

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 23.02.2018****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.No.480 of 2010**

Wanbury Limited
BSEL Tech Park, B-Wing,
10th Floor, Sector 30A,
Opp.Vashi Railway Station,
Navi Mumbai-400 705.

Rep.by Mr.Prakash Shankar Kambli,
Asst.Manager- Distributor.

... Plaintiff

(Amended as per order dt.30.01.2017 in
A.No.5803 to 5805 of 2010 & time extended by
Order dt.16.03.2017 in C.S.No.480 of 2010).

..Vs..

M/s.Meena Health Care Private Limited,
No.16,First Street,
Postal Audit Colony,
Chinamayaganar,
Chennai-600 092.

Rep.by its Managing Director,
Mr.V.Meenakshi Sundaram.

... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules r/w Order VII

Rule 1 of C.P.C. praying to pass a judgment and decree:-

a)A Permanent injunction restraining the Defendant, its
directors, servants, agents, representatives, associates or any of them

from in any manner interfering with or preventing the Plaintiff from removing the goods, dealing with and distribution of Plaintiff's goods stocked and stored in the Plaintiffs Licensed godown at No.16, 2nd floor, Samanthi Street, Brindavan Nagar, Koyambedu, Chennai-600 092 described in the Schedule, either by locking up the Schedule mentioned premises or by refusing to handover the keys thereto or in any other manner whatsoever.

b) Pay a sum of Rs.10,00,001/- to the plaintiff as damages.

c) Directing the defendant to pay the plaintiff a sum of Rs.43.42 lakhs with interest @ 18% per annum towards the value of shortage of stocks from 18.03.2010 till payment, and

d) for costs.

For Plaintiff : Mr.T.D.Selvan Babu
For Defendant : No Appearance

J U D G M E N T

The suit is for permanent injunction restraining the defendant from interfering with or preventing the plaintiff from removing the goods stocked at the plaintiff's licensed Godown at No.16, 2nd floor, Samanthi Street, Brindavan Nagar, Koyambedu, Chennai-600 092, for damages of Rs.10,00,001/-, and directing the defendant to pay the

plaintiff a sum of Rs.43.42 lakhs with interest at 18% per annum towards the value of shortage of stocks from 18.03.2010 till payment.

2.The plaintiff is a Pharmaceutical Company engaged in the manufacture of drugs. The defendant was appointed as plaintiff's Carrying and Forwarding Agent (C & F) for entire Tamilnadu. The plaintiff had supplied goods to the defendant and the goods were stored at the exclusive Godown (address mentioned supra).

3.According to the plaintiff, the defendant suddenly disappeared and the Godown premises was kept locked. Therefore, the plaintiff had come forward with the present suit for the reliefs stated supra.

4.During the pendency of the suit, it appears that an Advocate Commissioner was appointed to break open the Godown and out of the drugs supplied by the plaintiff for a value of Rs.1,13,93,000/-, the plaintiff was able to recover drugs worth Rs.63.26 lakhs leaving a shortage of saleable stocks worth for a sum of Rs.50.67 lakhs, after deducting the caution deposit, the plaintiff seeks recovery of a sum of Rs.43.42 lakhs from the defendant. Though, the defendant appeared at the interlocutory stage, he has not chosen to contest the suit by filing a

written statement. The defendant was called absent and set ex-parte.

5.The matter was posted before the learned Additional Master for recording evidence. One Prakash Shankar Kambli, the Deputy Manager of the plaintiff Company has been examined as PW-1, and Exs.P-1 to P-9 and Ex.C-1 and C2 were marked. From the oral and documentary evidence of PW-1, the fact that the defendant was appointed as Carrying and Forwarding Agent (C & F) of the plaintiff, and the fact that the defendant was entrusted with the goods of the plaintiff is true. Out of the goods worth Rs.1,13,93,000/-, the plaintiff was able to recover only goods worth Rs.63.26 lakhs, leaving the balance of Rs.50.67 lakhs, after deducting the security deposit, the plaintiff claims that, a sum of Rs.43.42 lakhs is due payable on plaintiff. The plaintiff has also claimed a sum of Rs.10,00,001/- towards damages.

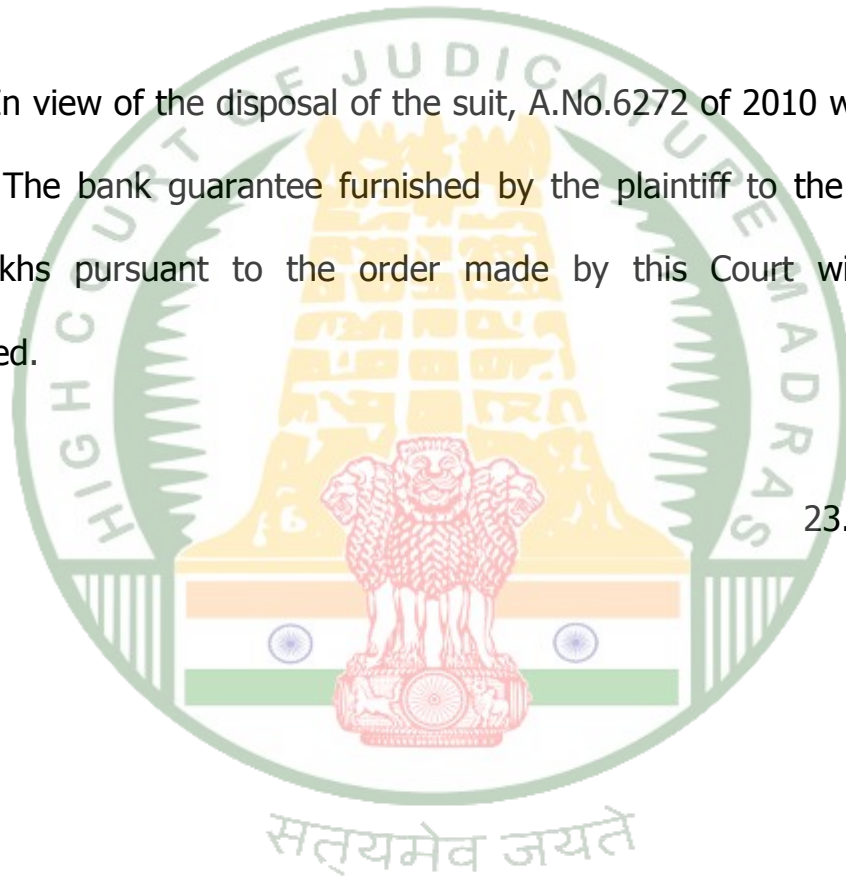
6.I do not find any proof for the said claim of the damages in the evidence of PW-1. So far as the prayer for permanent injunction, Mr.T.D.Selvan Babu, learned counsel appearing for the plaintiff would submit that nothing survives in the prayer for permanent injunction inasmuch as all the goods belonging to the plaintiff have been removed from the Godown during the pendency of the suit itself. Hence, the suit

from the date of suit i.e, from 18.03.2010 till date of payment. So far as the relief of permanent injunction, and relief for damages from the defendant, the suit will stand dismissed. The plaintiff is also entitled to proportionate costs on the decreed amount.

7.In view of the disposal of the suit, A.No.6272 of 2010 will stand closed. The bank guarantee furnished by the plaintiff to the tune of Rs.25 lakhs pursuant to the order made by this Court will stand discharged.

23.02.2018

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List of the witnesses examined on the side of the plaintiff:

PW1 - Prakash Shankar Kambli

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description</i>
1	P1	18.02.2009	The original Power of Attorney.
2	P2	24.04.2007	The true copy of the Drug Licenses No.4202/M-III20B and 4089/M-111/21B.
3	P3	15.03.2010 to 19.03.2010	The series (5 nos.) are the office copies of the Stock Transfer Notes.
4	P4	23.03.2010	The original Stock statement.
5	P5	12.04.2010	The series (2 nos.) are the true copies of the Termination Letter dated 12.04.2010 with returned envelopes.
6	P6	12.04.2010	The series (2 nos.) are the true copies of the Termination Letter dated 12.04.2010 with returned envelopes.
7	P7	17.04.2010	Series (3 nos.) are the original Doctor Complaints.
8	P8	..	The photocopy of the Visual Aids (23 pages) of plaintiff's brands.
9	P9	23.04.2010	The true copy of the Power of Attorney dated 23.04.2010 to plaintiff's representative Vijay Yashwant Parab.

Sl. No.	Exhibits	Date	Description
10	C1	15.07.2010	Spot Notice of Advocate Commissioner C-1.
11	C2	18.07.2010	Objection Letter of Plaintiff's counsel to Advocate Commissioner C-2.

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Index : No

Internet: Yes

Speaking Order

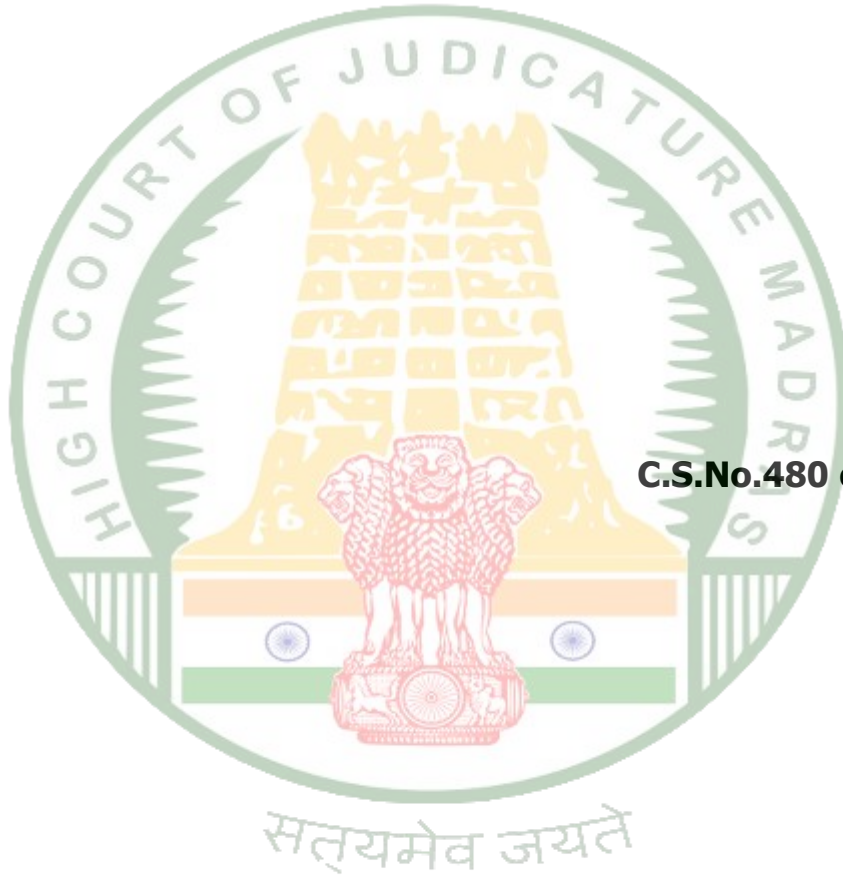
To

The Sub Assistant Registrar,
Original Side,
High Court,
Madras.

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R.SUBRAMANIAN,. J.

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