

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.02.2018

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THE HON'BLE MR.JUSTICE M.SUNDAR

O.A.Nos.426 & 427 of 2015**in C.S.No.325 of 2015**

M/s.Kalanjiyam Cut Piece,
Represented by its Partners
1.Mohammed Mohideen, 2.M.Basheerudeen
3.M.Thajudeen, 4.M.Jamaludeen
No.17/1, Ranganathan Street,
T.Nagar, Chennai - 600 017.

.. Applicant/Plaintiff
in both applications

Vs.

M/s.New Kalanjiyam Readymade,
Rep. by its Sole Proprietor/Partners,
No.17, 4th Main Road,
Nanganallur, Chennai - 600061.

.. Respondent/Defendant
in both applications

These Original Applications are preferred under Order XIV Rule 8 of O.S.Rules read with Order XXXIX Rule 1 and 2 of C.P.C. praying to

a) grant an interim injunction, restraining the respondent/defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the trade mark New Kalanziam Readymade upon the goods 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, phonetically or deceptively similar to the plaintiffs registered Trade Mark Kalanjiyam Cut Piece and Kalanjiyam or in any manner infringing the applicants/plaintiffs Registered Trade Mark No.690216, 1548035 and 1548038.

b) grant a interim injunction restraining the Respondent/Defendant by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of

Textile Goods using the mark New Kalanziam Readymade similar sounding names in the course of their business and pass off their textile goods using the trade mark Kalanjiyam Cut Piece and Kalanjiyam as and fr the Kalanjiyam Cut Piece and Kalanjiyam goods of the applicant/plaintiffs or enable other to pass off.

For Applicant : Ms.Vasudha Thiyagarajan
For Respondent : Mr.N.A.Nissar Ahamad

ORDER

Ms.Vasudha Thiyagarajan, learned counsel is before this Commercial Division on behalf of sole plaintiff, which is a Partnership Firm represented by four of its partners. On behalf of the sole defendant, which I am informed is a proprietary concern, Mr.N.A.Nissar Ahamed is before this Commercial Division.

2. Sole applicant in these two applications is the sole plaintiff in the main suit. Sole defendant in the main suit is the lone respondent in both these applications.

3. For the sake of convenience and clarity, parties in these two applications are referred to by their respective ranks in the main suit.

4. In other words, the 'applicant' in both these applications is referred to as 'plaintiff' and the 'respondent' in both these applications is referred to as 'defendant'.

5. Nucleus of these two applications are three registered trademarks.

These three trademarks are hereinafter referred to as 'suit TMs' for the sake of brevity, convenience and clarity, the details of which are as follows:

<i>S.N o.</i>	<i>Trade Mark No.</i>	<i>Date</i>	<i>Class</i>	<i>Goods</i>	<i>Mark</i>
1	690216B	11.12.1995	24	Textile Piece Goods	
2	1548035	10.04.2007	25	Brassieres, Chudhithar, Slips, Tops, Petty Coat, Skirt, Pant, Nightie, Falls, Shimmies, Panties, Jeans, Banians, Chappals and all other types of Readymade Garments included in Class 25	
3	1548038	10.04.2007	24	All Kinds of Textile Piece Goods including Dhoties, Shirtings, Suitings, Lungies, Bed Sheet, Sarees, Blouse Materials, Towels, Chduithar Materials, Woven interlinings Cotton Textiles, Bed Table Pillow Covers and other Clothing materials	

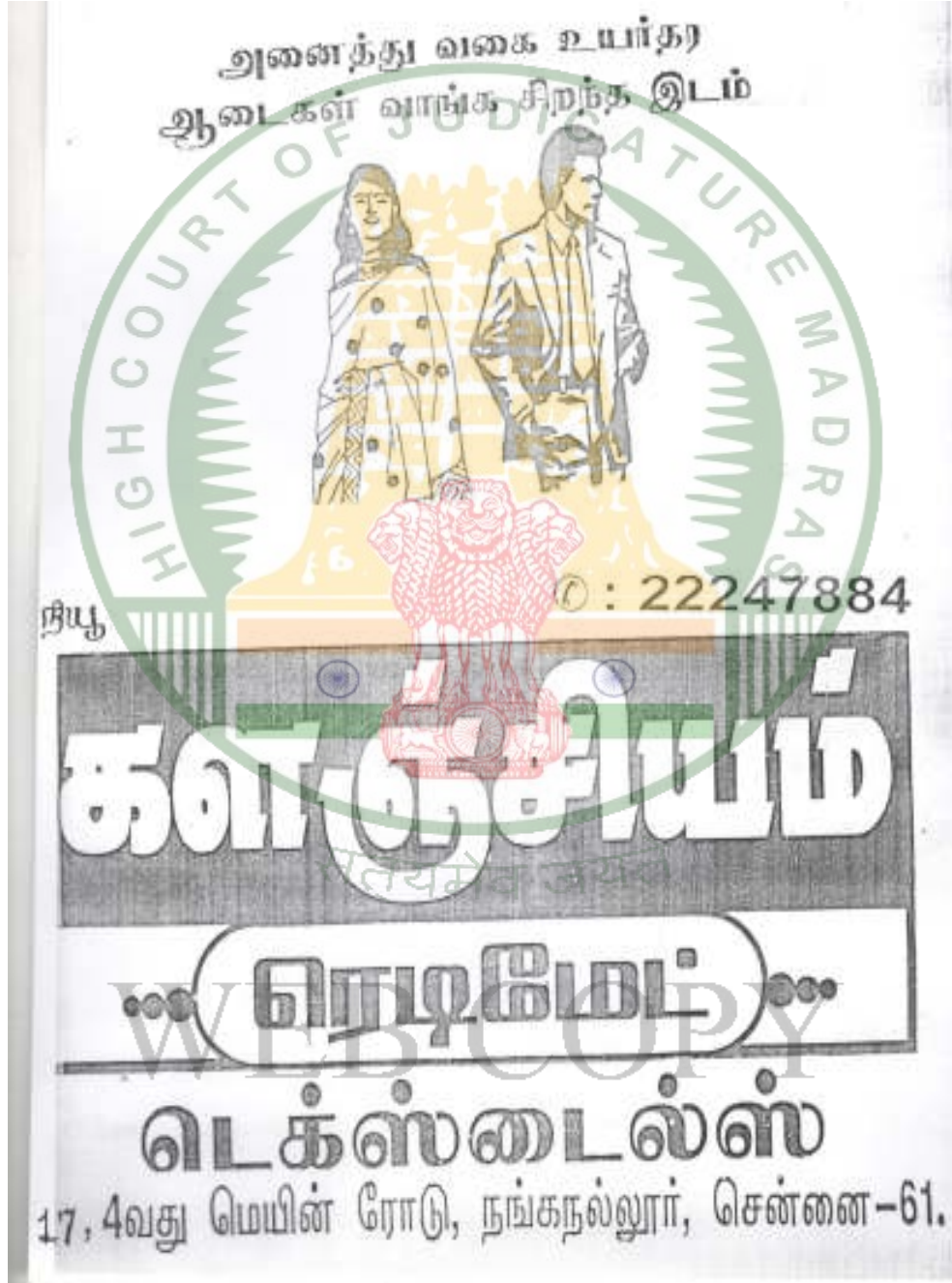
<i>S.N o.</i>	<i>Trade Mark No.</i>	<i>Date</i>	<i>Class</i>	<i>Goods</i>	<i>Mark</i>
				included in Class 24	

6. The main suit has been filed by the plaintiff alleging infringement of suit TMs and product passing off. The usual prayers for surrender of offending material and accounts are also there besides a prayer for costs and a residuary prayer seeking such further or other orders.

7. These two applications have been taken out with prayers for interim injunction qua infringement of suit TMs and passing off qua suit TMs as well as product passing off.

8. The defendant has entered appearance and filed a counter affidavit. In the counter affidavit, the defendant has clearly stated that he has been carrying on business under the name and style “New Kalanziam Readymade Textiles” since 01.11.1997 at No.17, 4th Main Road, Nanganallur, Chennai-61. It is also clearly admitted that this concern deals with readymade garments and textiles. The plaint averments regarding use of a particular mark by the defendant and the address at which the business is being carried on are not in dispute. Therefore this takes us to the question of whether the defendant's mark is offending at all. The mark used by the defendant as depicted (as

given by the plaintiff as suit document along with plaint) is as follows:



9. From a comparison of the above said two marks, it emerges that it is the word 'Kalanjiyam', which becomes very important. Whether Kalanjiyam is the dominant part of the plaintiff's suit TMs and whether the defendant is entitled to use it is the question that needs to be answered. This is owing to the fact the aforesaid depiction of the marks.

10. I deem it appropriate to leave open the aforementioned issue to be decided in the main suit for the following reasons:

i) Admittedly the plaintiff came to know about the use of the alleged offending mark by the defendant way back in 2012 itself and issued two notices. One dated 08.09.2012 and other dated 03.08.2012, but the suit itself has been filed by the plaintiff only on 15.04.2015 .

ii) To be noted, the defendant has averred that he is carrying on business from 01.10.1997. To the aforesaid cease and desist notice dated 08.09.2012, the defendant has sent a reply notice dated 16.08.2012. In the reply notice, the defendant has taken the plea that his business is far away from that of the plaintiff and that Kalanjiyam is a very common term.

iii) Today we are on 12.02.2018.

iv) Therefore, there has definitely delay on the part of plaintiff in filing

the suit. Furthermore, there is an allegation that the reply notice dated 16.08.2012 sent by the sole defendant has been suppressed in the plaint.

v) When I say delay on the part of the plaintiff, that is only for the purpose of disposal of these interlocutory applications. Whether there was delay in filing the main suit needs to be gone into in trial.

11. To be noted, pleadings are complete in the main suit. In other words written statement has been filed by the sole defendant. Both the learned counsel before me undertake to complete admission and denial of documents within the meaning of Order XI Rule 4 of amended Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC' as brevity) as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) within a period of two weeks from today i.e., on or before 26.02.2018. Both the learned counsel agree that thereafter, this suit can be listed for 'Case management' hearing under Order XV-A on 05.03.2018.

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12. In the light of the pre suit notice date, date of filing of suit and other relevant dates, which have been chronicled by me supra, I find that it would be inappropriate to grant an order of interim injunction pending main suit at this point of time. This is more so as the main suit is ripe for trial. In

the case management hearing, there can even be a possibility of summary judgment subject to submissions which the learned counsel may make.

13. Therefore, I dispose of both these applications leaving open the above issues to be decided in the main suit.

14. Owing to all that have been set out supra, both these applications stands dismissed.

15. To be noted, dismissal of these two applications will not come in the way of the merits of the main suit. Any views expressed herein in this order, is only for the limited purpose of disposal of these two applications and these views will not sway the main suit one way or the other. These are prima facie views for the purpose of disposal of interlocutory applications. Though obvious this position is made clear.

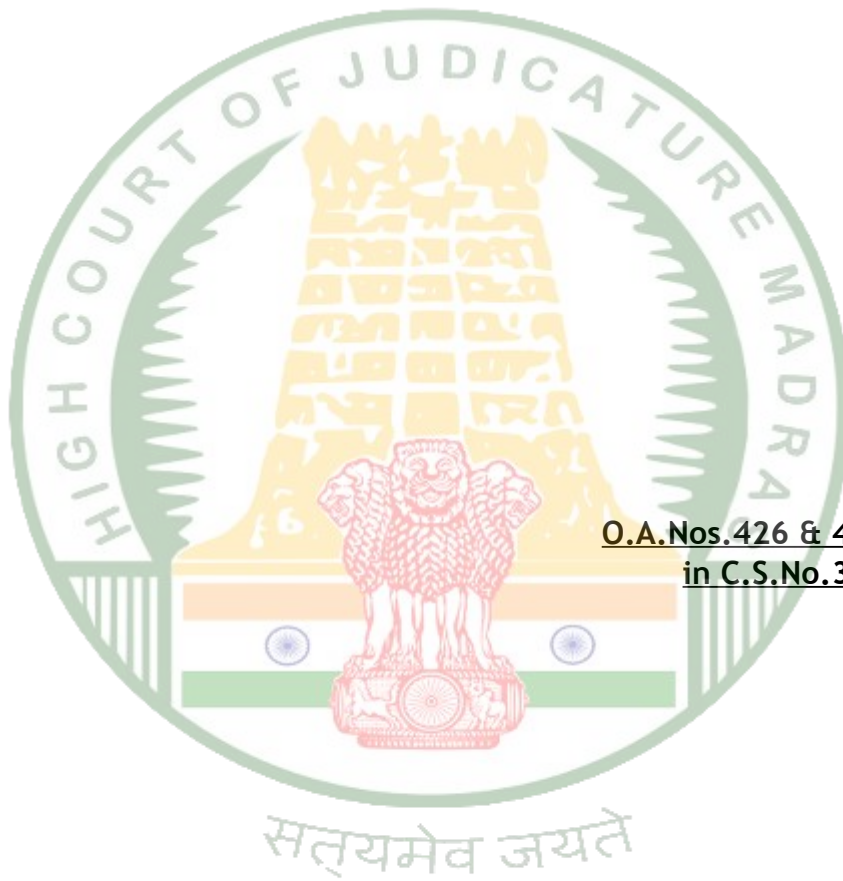
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List this matter on 05.03.2018.

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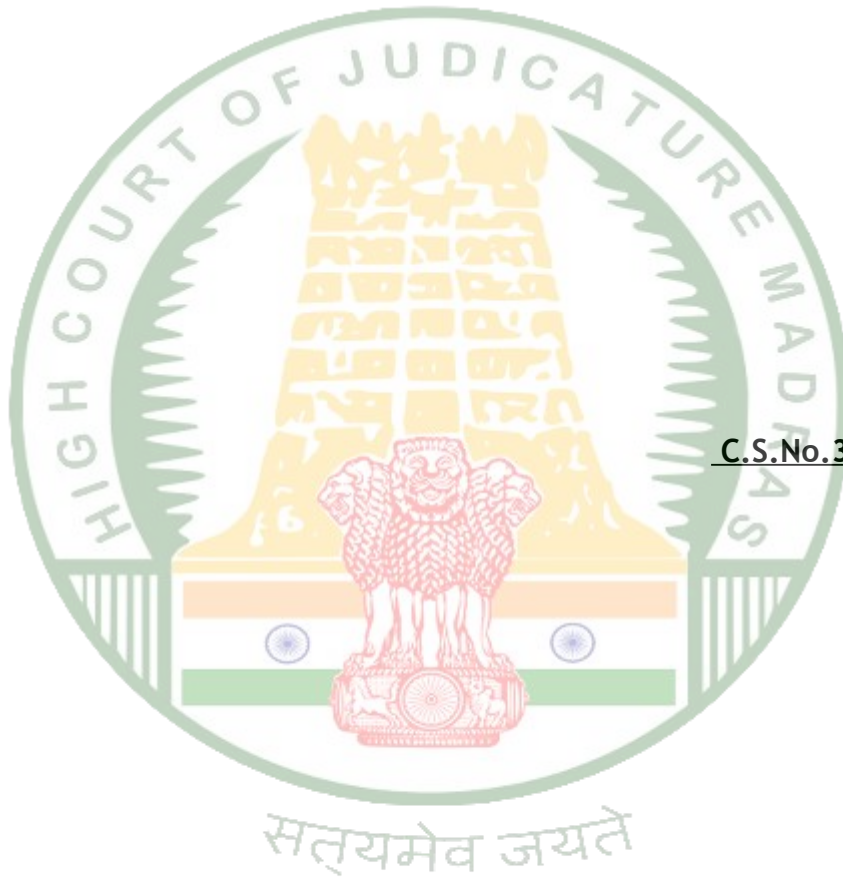
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