

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **08.02.2018**

CORAM

THE HON'BLE **MR.JUSTICE M.SUNDAR**

C.S.No.534 of 2015
and O.A.No.679 of 2015
and C.S.No.915 of 2016
and O.A.Nos.1092 to 1094 of 2016

C.S.No.534 of 2015:

K.Ganesh Nadar

.. Plaintiff

Vs.

M/s. Bharathi Consumer Care Products Pvt.Ltd.,
 First Line, Indhira Gandhi Nagar,
 Nallacheruvu,
 Guntur – 522 003, Andhra Pradesh
 & also carrying on business at
 No.38, Bhavani Ellaiamman Koil Street,
 Otteri, Chennai – 600 012.

.. Defendant

This Civil Suit is preferred, under Order IV, Rule 1 of O.S. Rules and under Order VII, Rule 1 CPC read with Sections 134(2) & 142 of the Trade Marks Act, 1999 praying to

A) Granting a declaration declaring that the threats made by the defendant by notice dated on 05.06.2015 against the plaintiff in using his registered trademark XTRA are “groundless and unjustifiable”;

B) Granting permanent injunction restraining the defendant by themselves, their servants, agents or any one claiming through them from in any manner continuing such groundless threats against the plaintiff in user of his registered trademark XTRA;

C) Directing the defendant to pay to the plaintiff the damages suffered by the plaintiff by virtue of the illegal threats emanated by the defendant after ascertaining the actual damages suffered by the

plaintiff.

D) direct the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.M.Balasubramanian
For Defendant : Ms.R.Prashanthi

C.S.No.915 of 2016:

M/s. Bharathi Consumer Care Products Pvt.Ltd.,
No.42, Bhavani Ellaianman Koil Street,
Otteri, Chennai – 600 012.
rep.by its Managing Director
Mrs.Parimala Manickavel.

... Plaintiff

Vs.

K.Ganesh Nadar

... 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 27,28,29, 134 and 135 of the Trademarks Act,1999 & Sections 51,54,55 of the Copyrights Act, 1957 praying to

(a) a permanent injunction restraining the defendant by themselves, their directors, partners, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademark XXX by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the deceptively similar trademark XTRA and almost identical package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's registered trade mark XXX along with distinctive trade dress in any manner whatsoever;

(b) a permanent injunction restraining the defendant by themselves, their directors, partners, their legal representatives,

successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's copyright in the artistic work XXX LABEL by use of identical colour scheme of red, white and yellow with metallic blue background for their XTRA package/wrapper or in any manner whatsoever;

'(c) a permanent injunction restraining the defendant by themselves, their directors, partners, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the deceptively similar trademark XTRA and almost identical package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's trade dress & get up in XXX package/wrapper in any manner whatsoever;

(d) the defendant be ordered to surrender to the plaintiff for destruction, all containers, pouches, prints, dies, blocks, moulds and plates, screen prints, packing and advertising material and any other material in their possession, bearing the mark XTRA which is a substantial reproduction of the plaintiff's trade dress & get up and copyright in the artistic work XXX package/wrapper;

(e) a preliminary decree be passed in favour of the plaintiff directing the Defendant to render account of profits made by use of trademark XTRA label and the identical artistic work therein and

final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts;

(f) the defendant be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as damages for their wrongful and illegal activities by use of trademark XTRA label and artistic work therein;

(g) for costs of the suit.

For Plaintiff : Ms.R.Prashanthi

For Defendant : Mr.M.Balasubramanian

COMMON JUDGMENT

These two suits are effectively in the nature of cross suits. While first of the two suits i.e., C.S.No.534 of 2016 is for alleged groundless threat under the Trade Marks Act, 1999, the second suit i.e., C.S.No.915 of 2016 is for the alleged infringement of Trademark.

2. I am informed that C.S.No.915 of 2016 was referred to Mediation and the Mediation was fruitful. Before the Mediation Centre, a memo of compromise dated 17.02.2017 was entered into and the original memo of compromise is placed before me. The terms of memo of compromise are as follows:

"The plaintiff and the defendant humbly beg to submit as follows:-

The terms plaintiff and defendant shall mean and include their heirs, executors, administrators,

successors and assigns of each party.

1. The following is the plaintiff's label and the defendant's impugned label, which the defendant undertakes not to use anymore:-



2. The defendant undertakes to use the amended labels as depicted herein below from 10.04.2017.





3. In case the defendant violates the above mentioned terms and conditions and if the impugned infringing label is found in the market, the defendant will be liable as per all remedies under law available to the plaintiff.

4. In view of the above, it is prayed that the suit may be decreed by recording this Memo of Compromise as per the above agreed terms.

5. The parties shall bear their own costs."

3. To be noted in the memo of compromise the labels are in colour. However, scanned reproduction of the same supra is in black and white in this judgment.

4. I am also informed that both the parties were present before the Mediation Centre for executing/filing the aforesaid memo of compromise and therefore, I dispense with the presence of the parties for recording memo of compromise.

5. Mr.M.Balasubramanian, counsel on the record for the sole plaintiff in C.S.No.534 of 2015 very fairly submits that there can be a decree in terms of the aforesaid memo of compromise in C.S.No.915 of 2016 also.

6. Ms.Prashanthi, counsel on record for the sole plaintiff in C.S.No.915 of 2016 agrees to such a course of action.

7. There shall be a common decree in these two suits, in terms of the aforesaid memo of compromise dated 17.02.2017.

8. The aforesaid memo of compromise shall form part of the common decree in both the suits. Consequently, all the interlocutory applications are closed.

08.02.2018

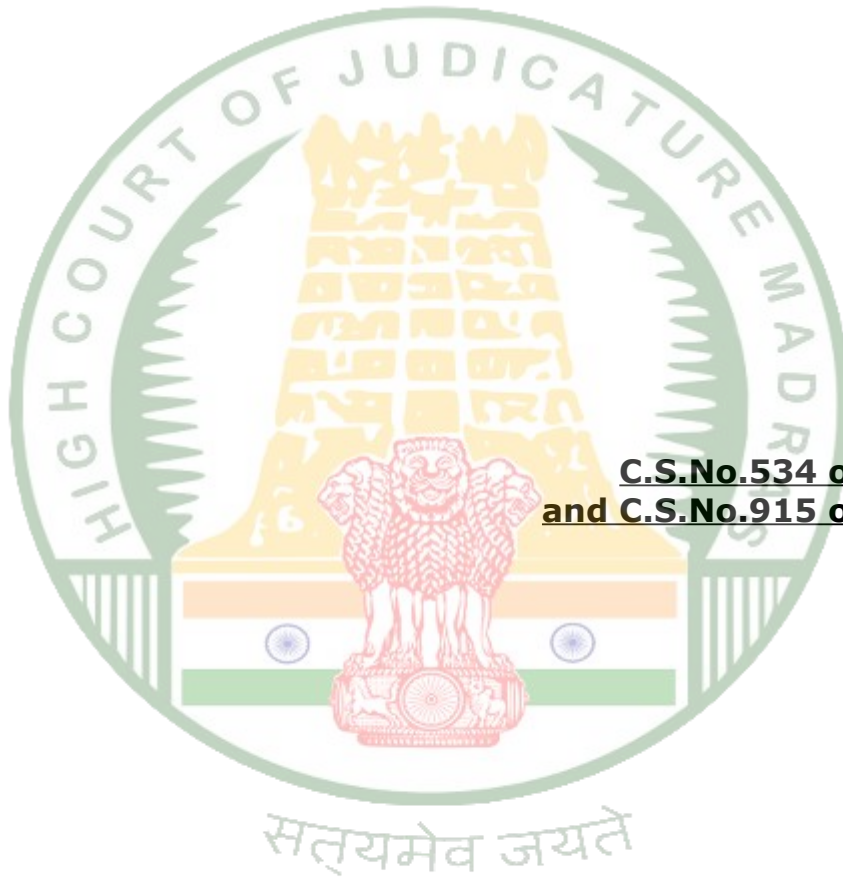
klit/vsm

Speaking/Non Speaking order: Yes/No

Index: Yes/No

M.SUNDAR.J.,

klt/vsm



C.S.No.534 of 2015
and C.S.No.915 of 2016

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