

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

Civil Suit No.814 of 2015
and
Application No.6679 of 2015
O.A.Nos.1084 & 1085 of 2015

Hindustan Unilever Limited
101, Santhome High Road
Chennai - 600 028
Represented by its Authorised Signatory

...Plaintiff

Vs.

Siva Shakti Soap Works
Rep by its Proprietor, D.Sunitha
No.4-23, Kovvur Road
Jagannadhapuram
Kakinada-533 002
Andhra Pradesh.

...Defendant

This Civil Suit is preferred, under Order IV Rule 1 of O.S.Rules read with Sections 51, 55, 58 and 62 of the Copy Right Act, 1957 and prays for a perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives, franchisees, or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly, any products, and in particular washing bar or wash powder, under the label/mark as contained in Plaint Document No.6 or any label/mark which is identical with or deceptively similar to the plaintiff's label/mark filed as plaint Document No.4, so as to pass off the defendant's goods as and for the goods of the plaintiff or in any other manner whatsoever connected with the plaintiff; a perpetual injunction restraining the

defendant, their distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under them from in any manner committing acts of copyright infringement by printing, stocking, manufacturing, selling offering for sale, stocking, advertising directly or indirectly, any goods and in particular washing bar or washing powder, under the label/artistic work as contained in plaint Document No.6 or any other label/artistic work or colour scheme which is identical with or deceptively similar to the plaintiff's artistic work as contained in plaint Document No.4 or in any other manner whatsoever; the defendant be ordered to surrender to the plaintiff for destruction of all banners, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the label/trademark /artistic work as contained in plaint Document No.6 or any other label /trademark/artistic work which is identical /deceptively similar to the plaintiff's label/trademark/ artistic work as contained in Plaint Document No.4; a preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of sales made by sale of goods under the infringing label filed as plaint Document No.6 and a final decree be passed in favour of the plaintiff for the amount of sales generated found to have been made by the defendants after the latter have rendered accounts; for costs of the suit; pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

For Plaintiff

: Ms.Devi

For Defendant

: Mr.Karthic

For Mr.Arun C. Mohan

J U D G M E N T

Ms.Devi, learned counsel on record for sole plaintiff is before this

Commercial Division. Mrs.Srishti Dhir, Senior Legal Executive of the plaintiff's

company is before this Commercial Division, supported by a certified copy of a Board Resolution dated 26.07.2010 and a Power of Attorney dated 10.08.2017, followed by a Letter of Authorization dated 16.08.2017, all of which together constitute the documents which give her the authority to represent the plaintiff's company.

2. On behalf of the sole defendant, Mr. Karthic, learned counsel is present before this Commercial Division on behalf of the counsel on record Mr. Arun C. Mohan. I am informed by Mr. Karthic that the defendant i.e., Siva Shakti Soap Works is a sole proprietary concern and one Ms. D. Sunitha is the sole Proprietrix. Mr. Karthic, learned counsel has filed a memo dated 28.03.2018 which reads as follows:

"1. It is submitted that the defendant has authorised on Mr. Ravi Balaru, the accountant of the defendant herein to execute, verify, sign, declare any legal document such as plaint, complaint, affidavits, petitions, etc., on behalf of M/s. Siva Sakthi Soap Works vide letter of authorization dated 16.11.2016.

2. It is submitted that both the Plaintiff and the defendant herein has agreed to enter upon a joint memorandum of compromise to settle the matter.

3. It is submitted that the Authorised signatory of the defendant was directed to be present personally for recording the joint memorandum of compromise before this Hon'ble High Court. It is submitted that the authorised signatory, owing to his sudden illness is unable to be present personally for the purpose of recording the joint memo of

compromise before this Hon'ble High Court. It is submitted that the absence of the authorised signatory is neither willful nor wanton but only owing to his sudden illness.

4. That for the above said reasons, the plaintiff most respectfully prays that this Hon'ble Court be pleased to dispense with the personal appearance of the authorised signatory for recording the said memorandum of compromise."

3. In the light of the aforesaid fact being brought to the notice of this Commercial Division, vide the aforesaid memo dated 28.03.2018, presence of sole Proprietrix carrying on business as Siva Shakthi Soaps Works, i.e., the defendant is dispensed with.

4. After arguments on merits for some time, I am informed that the parties have decided to enter into a joint memorandum of compromise. The joint memorandum of compromise dated 25.03.2018 duly signed by both the parties and their respective counsel is placed before me.

5. Both the learned counsel make a request that a compromise decree in terms of the aforesaid joint memorandum of compromise may please be passed.

6. I have examined the joint of memorandum of compromise and the same reads as follows:

"(i) The terms Plaintiff and Defendant shall mean and include its heirs, executors, administrators, successors and assigns of each party.

(ii) The Defendant acknowledges that the plaintiff's trademarks SURF; SURF EXCEL; and SURFMATIC registered under Nos.240234, 363896, 363888, 363896, 453414, 1065241, 1065243, and the label annexed hereto as Annexure-A are well known trade marks of the plaintiff as defined under Sec.2(i)(zg), the Trade Marks Act, 1999.

(iii) The Defendant hereby agrees to stop the manufacture / sale and/or distribution of any goods, and in particular washing powder and/or bar under the label annexed hereto as Annexure-B or any variations thereof, and further undertakes to not manufacture or market or distribute any goods, and in particular washing powder and/or bar under any label which is identical with/deceptively similar to the plaintiff's label annexed hereto as Annexure-A in any manner whatsoever.

(iv) The Defendant further undertakes to henceforth manufacture and/or market particular washing power and/or bar under the label annexed hereto as Annexure-C.

(v) The Defendants submit to a decree as prayed for by the plaintiff in para 29 (a) and (b) of the plaint filed in C.S.No.814 of 2015.

(vi) The Defendant declares that as on date it has NIL quantity of packed washing powder and/or bar under the infringing label annexed hereto as **Annexure-B** and NIL quantity of unused infringing rolls of packaging materials / pouches / label annexed hereto as **Annexure-B**, and undertakes to surrender to the plaintiff for destruction all the said packaging material and pouches alone, both used and unused, within a period 7 days from the date of this order.

(vii) In view of the above, the plaintiff gives up its relief as prayed for in para 29(c), (d) and (e) of the plaint filed in C.S.No.814 of 2015.

(viii) 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.

(ix) 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."

7. After examining the terms of the joint memorandum of compromise, I am of the view that a clarification is necessary with regard to

clause 2 of the aforesaid joint memorandum of compromise. It is well known that a trademark under Section 2(1)(zg) is a right in rem. Declaration in compromise decree is a right in rem, but the suit is an action in personem. Therefore, it is made clear clause 2 supra can be enforced only against the sole defendant and not against the third parties to this decree.

8. With the above clarification, Registry is directed to ensure that the above clarification is also incorporated in the decree.

9. With the above clarification, the suit is decreed in terms of the aforesaid joint memorandum of compromise dated 23.03.2018. The memo filed by the defendant, copy of the self attested photo identity, copy of the letter of authorisation with the Board Resolution and copy of the Power of Attorney shall all form part of the decree. The suit is decreed on above terms.

28.03.2018

may a

Index: Yes

Internet: Yes/No

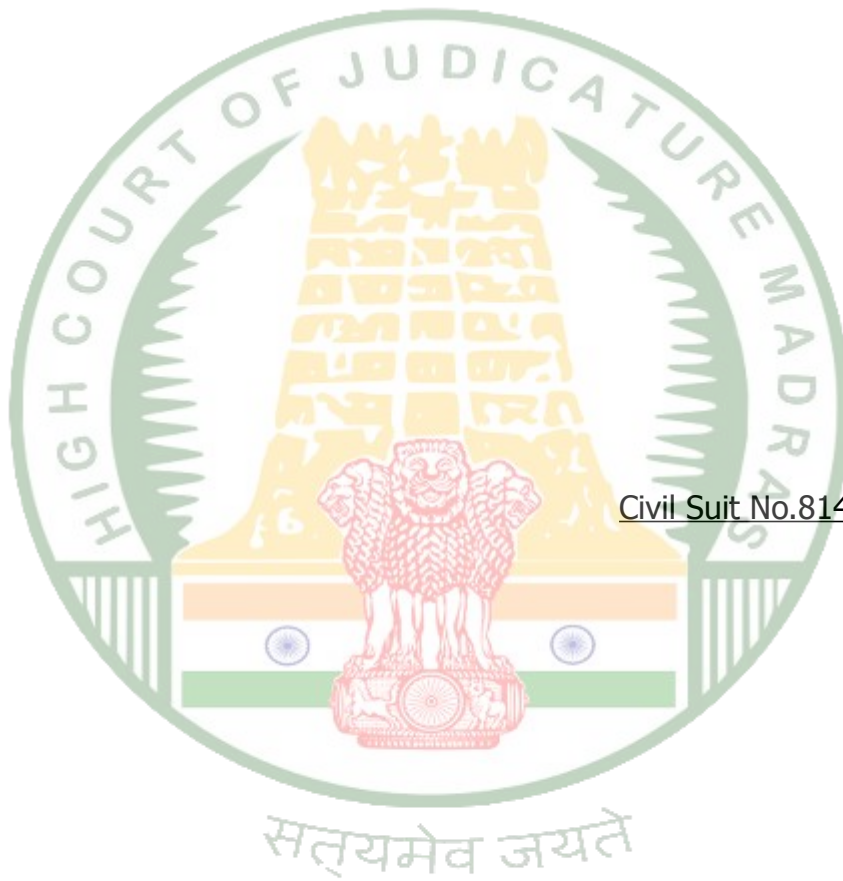
Speaking /Non-speaking order

To

Siva Shakti Soap Works
Rep by its Proprietor, D.Sunitha
No.4-23, Kovvur Road
Jagannadhapuram
Kakinada-533 002
Andhra Pradesh.

M.SUNDAR, J.

maya



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Dated : 28.03.2018