

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF JULY 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos.4632 & 4633 of 2018

in

C.S. No.225 of 2018

1. Pradeep Cholayil,
No.8, J Block, 6th Avenue,
Anna Nagar East, Chennai - 600 102.
rep. by its constituted Attorney
Mr.Heeroon Rasheed M.S.

2. Cholayil Private Limited,
No.8, J Block, 6th Avenue,
Anna Nagar East, Chennai - 600 102.
rep.by its Manager - Legal
Mr.Heeroon Rasheed M.S.

..Applicants/Plaintiffs
(in both applications)

-Versus-

Karnataka Soaps and Detergent Limited
P.B. 5531 Poona Highway,
Bangalore, 560 055
Karnataka, India.

.... Respondent/Defendant
(in both applications)

A.No.4632 of 2018

Application praying that this Hon'ble Court be pleased to order for appropriate action against the respondent for willful and deliberate disobedience of the order of interim injunction dated 16.04.18 passed by this Hon'ble Court in O.A.Nos.329 of 2018 in C.S.No.225/18 which is subsisting till date.

A.No.4633 of 2018

Application praying that this Hon'ble Court be pleased to order for appropriate action against the

respondent for willful and deliberate disobedience of the order of interim injunction dated 16.04.18 passed by this Hon'ble Court in O.A.Nos.330 of 2018 in C.S.No.225 of 2018 which is subsisting till date.

These Applications coming on this day before this court for hearing the court made the following order:

These applications have been filed by the plaintiff in the suit.

2. A.No. 4632 of 2018 has been filed under Order 39 Rule 2-A of the Code of Civil Procedure seeking appropriate action to be passed against the respondent for disobedience of the order of interim injunction dated 16.04.2018 in O.A.No. 329 of 2018, which is still subsisting.

3. A.No. 4633 of 2018 has also been filed by the plaintiff again under Order 39 Rule 2-A of the Code of Civil Procedure seeking appropriate action against the respondent for disobedience of the order of the interim injunction dated 16.04.2018 in O.A.No. 330 of 2018 passed by this Court and which is still subsisting.

4. C.S.No. 225 of 2018 had been filed by two plaintiffs, namely, (1) Pradeep Cholleyil, No.8, J Block, 6th Avenue, Anna Nagar East, Chennai - 600 102, rep. by its constituted attorney, Mr.Heeroon Rasheed M.S., and (2) Cholleyil Private Limited, No.8, J Block, 6th Avenue, Anna Nagar East, Chennai - 600 102, rep. by its constituted attorney, Mr.Heeroon Rasheed M.S., against Karnataka Soaps and Detergent Limited, P.B. 5531 Poona Highway, Bangalore, 560 055, Karnataka, India, under Sections 27, 134 and 135 of the Trade Marks Act 1999 and under the relevant provisions of the Commercial Courts

Act, Original Side Rules and Code of Civil Procedure, seeking a Judgment and Decree for permanent injunction restraining the defendant or anybody acting under them from in any manner manufacturing or marketing or advertising soaps which infringe the plaintiffs Trade Mark MYSOP with the similar mark MYSOAP and also for permanent injunction from passing off of the products of the defendant as if they are the products of the plaintiffs and for consequential reliefs to surrender the products already manufactured and for damages of Rs.10/- lakhs and for preliminary decree to render accounts of profits made by the defendant and also for costs of the suit.

5. The first plaintiff is the Managing Director of the second plaintiff. The second plaintiff is a leading manufacturer of ayurvedic soap and similar products. They have a Trademark for their soap by name MYSOP from the year 2008 and registered under Application No. 1754540. They have earned goodwill and reputation in the mark. There is much demand among the public for the said product. The registration has been granted on 18.11.2008.

6. The suit had been filed since the plaintiffs complained that the defendant also manufactured soap in a deceptively similar name MYSOAP. It was also complained that the label and wrapper were also similar. They were of the same colour in Dark Yellow / Orange. The plaintiffs filed O.A.Nos. 329 & 330 of 2018 seeking injunction restraining the defendant from infringing the Trade Mark of the plaintiffs and also seeking injunction from passing off the products of the defendant as if they are the products of the plaintiffs. These applications came up for consideration of this Court 16.04.2018 and this Court had, on perusal of the documents and on hearing the counsel had granted exparte interim

injunction originally till 06.06.2018 and thereafter had extended the said injunction and the said injunction is still in force. The notice was also served on the defendant. They also entered appearance.

7. At that juncture, these two applications have been filed by the plaintiffs complaining that in spite of the injunction order granted by this Court, the defendant was continuing to market their products, namely, soap under the name MYSOAP though there was a specific order of injunction, which had been granted by this Court.

8. In the affidavits filed in support of the present applications, it had been stated that the defendant was fully aware of the order of injunction as they were served with relevant suit papers on 19.04.2018. The defendant also entered appearance and filed their counter along with the typed set of documents. It had been stated that invoices which had been produced are after the date of the interim order and consequently, it had been stated that an appropriate action has to be taken against the defendant for willful breach and deliberate disobedience of the orders of injunction dated 16.04.2018 in O.A.Nos. 329 and 330 of 2018.

9. A.No. 4632 of 2018 had been filed with respect to alleged breach of the order of injunction in O.A.No. 329 of 2018 and A.No. 4633 of 2018 had been filed for violation of the injunction order passed in O.A.No. 330 of 2018. Notices were directed to the defendant and the learned counsel for the defendant filed an affidavit sworn by the General Manager (Marketing).

10. In the affidavit, it had been stated as follows:-

"5. I respectfully

submit that there is no willful disobedience or violation as alleged by the plaintiff. I submit that the defendant stopped production and manufacturing of the subject soap with effect from 07.03.2018 and the last production note no. is 2991 dated 07.03.2018.

6. I respectfully submit that there are various products already in the market throughout India. But I submit that I already instructed the depots not to sell any of the subject soaps without the permission of this Hon'ble Court. I respectfully submit that there is no disobedience to the orders of this Court.

7. I submit that the defendant has produced the invoices after the injunction order is passed, to prove the fact that the defendant's product is passed, to market and we are at difficulty to stop the sellers from selling the product in each and every depot and shops; since the product is having a substantial turn over. I respectfully submit that as stated above I have given instructions to the depot to take

steps to comply the directions of this Hon'ble Court forthwith. "

11. The learned counsel for the defendant stated that the defendant Company is a Government of Karnataka undertaking and reiterated the averments in the affidavit filed by the General Manager (Marketing). A perusal of the invoices filed along with the present applications reveal that the invoices have been raised by the defendant depots at Gujaraj (2 invoices), Maharashtra (4 invoices), Madhya Pradesh (2 invoices) and one invoice dated 30.04.2018 by the defendant at Bangaluru.

12. Mr. Arun C. Mohan, learned counsel for the applicant stressed that the defendant has deliberately and willfully disobeyed the order of injunction even though they were aware of the order passed. However, this contention has been refuted by Mr.V.Vargees Amal Raja, learned counsel for the defendant, who stated that the defendant had manufactured and had already distributed the products to various depots even prior to the date of knowledge of the order and that instructions had been given that the products should not be marketed.

13. In view of the fact that the defendant has categorically stated that they have taken steps and given instructions not to market the products complained and since this Court had granted only an interim ex-parte injunction order and the defendant has participated in the proceedings by filing their counter and arguments will have to be advanced in O.A.Nos. 329 & 330 of 2018, I hold that both these applications can be closed. The defendant has not acted with *mala fide* intention and actually on the other hand has expressed bona fide intention to comply with the orders of the Court.

14. With these observations, these Applications are closed. No costs.

15. To hear O.A.Nos. 329 & 330 of 2018, call the matter on 24.07.2018.

Sd/ .C.V.K.J

11.07.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/11.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.