

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No. 165 of 2018andO.A.Nos. 238 & 239 of 2018andA.No.2342 of 2018

1.Aqua Pump Industries,
Represented by its,
Managing Partner,
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore- 641 034,
Having their Branch Office at
New No.10, Old No.26,
Errabalu Chetty Street,
Parrys Corner,
Chennai – 600 001.

2.Aqua Sub Engineering,
Represented by its,
Managing Partner,
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore- 641 034,
Having their Branch Office at
New No.10, Old No.26,
Errabalu Chetty Street,
Parrys Corner,
Chennai – 600 001.

... Plaintiffs

Vs.

Permalbhai Modi,
Trading as : M/S. Himson Industries,
Plot No.40, Road No:A,
Opposite Vahepari Mahamandal,
Kathwada G.I.D.C, Ahmedabad-382 415,
Gujarat, India.

... Defendant

PRAYER : This Civil Suit filed under Order IV Rule 1 O.S. Rules and Order VII Rule 1 of CPC, read with Sections 27, 134 and 135 of the Trade Mark Act, 1999, praying for the following reliefs:

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or any one claiming through them from manufacturing , selling, advertising and offering for sale using the plaintiff's registered Trade Mark TEXMO/TEXMEK ANMOL as such or prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class-07 or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other Trade Mark which is in any way visually, or phonetically similar to the plaintiffs' Trade Mark TEXMO/TEXMEK ANMOL or in any manner infringing the plaintiffs registered Trade Mark Nos.315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778,

2702779,2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO/TEXMEK ANMOL as such or with prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class-07 or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs Trade Mark TEXMO/TEXMEK ANMOL or in any manner pass off the plaintiffs' goods.

(c) directing the defendant to surrender to the plaintiffs all the goods, packing materials, cartons,, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing / bearing the Trade Mark TEXMEK ANMOL or other deceptively similar to the plaintiffs Trade Mark TEXMO/TEXMEK ANMOL.

(d) directing the defendant to render an account of profits made by them by the use of the impugned Trade Mark TEXMEK ANMOL on the goods referred

para (a) & (b) and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts, and

(e) directing the defendant to pay to the plaintiffs the costs of the suit.

For Plaintiffs : M/s.C.Daniel & Gladys Daniel

For Defendant : M/s. B.Dhiyaneswaran

JUDGMENT

The plaintiffs and the defendant sat down and have settled the issues between themselves. They have relieved the Court of its burden to a particular large extent. This is appreciated.

2. Furtherance to their understanding, a Memorandum of Compromise had been entered into between them, which had been signed by both the plaintiffs and also by the defendant in each one of the pages. It has also been signed by the learned counsel for the plaintiffs and the learned counsel for the defendant. It is dated 18.05.2018.

3. According to the Memorandum of Compromise, it had been agreed between the parties as follows:-

“ 1.The terms plaintiffs and defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2.The defendant submits to a judgment and decree as below:-

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or any one claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark **TEXMO/TEXMEK ANMOL / TEXMEK / SILVER TEXMEK** as such or prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class- 07 or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other Trade Mark which is in any way visually, or phonetically similar to the plaintiffs' Trade Mark **TEXMO/TEXMEK ANMOL/ TEXMEK / SILVER TEXMEK** or in any manner infringing the plaintiffs registered Trade Mark Nos.315049 (SP- I), (SP- II) & 315050 (SP- I), (SP- II) renumbered as 2702778, 2702779,2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO/TEXMEK ANMOL/ TEXMEK / SILVER TEXMEK** as such or with prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class- 07 or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs Trade Mark

TEXMO/TEXMEK ANMOL /TEXMEK /SILVER TEXMEK or in any manner pass off the plaintiffs' goods.

3.The defendant undertakes to withdraw the Trademark TEXMEK ANMOL under Application No.2825355 dt.11.10.2014 in Class 7 with respect to Domestic Flour Mill, Submersible Pump, motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class- 07, advertised in the Trademark Journal No.1797 dated 15.05.2017.

4.The defendant submits that they are not carrying on business under the name of Harihar Industries and Hariom Industries at present.

5.The defendant undertakes hereby not to assert any right in respect of the expression TEXMEK ANMOL /TEXMEK /SILVER TEXMEK by filing Trademark Applications or using the same or similar sounding expression or its logo for any goods in future. The defendant also undertake to withdraw any Application in respect of TEXMEK ANMOL /TEXMEK /SILVER TEXMEK or any other similar sounding marks that have already been filed that is not within the knowledge of the plaintiffs.

6.The defendant shall not make any application for registration of the Trademark TEXMO/TEXMEK ANMOL /TEXMEK /SILVER TEXMEK as such or with prefix or suffix in any goods manufactured and sold by the defendant in future.

7.The defendant undertakes not to oppose or initiate any rectification proceedings against the plaintiffs' Trademark Applications or their Registered Trademarks.

In view of the decree for permanent injunction the plaintiffs have given up the reliefs contained in prayers (c), (d) & (e) in para 20 of the suit including cost of the suit.”

4 . The Memorandum of Compromise shall form part of the decree.

5. In accordance with the memorandum of compromise, the suit has therefore decreed with respect to the reliefs of 'a' & 'b', are concerned, namely,

“(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or any one claiming through them from manufacturing , selling, advertising and offering for sale using the plaintiff's registered Trade Mark TEXM0/TEXMEK ANM0L as such or prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class- 07 or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other Trade Mark which is in any way visually, or phonetically similar to the plaintiffs' Trade Mark TEXM0/TEXMEK ANM0L or in any manner infringing the plaintiffs registered Trade Mark Nos.315049 (SP- I), (SP- II) & 315050 (SP- I), (SP- II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXM0/TEXMEK ANM0L as such or with prefix or suffix in any Domestic Flour Mill, Submersible Pump, Motors, Flour Mill, Centrifugal Pumps and its Parts, Machines and Machine Tools, Motors and Engines (except for land vehicles), Machine Coupling and Transmission Components (except for land vehicles), Agricultural Implements (other than hand operated), Incubators for Eggs included in Class- 07 or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the

plaintiffs Trade Mark TEXM0/TEXMEK ANMOL or in any manner pass off the plaintiffs' goods. ”

6 . The plaintiffs have given up the reliefs in so far as the prayer with respect to 'c', 'd' and 'e'. The suit is dismissed with respect to the reliefs of 'c', 'd' and 'e', namely,

“(c) directing the defendant to surrender to the plaintiffs all the goods, packing materials, cartons,, advertisement materials and hoardings, letter- heads, visiting cards, office stationery and all other materials containing / bearing the Trade Mark TEXMEK ANMOL or other deceptively similar to the plaintiffs Trade Mark TEXM0/TEXMEK ANMOL.

(d) directing the defendant to render an account of profits made by them by the use of the impugned Trade Mark TEXMEK ANMOL on the goods referred para (a) & (b) and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts, and

(e) directing the defendant to pay to the plaintiffs the costs of the suit.”

7. Consequently, connected Applications are also closed. No costs.

18.06.2018

vsg/gsp

Index: Yes/No

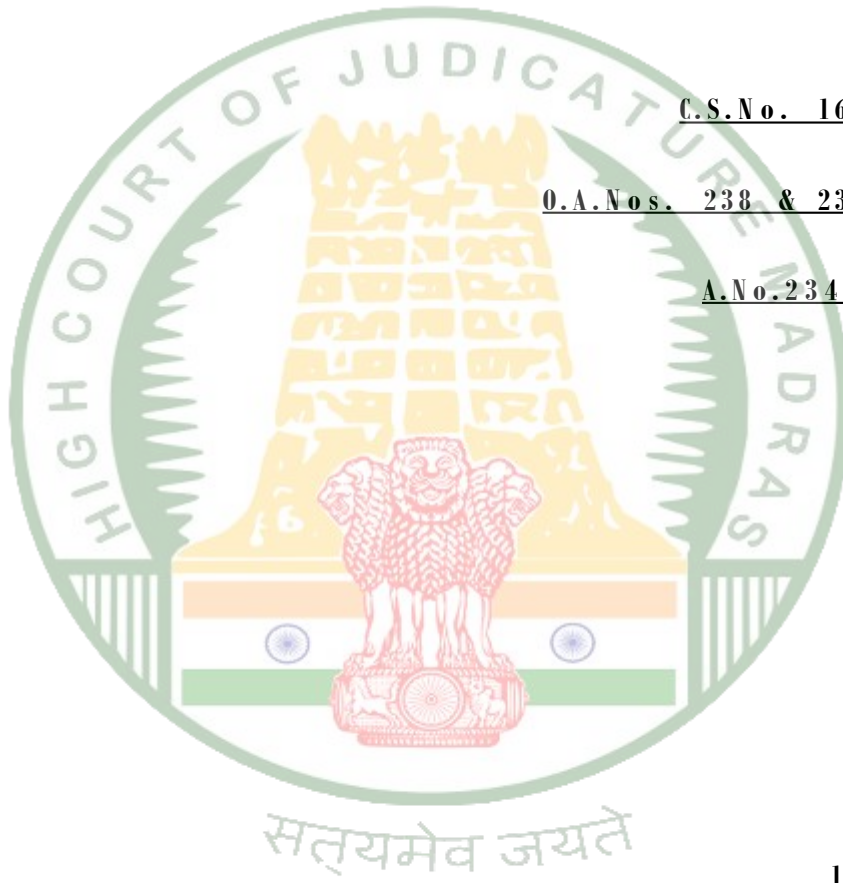
Internet: Yes/No.

Note: Issue Order copy on 19.06.2018

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C.V.KARTHIKEYAN, J.

Vsg/gsp



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and
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