

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.993 of 2017
and O.A.Nos.1292 to 1295 of 2017

Maarg India
 Partnership Firm
 Rep. by its Partner Mr.Muthahir,
 No.194/3, Rasappa Street,
 Park Town,
 Chennai - 600 003. .. Plaintiff

Vs.

1.Shiv Shankar Hardware and Tools
 Rep. by its Proprietor V.Bhima Ram
 No.41, Shop No.F4, 1st Floor,
 Venkatachala Mudali Street,
 Park Town,
 Chennai - 600 003.

2.Vovnath Hard Ware
 Rep. by its Authorised Person
 No.51/66, Shop No.10,
 Devaraj Mudali Street,
 Chennai - 600 003. .. Defendants

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules and Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 r/w Sections 51, 55, 62 of the Copyright Act, 1957 praying to

a) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockist, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives branches or any of them claiming through or under them from in any manner infringing the plaintiff's Registered Trademark PTA by use of the same or any

identical, deceptively similar mark “PJA/PJA WOOD/PJA SUPER” or any identical or deceptively similar mark or in any other manner whatsoever;

b) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockist, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives branches or any of them claiming through or under them from in any manner passing off or enabling passing off of the defendants goods under the Mark “PJA/PJA WOOD/PJA SUPER” as and for that of the plaintiffs goods by use of the plaintiffs Registered Trademark “PTA” or any Trade Mark deceptively similar or in any other manner whatsoever;

c) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockist, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner infringing the plaintiff's copyright over the artistic work, colour scheme, layout, get-up and lettering style in the “PTA” label by use of “PJA/PJA WOOD/PJA SUPER” label with or without the half circle over the mark/label or by use of identical or deceptively similar trading style and/or artistic work or in any other manner whatsoever;

d) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockist, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner violating the statutory and common law rights of the plaintiffs by use of Trade Dress of the plaintiff in deceptively similar Trade dress by the defendants employing identical or deceptively similar Trade Mark and or Trade Dress with/or without the trademark “PJA/PJA WOOD/PJA SUPER” or any other deceptively similar trade Mark in respect of the goods and services of the plaintiffs or by use of identical or deceptively similar label, packing materials/cartons or in any other manner whatsoever;

e) the defendants be ordered to surrender to the plaintiffs for destruction all goods, name boards, packing materials, printer bills, cartons, labels and other materials bearing or comprising the Trademark “PJA” along with art work which is identical with and/or deceptively similar to that of the plaintiff's registered trade mark label “PTA”;

f) the defendants be orders to prepare and submit an account of profits made by them by the unlawful use of the Trade Mark label/trade dress of the plaintiffs and thereafter to pass a final decree upon ascertaining the accounts, in favour of the plaintiffs and against the defendants;

g) the defendants be ordered to pay damages of sum of Rs.30,00,000/- (Rupees Thirty lacs only) for the notional loss and

h) for the costs of the suit

For Plaintiffs : Mr.S.Patrick

For Defendants : Mr.V.Santharam

JUDGMENT

Mr.S.Patrick, learned counsel on record for the sole plaintiff is before this Commercial Division. Mr.V.Santharam, learned counsel on record for both the defendants is before this Commercial Division.

2. Mr.V.Bhima Ram, defendant No.1 and Mr.Mancharam, defendant No.2 are present before this Commercial Division.

3. It is submitted that plaintiff and the two defendants have entered into a joint Memo of Compromise dated 26.02.2018.

4. Plaintiff's representative has sought to dispense with his presence, on the ground that he is traveling. Considering that both the defendants are present before this Court for recording this Memo of Compromise, I dispense with the presence of the plaintiff.

5. Both sides request for a compromise decree in terms of the aforesaid

Memo of Compromise dated 26.02.2018, which reads as follows:

“The plaintiff and defendants have arrived at a settlement on the following terms and conditions:

1. The 1st defendant is Shiv Shankar Hardware and Tools represented by one V.Bhima Ram Proprietor having their office at Old No.41, Shop No.F4, 1st Floor, Venkatachala Mudali Street, Park Town, Chennai 600 003. The 2nd defendant is Vovnath Hard Ware, represented by proprietor Sri.Mancharam having office at No.51/66, Shop No.10, Devaraj Mudali Street, Chennai 600 003. The copy of the GST Registration and VAT Registration obtained by the defendants are appended herewith as **Annexure-A1 and A2.**

2.The defendants admit and acknowledge that the plaintiff is prior adopter and the registered proprietor of the well known trademark “PTA” under Registration No.1677459 in respect of its products and undertakes not to at any time resort to any proceedings in relation thereto including applying for rectification thereto before the appropriate Forum, since the registration confers exclusive right upon the Plaintiff over the “PTA” trade mark.

3.The Defendants undertake not to use the Trade mark “PTA” or any deceptively similar trademark visually, structurally phonetically or advertise their goods using the Trademark PTA/PJA/PJA WOOD/PJA SUPER or any deceptive variation there off in relation to any existing entity/firm or to be incorporated in the future. The defendants undertaking to cease to use the above Trade Marks will take complete effect not latter than 31st March 2018.

4.The Defendants further undertakes not to use the trade mark/label “PTA/PJA/PJA WOOD/PJA SUPER” deceptively similar to the trade mark of the plaintiff bearing the trade mark “PTA” and the Copyright vesting in the artistic works and colour scheme, layout, get-up and lettering style, trade dress of the



plaintiff in the by the use of “
or any mark/label deceptively similar to that of the Plaintiff
artistic work/label or by use of identical or deceptively similar
trading style and/or artistic work or in any other manner
whatsoever.

5. The Defendants undertake not to advertise the objectionable trade mark **PJA/PJA WOOD/PJA SUPER** or advertise any other mark deceptively similar to the Plaintiff or use the mark/label/packaging or any other visual variation of the mark/label/packaging in their pamphlets, name boards, catalogues, websites, promotional material, labels, cartons, packing materials, on the product or in any other manner whatsoever.

6. The 1st defendant hereby confirms having withdrawn Trade Mark Application No.3531511 for the Trade Mark PJA WOOD and the Trade Mark Application No.3531512 for the Trade Mark PJA SUPER with the registrar of Trade Marks. Copy of the withdrawal request duly acknowledged by the Registrar along with IP India Website update thereof is appended as annexure B1 and B2 respectively. The defendants further undertake not to file any applications for any Trade Mark identical or similar to that of the plaintiff's Trade Mark "PTA".

7. The defendants confirm that they undertake to exhaust and/or destroy all goods including screws, name boards, packing materials, menu cards, printer bills, cartons, sachets, labels and other materials bearing the Trademark "**PJA/PJA WOOD/PJA SUPER**" along with artwork which is identical with and/or deceptively similar to that of the Plaintiff's registered

trade mark "PTA/ strictly on or before
31st March 2018.

8. That this Memo of Compromise will be binding on the Parties hereto as also their Proprietor, partner, director, Franchisee, their branch units, employees, servants and agents, distributors, sellers, dealers or anyone claiming through or under any of them.

9. It is, therefore prayed that this Memorandum of Compromise may be recoded and Decree may be passed by this Hon'ble Court, incorporating the terms of the Memorandum as stated above and thus render justice.

Dated at Chennai on this the 26th day of February, 2018."

6. The memo of compromise contains four Annexures i.e., Annexures A1 and A2 and Annexures B1 and B2.

7. There shall be a decree in this suit in terms of the aforesaid Memo of Compromise dated 26.02.2018.

8. The aforesaid Memo of Compromise dated 26.02.2018, shall form part of the decree in this suit. Consequently, connected pending applications shall stand closed. No costs.

26.02.2018

Speaking/Non-Speaking order

Index : Yes/No

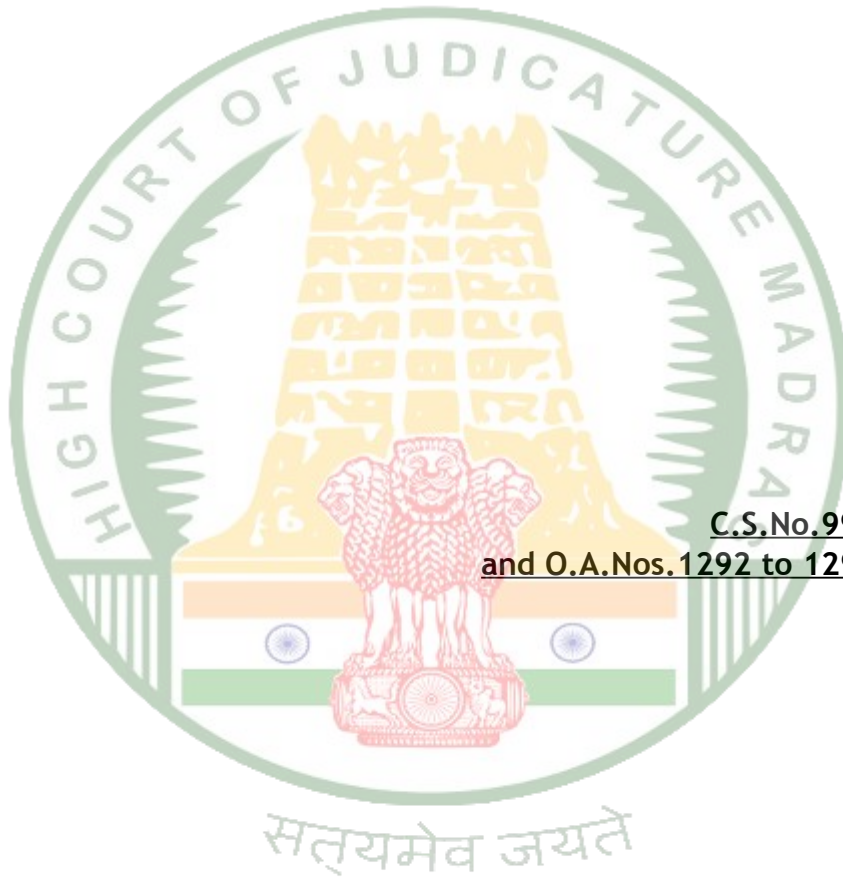
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M.SUNDAR, J.

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