

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.981 of 2017

M/s.Adyar Ananda Bhavan Sweets and Snacks,
rep by its Partner Mr.K.T.Venkatesan,
Muthulakshmi Bhavan,
No.9, M.G.Road,
Shastri Nagar, Adyar,
Chennai-600 020.

..Plaintiff

Vs.

Sree Keerthi Bhavan,
No.2, Apparsamy Koil Street,
Thiruvottiyur,
Chennai-600 019.

... Defendant

This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of CPC read with Sections 134 and 135 of the Trade Marks Act, 1999 seeking judgment and decree (a) to declare that defendant is infringing the plaintiff's registered trademark Number 1225607 in respect of its

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restaurant business carried under the name

[Adyar Ananda Bhavan] and



(b) grant a permanent injunction restraining the defendant, their men, agents, or persons acting on their behalf, from in any manner infringing the plaintiff's right in its trademark bearing No.1225607 in respect of its business under the name 'Adyar Ananda Bhavan' by running a restaurant with identical name and logo or in any manner similar name and logo to that of the plaintiff; (c) grant a permanent injunction restraining the defendant, its men, agents and servants from in any manner passing off its business as that of plaintiff's by using the name 'Adyar Ananda Bhavan' with or without a similar logo, or by any other identical name or deceptively similar name as that of the plaintiff, with or without any deceptively similar or similar logo as that of the plaintiff in its registered mark bearing No.1225607 or any of the other names and logos for which registration has been applied for by the plaintiff; (d) direct the defendants to pay the costs of the suit and (e) to pass such further or other reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Ms.U.Archana
for Mr.K.Harishankar

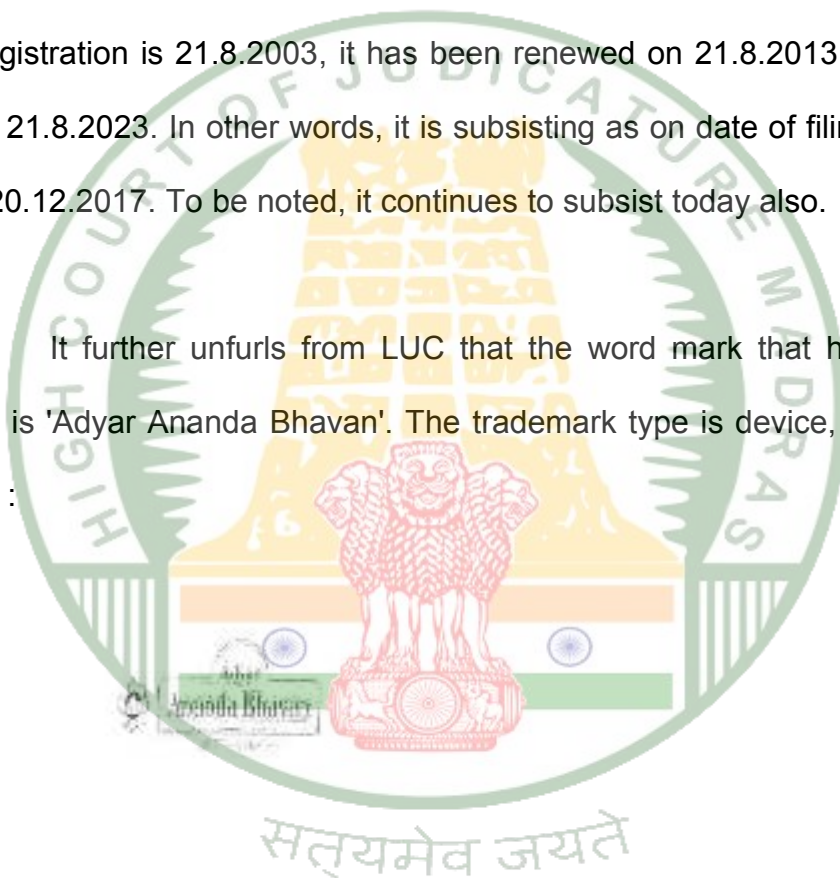
For Defendant : Set ex parte

JUDGMENT

This suit has been filed alleging infringement of registered trademark of plaintiff and passing off.

2 The nucleus of this suit is a registered trademark bearing Trademark No.1225607. The Legal Use Certificate ('LUC' for brevity) of the said trademark, i.e., Trademark No.1225607, has been marked as Ex.P.4. A perusal of Ex.P.4 reveals that the mark has been registered in Class 30. The date of registration is 21.8.2003, it has been renewed on 21.8.2013 and it is valid upto 21.8.2023. In other words, it is subsisting as on date of filing of the suit, i.e., 20.12.2017. To be noted, it continues to subsist today also.

3 It further unfurls from LUC that the word mark that has been registered is 'Adyar Ananda Bhavan'. The trademark type is device, which is as follows :



4 This registered trademark is hereinafter referred to as 'suit trademark' for the sake of convenience and clarity.

5 Besides the suit trademark, it is the case of plaintiff that they have applied for registration of several other marks in different classes and there is enumeration of about 34 of such applications. These 34 applications enumerated in a tabular form has been marked as Ex.P.6. I deem it

appropriate to scan the aforesaid tabular column and reproduce the same, which reads as follows :

S.No.	Trade Mark	Class	Appln No	Appln Date	User date
1	ADYAR ANANDA BHAVAN	29	3102915	21-Nov-15	6-Apr-88
2	ADYAR ANANDA BHAVAN	30	3102916	21-Nov-15	6-Apr-88
3	ADYAR ANANDA BHAVAN	32	3102918	21-Nov-15	6-Apr-88
4	ADYAR ANANDA BHAVAN	35	3102916	21-Nov-15	6-Apr-88
5	ADYAR ANANDA BHAVAN	43	3102917	21-Nov-15	6-Apr-88
6		29	3102963	21-Nov-15	15-Apr-89
7		30	3102964	21-Nov-15	15-Apr-89
8		32	3102965	21-Nov-15	15-Apr-89
9		35	3102966	21-Nov-15	15-Apr-89
10		43	3102967	21-Nov-15	15-Apr-89
11	A2B	29	3102968	21-Nov-15	24-Feb-05
12	A2B	30	3102969	21-Nov-15	24-Feb-05
13	A2B	32	3102970	21-Nov-15	24-Feb-05
14	A2B	35	3102971	21-Nov-15	24-Feb-05
15	A2B	43	3102972	21-Nov-15	24-Feb-05
16		29	3102973	21-Nov-15	24-Feb-05
17		30	3102974	21-Nov-15	24-Feb-05

18		32	3102975	21-Nov-15	24-Feb-05
19		35	3102976	21-Nov-15	24-Feb-05
20		43	3102977	21-Nov-15	24-Feb-05
21	AAB	29	3106729	24-Nov-15	6-Apr-88
22	AAB	30	3106730	24-Nov-15	6-Apr-88
23	AAB	32	3106731	24-Nov-15	6-Apr-88
24	AAB	35	3106732	24-Nov-15	6-Apr-88
25	AAB	43	3106733	24-Nov-15	6-Apr-88
26		29	3106734	24-Nov-15	6-Apr-88
27		30	3106735	24-Nov-15	6-Apr-88
28		33	3106736	24-Nov-15	6-Apr-88
29		35	3106737	24-Nov-15	6-Apr-88
30		43	3106738	24-Nov-15	6-Apr-88
31	AAB RESIDENCY	43	3106739	24-Nov-15	18-Sep-08
32		43	3106740	24-Nov-15	15-Sep-08
33	AAB VEG RESTAURANT	43	3106741	24-Nov-15	24-Feb-05
34		43	3106742	24-Nov-15	24-Feb-05

6 The plaintiff is a registered partnership firm. The partnership deed of the plaintiff has been marked as Ex.P.2 and the firm registration certificate of plaintiff has been marked as Ex.P.3.

7 With regard to suit trademark, it is the specific case of the plaintiff that it is running a chain of restaurants specializing in Indian cuisine whose business was commenced in the year 1988 as a confectionery. The plaintiff has averred in the plaint that their business was started way back in 1988 as a confectionery. In other words, according to the plaintiff, a humble beginning has now grown into almost Rs.800 Crores business.

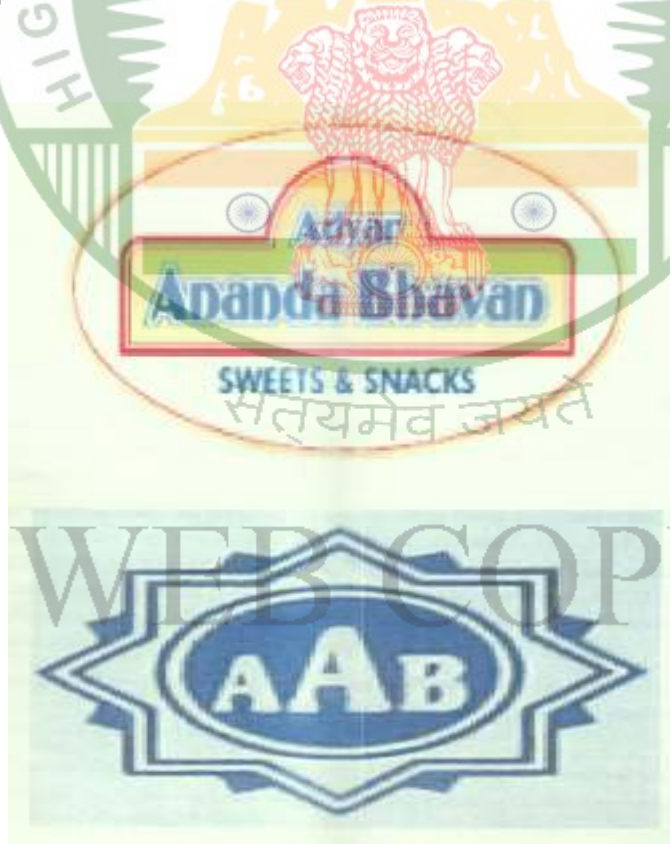
8 Plaintiff has also pleaded that the plaintiff is known for their commitment to quality and high degree of professionalism and use of the state of the art technique in preparation of traditional Indian sweets and dishes.

9 In this regard, it is to be noted that the suit trademark which has been registered in class 30 is with regard to goods which have been described as food items, sweets, snacks, savouries. Plaintiff has also pleaded that by continuous use of the suit trademark, it has gained enormous goodwill and reputation. It is submitted and asserted by plaintiff that the suit trademark is synonymous with quality and service that it is associated with.

10 With regard to trajectory of the suit, it is to be noted that the suit was filed on 20.12.2017, suit summons was served on the sole defendant and sole defendant was set ex parte in and by proceedings of this Commercial Division on 23.2.2018. The suit was set down for recording ex parte evidence before learned Additional Master-III on 08.03.2018. One witness, i.e., P.W.1 being one Mr.R.Saravana, Manager of plaintiff firm has been examined and 9 exhibits, namely Exs.P.1 to P.9 were marked.

11 Coming to the core lis, it is the specific case of the plaintiff and to be noted, the suit itself is predicated on the ground that the plaintiff came to know some time in August 2017 that the suit trademark is being infringed by defendant and that defendant is also guilty of passing off qua logo Adyar Ananda Bhavan. Reference in this regard is to be made to the device mark.

12 Today, when the suit is listed before this Commercial Division for argument, Ms.Archana, learned counsel representing the counsel on record for plaintiff draws my attention to the depiction of plaintiff's mark and defendant's mark. Learned counsel draws my attention to Ex.P.5 which is the depiction of plaintiff's mark. Ex.P.5 is as follows :



13 Ms.Archana, learned counsel draws my attention to Ex.P.8 which is the alleged offending mark of defendant and the same is as follows :



14 Besides alleged offending mark, a photograph of defendant's outlet has also been taken and marked as Ex.P.9 with a suitable certificate under Section 65B of the Indian Evidence Act, 1872. It is necessary to scan and reproduce Ex.P.9 which is as follows :



15 Drawing my attention to Ex.P.5 on one side and Exs.P.8 and P.9 on the other side, learned counsel for plaintiff points out that this is a clear case of infringement of suit trademark as depiction of mark is so similar that it cannot but cause deception. Adyar Ananda Bhavan is a prominent word mark which is part of the device and is subject matter of the suit trademark. I have already alluded to depiction of marks. A comparison of depiction of plaintiff's mark and alleged offending mark of the defendant leave no doubt in one's mind that plaintiff has made out a case for infringement and passing off. It is more so as the line of activities is same. The defendant is also running a restaurant.

16 With regard to comparison itself, notwithstanding the fact that there is word mark registration and prominent part of the suit trademark is word mark Adyar Ananda Bhavan, I embark upon comparison of two marks by adopting the time honoured principle for such comparison laid down in the celebrated judgment of Hon'ble Supreme Court in **Parle Products (P) Ltd. Vs. J.P. and Co., [(1972) 1 SCC 618]**. I deem it appropriate to extract paragraph 9 of the said judgment which reads as follows :

"9. It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluko Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper

on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it. “

17 While applying the aforesaid **Parle** judgment and comparing Ex.P.5 on one hand and Ex.P.8 and Ex.P.9 on the other hand, what I have done is I have seen plaintiff's mark, i.e., Ex.P.5, taken it away from the sweep of my eyes, thereafter seen Exs.P.8 and P.9 and asked myself a question as to whether a man of average intelligence with imperfect recollection and ordinary prudence be lulled into the belief that what he is seeing now (alleged offending mark) is what he saw earlier (plaintiff's mark). To be noted, all these exhibits placed before me were in colour (owing to which, I had the benefit of comparing the colour scheme also), whereas the scanned reproduction of the same supra are in black and white. I have no doubt in my mind that the answer is emphatic and in the affirmative.

18 Now, I turn to the nature of deposition. As alluded to supra, one R.Saravana, who is described as Manager in the plaintiff firm has deposed as P.W.1. The authorisation given by the plaintiff firm in favour of P.W.1 dated 6.3.2018 has been marked as Ex.P.1. I have perused the evidence in chief of

P.W.1, which is in the form of proof affidavit, dated 7.3.2018. To my mind, the evidence / deposition is cogent. It is in tandem and in tune with the plaint averments. Besides all these exhibits, it is brought to my notice by learned counsel for plaintiff that prior to filing of the suit on 20.12.2017, a cease and desist notice dated 24.8.2017 was issued to defendant on the plaintiff coming to know about alleged infringement and passing off. The cease and desist notice has been marked as Ex.P.7. This cease and desist notice has not evinced any response or reply is plaintiff counsel's say.

19 A rather unique prayer is contained in sub paragraph (a) of plaint prayer paragraph. To be noted, prayer paragraph in the plaint is paragraph 28. Sub paragraph (a) is the first limb of plaint prayer. It is for a declaration that defendant is infringing the suit trademark. In the light of the comparison I have made and in the light of plaint averments, deposition of P.W.1 and plaintiff's exhibits remaining undisputed and not being refuted, there may be no difficulty in acceding to this prayer and granting a declaration qua infringement of suit trademark. Once there is declaration as sought for, it follows as a sequitur that plaintiff will be entitled to injunctive reliefs qua infringement of suit trademark and passing off which are prayers contained in sub paragraphs (b) and (c) of paragraph 28 of plaint. Sub paragraph (d) of the plaint prayer is with regard to cost of the suit. Considering the fact that defendant has not chosen to respond to the cease and desist notice and not even to suit summons resulting in plaintiff being compelled to continue and carry on the suit to its logical end, I am of the view that plaintiff is entitled to

cost of the suit.

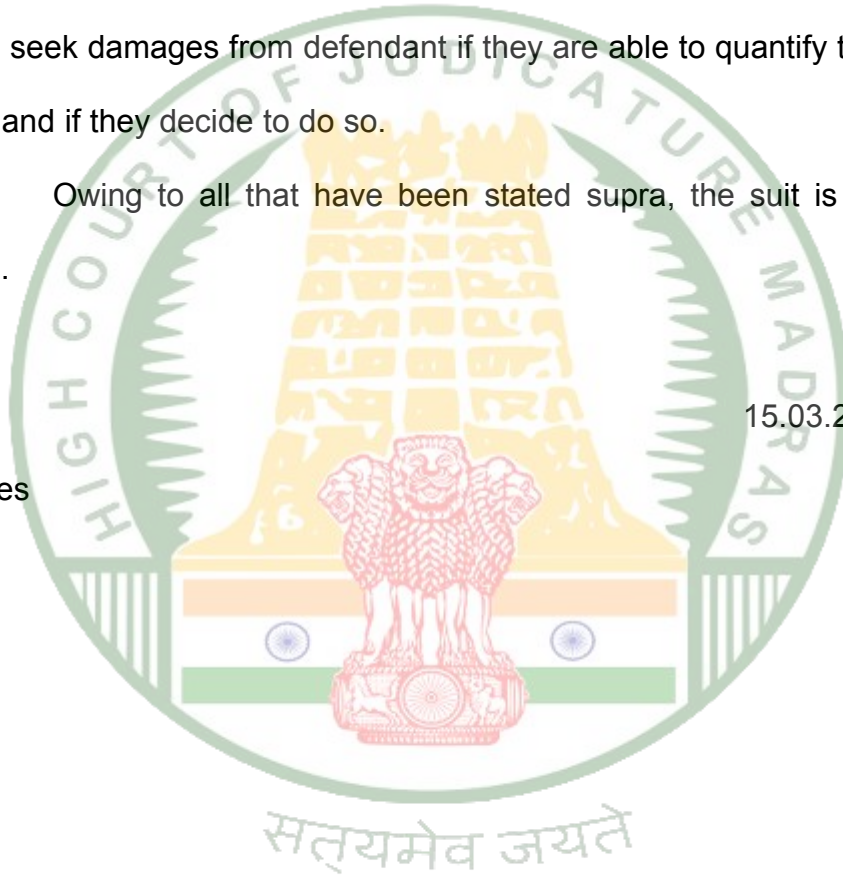
20 With regard to prayer in sub paragraph (e) of paragraph 28, it is the usual residuary prayer. Though plaintiff has not asked for the usual prayers for accounts and delivery of offending materials for destruction, in the light of the residuary prayer, I grant a relief to the effect that plaintiff will be entitled to seek damages from defendant if they are able to quantify the loss / damages and if they decide to do so.

21 Owing to all that have been stated supra, the suit is decreed with costs.

15.03.2018

Index : Yes

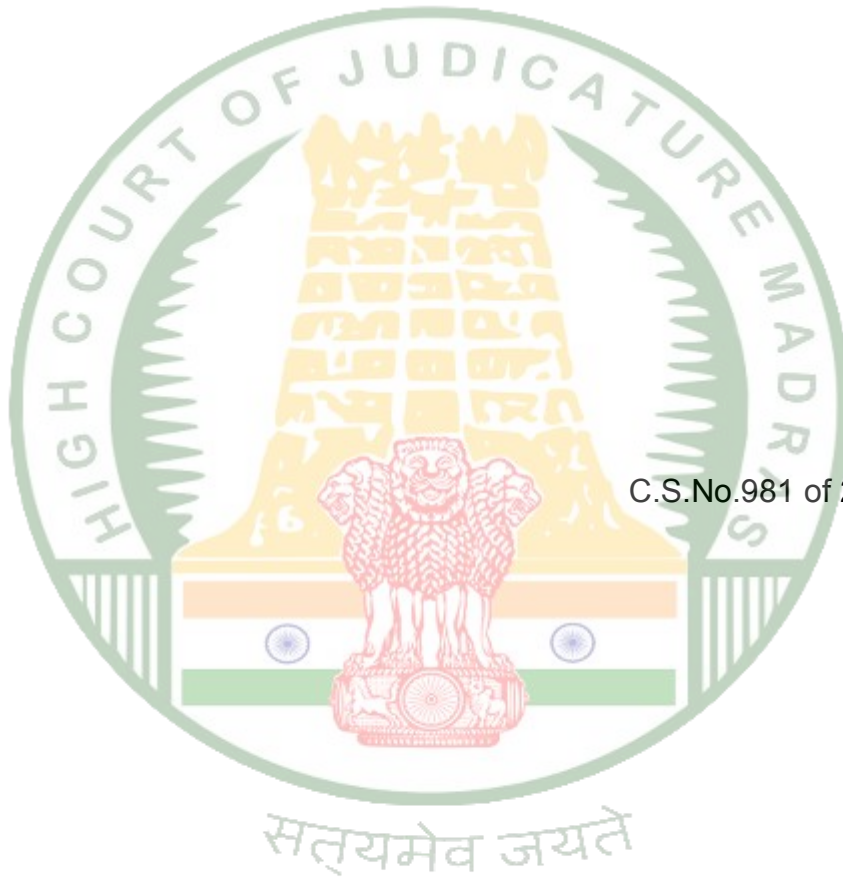
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M.SUNDAR, J.

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