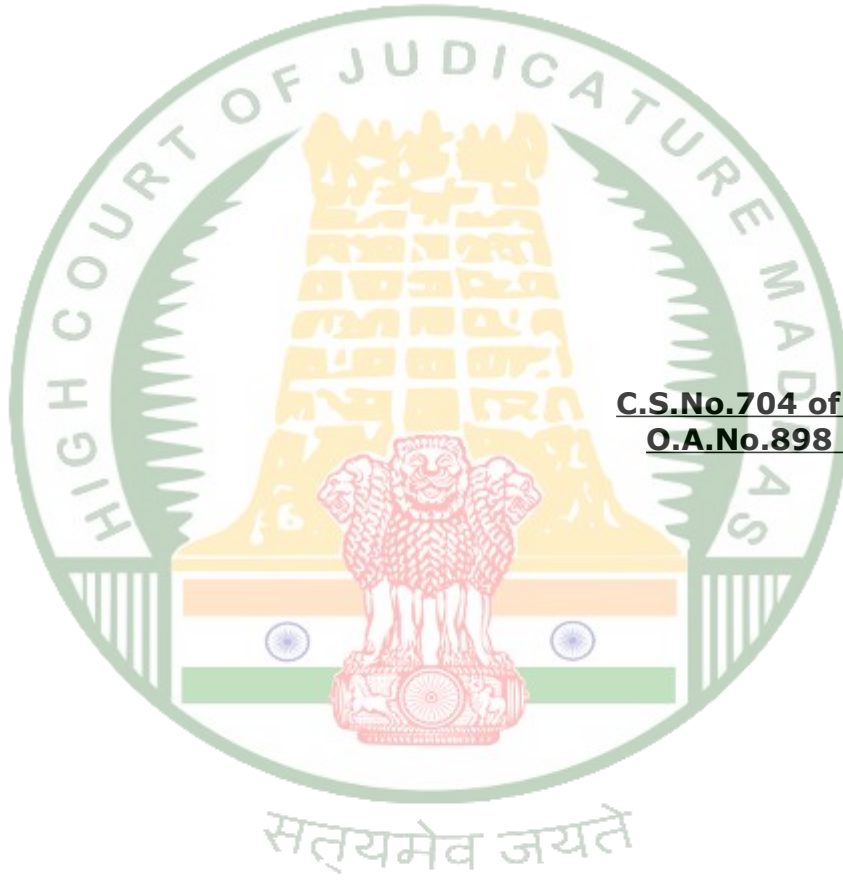
Speaking/Non-Speaking order

Index : Yes/No

gmd/gpa

M.SUNDAR, J.

gmd/gpa



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