

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.901 of 2017
&
A.Nos.1151 to 1153 of 2017

N.Ranga Rao & Sons Private Ltd.,
 PB No.52, Vani Vilas Road
 Mysore-570 004
 and whose Branch office is at
 T.S.109, Block No.3, Poomagal
 5th Street, Ekkaduthangal
 Chennai – 600 097

... Plaintiff

Vs

Devdarshan Overseas
 314 & 320 Industrial Area-II
 Chandigarh- 160 002

... Defendant

Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC along with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyright Act, 1957 seeking permanent injunction restraining the defendant by itself, its men, servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered Mark CYCLE BRAND THREE IN ONE label, more fully specified in SCHEDULE A to the plaint, by using the impugned BLACK 999 packaging label containing identical colour scheme, get up and arrangement of features or any other mark or marks which are in anyway identical, deceptively similar to or a colourable imitation of the plaintiff's registered Trade Mark CYCLE BRAND THREE IN ONE label, either by manufacturing or selling or offering for sale or in any manner advertising the same; permanent injunction restraining the defendant by

itself, its men, servant, agents or any one claiming through it from in any manner infringing the plaintiff's copyright in the artistic work CYCLE BRAND THREE IN ONE label and CYCLE BRAND safety matches label, along with the unique and distinctive colour scheme, more fully specified contained in SCHEDULE B to the plaint, by using impugned packaging label containing identical colour scheme, get up, layout or any other artistic work, which has an overall similarity to and is a colourable imitation of the plaintiff's CYCLE BRAND THREE IN ONE label and CYCLE BRAND safety matches label, either by manufacturing or selling or offering for sale or in any manner advertising the same; granting a permanent injunction restraining the defendant by itself, its men, servant, agents or any one claiming through it from in any manner passing off its incense sticks and safety matches, by using the offending packaging labels, more fully specified in SCHEDULE C to the plaint, which is almost identical to the plaintiff's prior adopted and reputed CYCLE BRAND THREE IN ONE label and CYCLE BRAND safety matches label or any mark/label deceptively similar thereto; directing the defendant to render a true and faithful account of the profits earned by them through the sale of products under the packaging label identical to plaintiff's CYCLE BRAND THREE IN ONE label and CYCLE BRAND safety matches label and direct payment of such profits to the plaintiff for the acts of infringement and passing off committed by the Defendant; directing the defendant to surrender to the plaintiff the entire stock of unused offending labels identical to plaintiff's CYCLE BRAND THREE IN ONE label and CYCLE BRAND safety matches label along with the blocks and dyes for destruction and for the costs of the suit.

For Plaintiffs : Mr.S.Diwakar

For Defendants : Mr.R.Sathish Kumar

JUDGMENT

Mr.S.Diwakar of Advocates of Factum Law (Law Firm) on record for sole plaintiff is before this Commercial Division. Mr.R.Sathish Kumar, learned counsel on record for the sole defendant is before this Commercial Division.

2. Sole plaintiff is a Private Limited Company and Mr.V.Ramamoorthy, whose designation has been described as Associate Regional Manager, Tamil Nadu, is before this Commercial Division on behalf of the plaintiff company and he has produced a Letter of Authorization from the plaintiff company dated 19.03.2018.

3. With regard to sole defendant, I am informed that it is a Partnership firm. I am also informed that it is a registered partnership firm. An affidavit sworn to by one of the partners in the Defendant firm i.e., Shri Banwarlal Jain (affidavit dated 21.03.2018) has been placed before me. In this affidavit, Shri Banwarlal Jain has expressed his inability to travel from Chandigarh and be present before this Commercial Division.

4. After substantial arguments on merits, I am informed that both the litigants decided to settle the lis and they have entered into a memorandum of compromise dated 21.03.2018. Memorandum of compromise dated 21.03.2018 together with annexures have been placed before me and the same shall hereinafter be referred to as 'said MOC' for

the sake of brevity and clarity. To be noted, the said MOC has been duly signed by both litigants and their respective counsel. Terms of the said MOC are contained in Paragraph 3 to 5 and the same read as follows:

3. The Defendant has assured the Plaintiff that

i. The Defendant shall forthwith use only the label as found in Annexure C to this memorandum in respect of its product under the mark BLACK 999;

ii. The Defendant or any person claiming under or through them shall forthwith cease to use and shall not manufacture or market their products or in any manner use the offending label as found in Annexure A and/or Annexure B to this memorandum or any other label similar to Plaintiff's "CYCLE BRAND THREE IN ONE" label and the CYCLE BRAND Safety Matches label as found in Annexure B to this memorandum;

iii. Consequently, the Defendant agrees to bind itself to a decree of permanent injunction in terms of prayers 31 (a), 31(b) and 31(c) of the plaint in C.S.No.901 of 2017;

iv. The defendant shall take appropriate steps before the Registrar of Trademarks to withdraw application no.3547368 in class 3, which seeks to register the label as found in Annexure A to this memorandum;

4. Subject to the above, the plaintiff agrees to give up other reliefs found in plaint, being prayers 31(d), 31(e) and 31(f);

5. Parties to this memorandum further agree that they shall to bear respective costs. It is further mutually agreed between the parties hereto that the term "Person" shall refer to individual, company, group, firm or any person(s)."

5. Both the aforesaid learned counsel, on instructions, from their respective clients request that this Commercial Division shall pass a compromise decree in terms of said MOC.

6. There shall be a decree in the main suit i.e., C.S.No.901 of 2017 in terms of said MOC. Said MOC, Letter of Authorization dated 19.03.2018 from the plaintiff company together with certified copy of Board resolution, self-attested photocopy of the photo identity cards (Aadhar Card) of Mr.Ramamoorthy and aforesaid affidavit of Shri.Banwarlal Jain dated 21.03.2018 shall all form part of the decree.

Suit disposed of on above terms. All applications shall stand closed.

27.03.2018

Index: Yes/No

सत्यमेव जयते
WEB COPY

M.SUNDAR, J.
gpa



C.S.No.901 of 2017

WEB COPY

27.03.2018