

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.254 of 2015

Hindustan Unilever Limited
101, Santhome High Road
Chennai – 600 028

.. Plaintiff

Vs.

1.S.S.Enterprises
No.43, SIDCO
Dindigul – 3

2. S.Sivakumar
Person-in-Charge
S.S.Enterprises
No.43, SIDCO
Dindigul - 3

.. Defendants

Civil Suit preferred, under Order IV Rule 1 of High Court Original Side Rules read with Sections 27, 134 and 135 of the Trademarks Act, 1999 praying for perpetual injunction restraining the defendants, its distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner infringing the plaintiff's registered trademark Thunder Device/ trademark registered under No.539824 by manufacturing, selling, offering for sale, stocking, advertising, either directly and/or indirectly any goods and in particular any washing powder/washing bars employing the THUNDER device/trademark either per-se or in combination and/or any other mark/device, which is identical with and / or deceptively similar to plaintiff's registered THUNDER device/trademarks bearing No.539824 or in any other manner whatsoever; perpetual injunction restraining the

defendants, its distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner manufacturing, selling, offering for sale, stocking, advertising, either directly and/or indirectly any goods and in particular any washing powder/washing bars using the THUNDER device/mark either per-se or in combination and/or any other device or mark, which is identical with and / or deceptively similar to plaintiff's THUNDER device/trademarks so as to pass off the defendants' products as and for the products of the plaintiff or in any other manner whatsoever connected with the plaintiff; to direct the defendants to surrender to plaintiff for destruction all packed goods, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the plaintiff's THUNDER device/trademark either alone or in combination with any trademark; to pass a preliminary decree in favour of the plaintiff directing the defendants to render account of profits made by use of the THUNDER device/mark and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts and for the costs of the suit.

For Plaintiff : Mr.Madhan Babu

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Mr.Madhan Babu, leaned counsel is present before this Commercial Division on behalf of the sole plaintiff and Mr.R.Sathish Kumar, learned counsel is present before this Commercial Division on behalf of both the defendants. On behalf of plaintiff company, Ms.Vidya Chandrasekar, Manager of the plaintiff company is present along with a Power of Attorney Deed from the plaintiff company dated 26.07.2017. On the side of the defendants, second defendant Mr.S.Sivakumar is present representing

both the defendants.

2. It is represented that the plaintiff and defendants have entered into a joint memorandum of compromise dated 28.02.2018, which has been placed before me. Both the aforesaid individuals present in Court represent that the plaintiff and defendants are agreeable to a compromise decree being passed in terms of the joint memorandum of compromise dated 28.02.2018.

3. Learned counsel on both sides also make a joint request in this regard.

4. With regard to plaintiff, Photocopy of aforesaid Power of Attorney Deed dated 26.07.2017 and self-attested photocopy of an identify card are placed before this Court. On behalf of the defendant, a self-attested identity card i.e., Aadhar Card is placed before this Commercial Division.

5. The Joint Memo of Compromise dated 28.02.2018 reads as follows:

"The plaintiff and the defendants have agreed to compromise the matter in the following terms.

"1. The terms plaintiff and defendants shall mean and include its heirs, executors, administrators, successors and assigns of each party.

2. The Defendants acknowledges that the plaintiff's mark/device registered under No.539824 (hereinafter referred to as Thunder Device) is a well known mark of the plaintiff as

defined under Sec.2(zg) the Trade Marks Act, 1999.

3. The Defendants hereby agrees to stop the manufacture/sale and/or distribution of any goods, and in particular washing powder and/or bar under the Thunder Device or any variations thereof.

4. The defendants submit to a decree as prayed for by the plaintiff in para 23 (a) and (b) of the plaint filed in C.S.No.254 of 2015.

5. The Defendants agree to surrender to the plaintiff for destruction all the packaging material and pouches under the Thunder Device, which are stored in the premises of the defendants and under the custody of the Advocate Commissioner appointed by this Hon'ble Court.

6. The Defendants agree to open its premise at No.43, SIDCO, Dindigul-3 under the lock and seal of the Advocate Commissioner in the presence of the plaintiff's representative at a time mutually convenient for the parties and empty the offending labels containing the washing bar and deliver to the plaintiff the offending labels containing the offending Thunder Device alone along with all the unused offending labels containing the offending Thunder Device for destruction.

7. The defendants agree to pay a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred Only) as damages and cost to the plaintiff.

8. In view of the above, the plaintiff gives up its relief as prayed for in Para 23(c), (d) and (e) of the plaint filed in C.S.No.254 of 2015.

9. The parties shall bear their respective costs in respect of the suit and they shall have no further claims whatsoever against each other and the present compromise fully and finally settles all the disputes forming subject matter of the present suit.

10. The suit shall be decreed on the terms of the present joint memorandum of compromise and the joint memorandum of compromise shall form part of the decree."

6. There shall be a decree in terms of the joint memorandum of compromise dated 28.02.2018, which shall form part of the decree. The aforesaid photocopy of Power of Attorney and photocopies of photo identify cards (self-attested) also shall form part of this decree.

7. To be noted, this is a compromise of a suit within the meaning of Order XXIII Rule 3 of Code of Civil Procedure, 1908 ('CPC' for brevity), it has become necessary to say this in this decree to make it clear that clause 2 in the memo of compromise dated 28.02.2018 will be enforceable only against defendants. It has become necessary to make this clarification as the aforesaid clause is couched in a language with vast amplitude and width. Plaintiff may or may not have a right in rem qua registered trademark, which is subject matter of the suit, but this is an action in personem and compromise decree in this suit is under Order III Rule 3 of CPC. Therefore, there can be a declaration qua d(zg) of Trademarks Act, 1999.

The suit is disposed of on above terms.

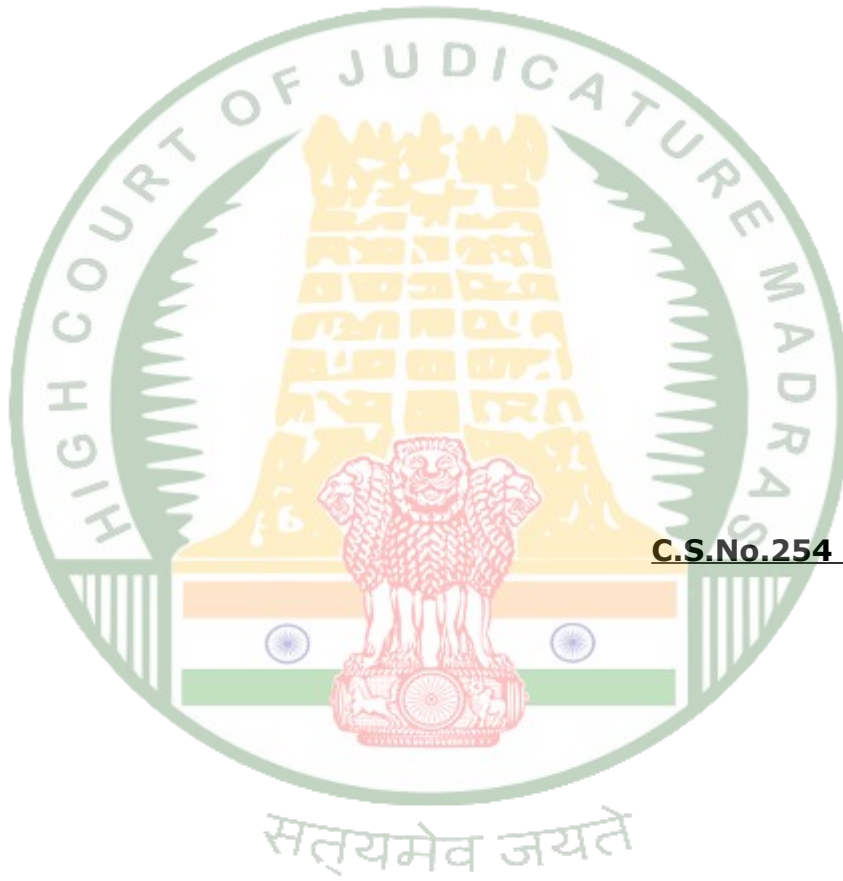
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M.SUNDAR.J



C.S.No.254 of 2015

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28.02.2018