

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm.Div) No.291 of 2018

1.Aktiebolaget Volvo,
SE -405 08 Goteborg
Sweden
represented by Constituted Attorney
Mr.Laxminarayan Hegde

2.Volvo Trademark Holking AB,
C/O AB Volvo
SE-405 08 Goteborg
Sweden
Represented by Constituted Attorney
Mr.Laxminarayan Hegde

3.Volvo Car Corporation
SE-405 31 Goteborg
Sweden
Represented by Constituted Attorney
Mr.Laxminarayan Hegde ... Plaintiffs
Vs.

1.Volvo Industries (India)
35/2, Vivekanandan Farm
Nagaramalai Adivaram
Salem - 636 004, Tamil Nadu
Through its proprietor
Mr.Babulal Choudhary

2.Lakshmi Appliance
5/2 Veerapandiyur Nagar
Near New Bus Stand
Salem - 636 004, Tamil Nadu
Through its proprietor
Mr.K.R.Choudhary .. Defendants

This Civil Suit is preferred, under Order VII Rule 1 CPC Read with Order IV Rule 1 of the Original Side Rules of the Madras High Court, Section 2 (1) (C) (xvii) read with Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and Sections 11, 27,29,134,135 Trademarks Act, 1999, seeking a permanent injunction restraining the

defendant, their directors, proprietors, subsidiaries, stockists, representatives and anyone acting for or on its behalf from in any manner directly or indirectly using the mark/name 'VOLVO INDUSTRIES (INDIA)' 'VOLVO PREMIER' 'VOLVO PREMIER' OR or any mark/name similar to the plaintiffs' trademark/name VOLVO, amounting to infringement of plaintiff No.2's registered trademark VOLVO as referred to in paragraph 12 of the plaint; seeking a permanent injunction restraining the Defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, servants, agents, distributors, stockists, representatives and anyone acting for or on its behalf from in any manner directly or indirectly using the mark/name 'VOLVO INDUSTRIES (INDIA)' 'VOLVO PREMIER' 'VOLVO PREMIER' or any mark/name similar to the plaintiffs' trademark/name VOLVO, amounting to passing off the defendant's business/services as those of the plaintiffs'; seeking a permanent injunction restraining the defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, servants, agents, distributors, stockists, representatives and anyone acting for or on its behalf from in any manner directly or indirectly using the mark/name 'VOLVO INDUSTRIES (INDIA)' 'VOLVO PREMIER' 'VOLVO PREMIER' or any mark/name similar to the plaintiffs' trademark/name VOLVO, amounting to dilution and tarnishment of the plaintiffs well known trademark VOLVO; to directing the defendant to furnish all the data and accounts of all transactions undertaken and the profits obtained (including the data of the suppliers, the number of purchases, etc.) during the course of its business relating to goods/services under the impugned trade name and trademarks 'VOLVO INDUSTRIES (INDIA)' 'VOLVO PREMIER' 'VOLVO PREMIER', to the plaintiffs'; to delivery up of all finished and unfinished materials including signage, cards, stationary, accessories, packaging, labels, brochures, printed materials including hoardings and other material bearing the impugned 'VOLVO INDUSTRIES (INDIA)' 'VOLVO PREMIER' 'VOLVO PREMIER' trade name and trademark or any mark deceptively similar to the plaintiffs' trademark /name VOLVO, by the defendants to the plaintiffs for the purpose of destruction and for costs.

For Plaintiffs : Mr.N.C.Vishal
of M/s.Anand & Anand Law Firm

For Defendants : Mr.Ashok Kumar J Daga

JUDGMENT

There are three plaintiffs and two defendants in this suit.

2. Court is informed that all the three plaintiffs are entities incorporated in Sweden and they are represented by Constituted Attorney Mr.Laxminarayan Hegde. With regard to two defendants, Court is informed that both are proprietary concerns. Defendant No.1 is one Mr.Babulal Choudhary who was carrying on business in the name and style of 'Volvo Industries (India)' as sole proprietor and Defendant No.2 is Mr.Suraj Mal, who was carrying on business in the name and style of 'Lakshmi Appliance' as sole proprietor. To be noted, in the long and short cause titles of the plaint, the second defendant has been shown as K.R.Choudhury (Proprietor), though the name and style in which business was carried on i.e., 'Lakshmi Appliance' has been correctly given.

3.Today, Mr.N.C.Vishal of M/s.Anand & Anand (Law Firm) is before this Commercial Division on behalf of three plaintiffs. Mr.Ashok Kumar Daga, learned counsel on record for both defendants is before this Commercial Division. To be noted, both the defendants i.e., Mr.Babulal Choudhary and Mr.Suraj Mal are also present before this Commercial Division. It is submitted that parties have amicably settled the issues amongst themselves and they have reduced the terms of settlement into a Memo of Compromise dated 28.09.2018, which shall hereinafter be referred to as 'said MOC'.

4.As mentioned supra, both defendants are before this Commercial Division. On behalf of plaintiffs, it is submitted by learned counsel for plaintiffs that Mr.Laxminarayan Hegde was present before this Court on 28.09.2018 for signing another MOC in another suit and he is unable to be present before this Court today as he is travelling. Saying so, a prayer is made for dispensing with the presence of aforesaid Constituted Attorney of the plaintiffs for recording said MOC. To buttress this dispense with presence request, it is submitted that the parties signed said MOC in the presence of each other.

5. Both learned counsel make a common joint request, on instructions, from their respective clients that the suit be decreed in terms of said MOC. Defendants present in Court confirm that they have understood the terms of said MOC and that they have signed the same after understanding the contents.

6. Plaintiffs' Constituted Attorney and two defendants have produced photocopies of their photo identity cards, which are self-attested.

7. Said MOC dated 28.09.2018 as well as the aforesaid self-attested photocopies of photo Identify cards shall form part of the compromise decree.

Suit decreed on above terms. There shall be no order as to costs.

05.10.2018

Index : Yes/No
gpa/mp

M.SUNDAR, J.

gpa/mp

C.S.No.291 of 2018

05.10.2018