

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.736 of 2017**&****O.A.Nos.938 and 939 of 2017**

M/s.Apex Laboratories Pvt. Ltd.,
29, SIDCO Garment Complex, III Floor
Guindy, Chennai – 600 032

... Plaintiff

Vs

Syskem Pharmocrats
Sri Balwant Bhavan, Bhallon (V)
Solan – 173 212, Himachal Pradesh

... Defendant

Plaint filed under Order VII Rule 1 of Civil Procedure Code, 1908 and Order IV Rule 1 of Original Side Rules, 1956 read with Sections 27, 28, 29, 134, 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyrights Act, 1957 seeking permanent Injunction restraining the Defendants by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the Plaintiffs registered trademarks ZINCOVIT by using a deceptively similar trademark ZINCORVIT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever; permanent Injunction restraining the Defendants by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the Defendant products under the trademark ZINCORVIT as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's ZINCOVIT trademark or in any other manner whatsoever; to direct the defendant to surrender to plaintiff's for destruction of all products, labels, cartons, dyes, moulds, screen prints, packing materials and other materials bearing the

trademark ZINCORVIT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label; a preliminary decree be passed in favour of the plaintiff's directing the defendant to render account of profits made by use of trademark and copyright in the artistic work ZINCORVIT label and a final decree be passed in favour of the plaintiff's for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts and for the costs of the suit.

For Plaintiff : Mr.R.Sathish Kumar

For Defendant : Ms.R.Divya
for Mr.J.Vepparasu

JUDGMENT

Mr.R.Sathish Kumar, learned counsel on record for plaintiff and Ms.R.Divya, learned counsel representing Mr.J.Vepparasu, learned counsel on record for sole defendant are before this Court. To be noted, this settlement has been arrived at after substantial arguments on the merits of the matter.

2.On behalf of plaintiff, Mr.D.Jude F.L.S.Durai Pandian, Chief Vigilance Officer of the plaintiff company is before this Commercial Division. To be noted, Mr.D.Jude F.L.S.Durai Pandian has verified and signed the plaint on behalf of the plaintiff company. On behalf of the defendant, which I am informed is a partnership firm, an affidavit sworn to by one of its partners R.Sivakumar (affidavit dated 01.03.2018) has been placed before me. In this affidavit, the deponent has expressed his inability to appear before this Commercial Division today for recording the memorandum of compromise citing some inevitable circumstances touching upon management issues pertaining to workers in the factory.

3. I have heard the aforesaid learned counsel for defendant and I have perused the affidavit. I deem it appropriate to dispense with the presence of the defendant for recording this memorandum of compromise. The deponent of the affidavit has confirmed that the terms of the compromise, which the parties have arrived at, is acceptable to him. Mr. D.Jude F.L.S.Durai Pandian also submits that the parties have entered into memorandum of compromise dated 12.03.2018 and that the terms are acceptable to his Company i.e., the plaintiff company.

4. The memorandum of compromise is dated 12.03.2018 and the terms read as follows:

"2. The Defendant approached the Plaintiff for amicable settlement of the dispute and the Plaintiff also agreed to settle the dispute on the following terms and conditions reduced hereunder:

a. That the Defendant is carrying on manufacturing of Pharma and other products at Sri Balwant Bhavan Bhallon (V), Solan-173 212, Himachal Pradesh. The defendant had manufactured the product named ZINCORVIT under third party manufacturing agreement for one M/s.Cord Pharma. Since it was the brand name of Cord Pharma and the defendant has no responsibility for the infringement trademark of ZINCORVIT in any manner whatsoever, hence for any dispute regarding infringement of trade mark ZINCORVIT, that shall be settled by M/s.Cord Pharma at its own responsibility.

b. The defendant had manufactured the product under the brand name ZINCORVIT on the request and for Cord Pharma having its office at Door No.4/225, Pagalpatty Village,

Omalur (TK), Salem District-636 304 Registration Number 446 of 2016.

c. That the defendant has manufactured only one batch of ZINCORVIT on the request of Cord Pharma and details are as given below:

a.Invoice Date : 07/01/2017

b.Batch No : SFVA16001

c.9850 Strips : (985 boxes)

d. That the Defendant has stopped manufacturing and marketing the product ZINCORVIT. As per the instruction obtained from Cord Pharma the Defendant understand that there was no profit out of the Zincorvit product and 4940 strips of the products has been damaged during storage causing heavy loss to the tune of Rs.69,999/- and that Cord Pharma is very much ready and willing to submit the balance unsold 1263 strips of ZINCORVIT Tablets before this Hon'ble Court. However, the same is going to be destroyed shortly by Cord Pharma.

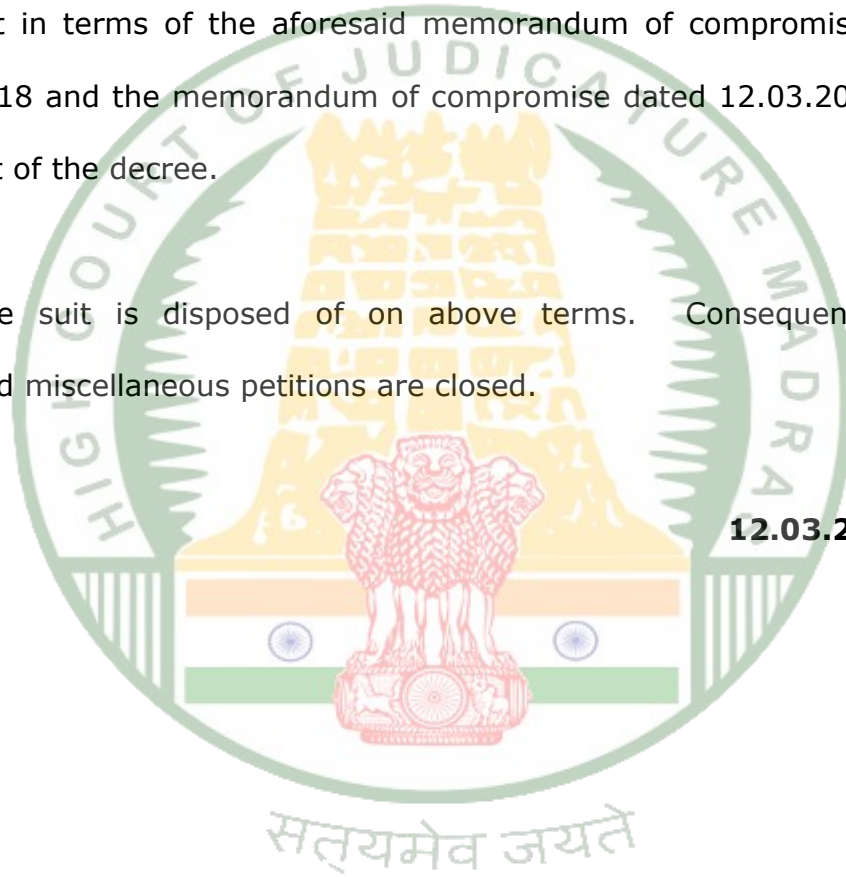
e.That the Defendant undertakes that it will not manufacture or market or otherwise deal with the products bearing the trademark ZINCORVIT or any other trademark identical or deceptively similar to the plaintiff's product ZINCOVIT at point of any point in future whatsoever.

f.The Plaintiff and Defendant pray that the above suit may be decreed in terms of Prayers (a) and (b) of Paragraph 29 of the Plaint and the plaintiff is willing to give up the reliefs under Prayers 29(c), 29(d), 29(e) and 29(f) of the Suit in view of this Memorandum of Compromise."

5. Both the learned counsel before me make a request that a compromise decree may please be passed in terms of the aforesaid memorandum of compromise dated 12.03.2018 in the main suit. The joint request is acceded to. There shall be a compromise decree in the main suit in terms of the aforesaid memorandum of compromise dated 12.03.2018 and the memorandum of compromise dated 12.03.2018 shall form part of the decree.

The suit is disposed of on above terms. Consequently, the connected miscellaneous petitions are closed.

gpa



12.03.2018

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M.SUNDAR, J.

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