

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.386 of 2018
and
O.A.Nos.564 & 565 of 2018

1.Aqua Pump Industries
represented by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
having their branch office at
New No.10, Old No.26
Errabalu Chetty Street, Parrys Corner
Chennai - 600 001.

2.Aqua Sub Engineering
represented by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
having their branch office at
New No.10, Old No.26
Errabalu Chetty Street, Parrys Corner
Chennai - 600 001.

..Plaintiffs

Vs.

Techno Pumps
Palakkad Main Road,
Karumbukkadai,
Coimbatore - 641 008

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules and Order VII Rule 1 CPC, read with Sections 27, 134 & 135 of The Trade Marks Act, 1999, praying to

a) Grant a permanent injunction restraining the defendant, by itself their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark **TEXMO/TECHNO along with the inverted triangle device** as such or prefix or suffix in any selfpriming, submersible, Monoblock, Openwell Pumps, Magic Section or in any other goods manufactured and sold by the Defendant or its trading style 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, or phonetically similar to the plaintiff's registered Trade Mark **TEXMO/TECHNO along with the inverted triangle device** or in any manner infringing the plaintiffs Registered Trade Mark Nos.315049(SP-I), (SP-II) &315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively;

b) Grante a permanent injunction restraining the defendant, by itself, their servants, agents, distributors, or any one claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO/TECHNO along with the inverted triangle device** as such or with prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the Defendant and its trading style 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, or phonetically similar to the Plaintiffs Trade Mark **TEXMO/TECHNO along with the inverted triangle device** or in any manner pass off the Plaintiff's goods.

c) Direct the defendant to surrender to the Plaintiffs all the goods, packing materials, cartons, advertisement materials, and hoardings, letter-

heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark **TECHNO along with the inverted triangle device** or other deceptively similar to the plaintiffs' Trademark **TEXMO**,

d) direct the Defendant to render an account of profits made by them by the use of the impugned trademark **TECHNO along with the inverted triangle device** on the goods referred prayer (a) & (b) and decree the suit for the profits found to have been made by the defendant, after the Defendant has rendered accounts

e) direct the defendant to pay the plaintiffs the costs of the suit, and

f) Pass such further or other order, as this Court may deem fit and necessary in the circumstances of the case and thus render justice.

For Plaintiffs : Ms. Gladys Daniel

For Defendant : Mr.R.Thiyagarajan

JUDGMENT

There are two plaintiffs and a sole defendant in the instant suit.

2. Ms.Gladys Daniel, learned counsel on record for both the plaintiffs and Mr.R.Thiyagarajan, learned counsel on record for sole defendant are before this Commercial Division.

3. Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 23.11.2018, which reads as

follows:

'There are two plaintiffs and a sole defendant in the instant suit.

2. To be noted, this suit is listed today (23.11.2018) under the caption 'REPORTING SETTLEMENT AND MEMORANDUM OF COMPROMISE'.

3. Ms.Gladys Daniel, learned counsel on record for two plaintiffs and Ms.Vasudha Thiyagarajan, learned counsel on record for sole defendant are before this Commercial Division.

4. Both learned counsel submitted that the matter has been amicably settled amongst the parties and they have reduced the same into a Memorandum of Compromise. A copy of the Memorandum of Compromise, duly signed by the sole defendant was circulated for perusal, but given back to the counsel.

5. Be that as it may, it is brought to the notice to this Court that sole defendant is a proprietary concerned and it is one Mr.Abdul Nazar, S/o.Mr.Abdul Wahith, who is carrying on business as sole proprietor in name and style Techno Pumps. Mr.Abdul Nazar is present in Court today. Sole defendant Mr.Abul Nazar submits that he has understood the contents of the Memorandum of Compromise and requests for a compromise decree to be passed in terms of the same.

6. Ms.Gladys Daniel, counsel for plaintiffs submits that the individual who has to sign the aforesaid Memorandum of Compromise on behalf of plaintiffs, is traveling and the same will be done by this week end.

7. In the light of the aforesaid narrative, presence of sole defendant in the next listing for recording the Memorandum of Compromise is dispensed with.

8. Mr.T.Narendran, whom this Commercial Division is

informed is Vice President in the two plaintiffs firm, will be the signatory on behalf of the plaintiff and counsel for plaintiff submits that he will be present in the next listing.

List this matter under the same caption on 27.11.2018.'

4. The aforesaid proceedings are self explanatory.

5. Today, Mr.T.Narendran S/o.Thyagarajan, whom this Commercial Division is informed is Vice-President (Finance and Administration) in both the plaintiff firms (to be noted, both plaintiffs are partnership firms) is before this Commercial Division.

6. Two authorization letters from each of the plaintiffs both dated 26.11.2018 authorizing Mr.T.Narendran to represent the partnership firms in the instant proceedings and signed by Mr.R.Kumaravelu, Managing Partner of both the plaintiff firms have been placed before me.

7. In this regard, Ms.Gladys Daniel, learned counsel for plaintiffs draws my attention to plaint Document No.8, which consists of the firm registration certificates and partnership deeds of both plaintiff firms. Learned counsel draws my attention to clause 6 of the Partnership Deeds, which reads as follows:

'6. The party of the First Part, Mr.R.Kumaravelu shall be the Parter in-charge of the management of the affairs of the Firm and his decision shall be final in all matters pertaining to the Firm's operation and future plans. It is

specifically agreed among the parties that in the event of any agreement or agreements becoming necessary to be entered into with any Government or Quasi Government authority or authorities, the signature of Mr.R.Kumaravelu on such documents as Managing Partner of the Firm shall be considered valid and binding on the Firm.

'6. The party of the First Part, Mr.R.Kumaravelu shall be the Parter in-charge of the management of the affairs of the Firm and his decision shall be final in all matters pertaining to the Firm's operation and future plans. It is specifically agreed among the parties that in the event of any agreement or agreements becoming necessary to be entered into with any Government or Quasi Government authority or authorities, the signature of Mr.R.Kumaravelu on such documents as Managing Partner of the Firm shall be considered valid and binding on the Firm.'

8. To be noted, clause 6 is adverbium the same in both the partnership deeds. On this basis, it is submitted that Mr.R.Kumaravel, Managing Partner is empowered to act on behalf of both the partnership firms and therefore he has signed the authorization letters on that basis.

9. Mr.T.Narendran has produced his Aadhar Card and a self attested photo copy of the said photo identity card has also been placed before this Commercial Division.

10. Pursuant to and in continuation of earlier proceedings dated

23.11.2018, learned counsel for plaintiffs requests that a compromise decree may please be passed in the instant suit, in terms of the 'Memorandum of Compromise dated 23.11.2018' (hereinafter referred to as 'said MOC' for brevity).

11. To be noted, said MOC reads as follows:

**'MEMORANDUM OF COMPROMISE BETWEEN THE
PLAINTIFFS AND THE DEFENDANT'**

The plaintiffs and the defendant have agreed to compromise the matter in the following terms:

1. *The terms Plaintiffs and Defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.*

2. *The defendant is carrying on business at the above mentioned address.*

3. *The Defendant acknowledges that the plaintiffs are the prior users of the suit Trademark **TEXMO/TEXMO** along with the inverted triangle device.*

4. *The Defendant submits to a Judgment and Decree as prayed for in terms of prayer [a] & [b] of para 20 of the plaint for*

*a) Granting a permanent injunction restraining the defendant, by itself their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark **TEXMO/TECHNO** along with the inverted triangle device as such or prefix or suffix in any selfpriming, submersible, Monoblock, Openwell Pumps, Magic Section or in any other goods manufactured and sold by the Defendant or its*

trading style 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, or phonetically similar to the plaintiff's registered Trade Mark **TEXMO/TECHNO along with the inverted triangle device** or in any manner infringing the plaintiffs Registered Trade Mark Nos.315049(SP-I), (SP-II) &315050 (SP-I), (SP-II) renumbered as 2702778, 2702779 2702780 & 2702781 respectively;

b) Granting a **permanent injunction** restraining the defendant, by itself, their servants, agents, distributors, or any one claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO/TECHNO along with the inverted triangle device** as such or with prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the Defendant and its trading style 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, or phonetically similar to the Plaintiffs Trade Mark **TEXMO/TECHNO along with the inverted triangle device** or in any manner pass off the Plaintiffs' goods.

5. The defendant undertakes to withdraw any Application for registration of the Trade Mark in respect of **TEXMO/TECHNO along with the inverted triangle device** or in any other similar sounding marks that have already been filed that is not within the knowledge of the plaintiffs.

6. The Defendant shall not make any application for registration of the Trademark **TEXMO/TECHNO along with the inverted triangle device** as such or with prefix or suffix

in any goods manufactured and sold by the defendant in future.

7.The Defendant undertakes not to oppose or initiate any Rectification proceedings against the Plaintiffs' Trademark Applications or their Registered Trademarks.

In view of the decree for permanent injunction the Plaintiffs have given up the reliefs contained in prayers c,d & e in para 20 of the suit including cost of the suit.

Dated at Chennai on this the 23rd day of November 2018.

(s/d)
1st plaintiff
(s/d)
2nd plaintiff
Counsel for Plaintiffs

(s/d)
Defendant
Counsel for Defendant'



12. To be noted, said MOC has been duly signed by all the parties to the lis and their respective counsel.

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13. In the light of the narrative supra, there shall be a compromise decree in the main suit in terms of said MOC. Said MOC, two authorization letters and self attested photo identity cards of plaintiffs' representative and sole defendant Mr.Abdul Nazar shall all form part of the compromise

decree.

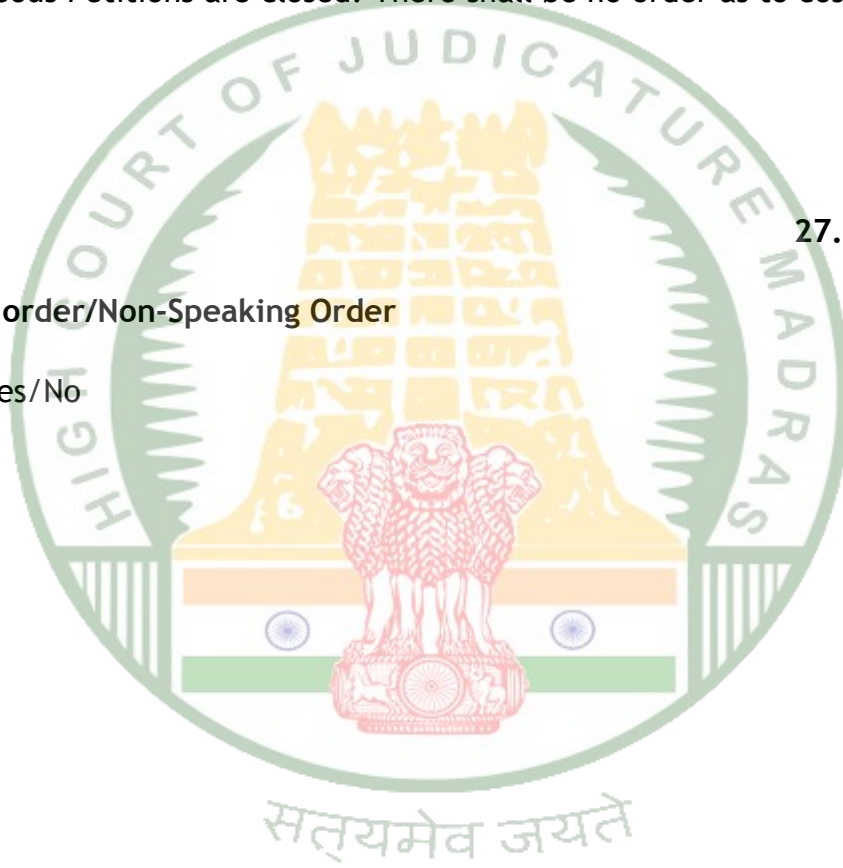
14. Suit is decreed on above terms. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

27.11.2018

Speaking order/Non-Speaking Order

Index : Yes/No

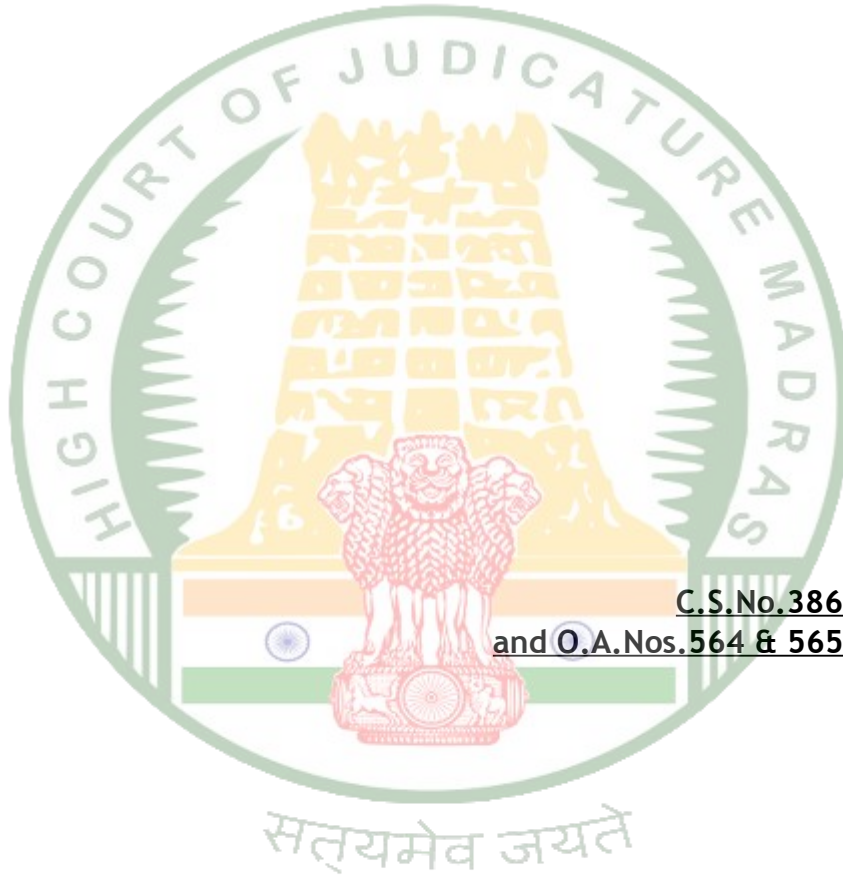
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M.SUNDAR, J.

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