

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.777 of 2008
and A.Nos.5980 of 2008
and A.Nos.3650 and 3651 and 2695 of 2009
and O.A.Nos.904 and 905 of 2008

The Society of Certified Public Accountants
No.6E, VI Floor
Eldorado Building, 112
Nungambakkam High Road
Chennai - 600 034
Represented by its law officer and
Authorized signatory
Mr.M.S.Rao

.. Plaintiff

Vs.

1.New Horizons Educational Institute Pvt. Ltd
301-A, City Point, Dhole Patil Road
Pune.

2.New Horizons Educational Institute Pvt. Ltd
No.10, College Road, Park Circle, 1st Floor
Chennai - 600 006.

.. Defendants

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This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules read
with Order VII Rule 1 of C.P.C. Praying

a) to grant permanent injunction restraining the defendants by
themselves, their servants or agents or anyone claiming through them, from
in any manner infringing the plaintiff registered trademark 'CpA' by using

the offending trade mark 'CPA' or any other mark or marks which are in any way identical or deceptively similar to the plaintiffs well established and registered trade mark 'CPA';

b) to grant permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them, from in any manner passing off their services by using the offending trade mark 'CPA' as and for the celebrated services rendered by using the well established and registered trade mark 'CPA' either by rendering services or offering service or in any manner advertising the same;

c) to direct the defendants to render a true and faithful accounts of the profits earned by them through rendering services by using the offending trademark 'CPA' and directing the payment of such profits to the plaintiff for the passing off committed by the defendants;

d) direct the defendants to surrender to the plaintiff the entire stock of unused labels, bill books, publications instructional materials, computer software, hard disks, electronic and magnetic storage date etc., bearing the offending trade mark 'CPA' together with the blocks and dyes for destruction; and

e) direct the defendants to pay to the plaintiff the cost of the suit

For Plaintiff : Ms.Durga V. Bhatt

For Defendants : Ms.Bhuvaneswari

JUDGMENT

Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 30.07.2018, which reads as follows:

The defendant is directed to file a memo along with order copy of the Intellectual Property Appellate Board since an order had been passed, according to the defendant, in their favour.

2. For filing such memo along with the order copy, call the matter once again on 21.08.2018.

3. Post the suit under the caption 'for dismissal'.

2. Pursuant to the aforesaid earlier proceedings, learned counsel for defendants has placed before this Commercial Division an order of the 'Intellectual Property Appellate Board' ('IPAB' for brevity) dated 11.11.2011 in ORA/14-17/2010/TM/CH, wherein and whereby the rectification application moved by the defendants has been allowed.

3. Be that as it may, Ms. Durga Bhatt learned counsel on record for plaintiff and Ms. Bhuvaneshwari, learned counsel representing the counsel on record for defendants are before this Commercial Division.

4. Based on the submissions at the bar, I perused the plaint.

5. A perusal of the plaint reveals that this suit primarily pertains to alleged infringement of plaintiff's trade mark (which has since been rectified). Therefore, this is a commercial dispute within the meaning of sub-clause (xvii) of Section 2(1)(c) of 'The Commercial Courts Act, 2015'

('said Act' for brevity). Sub-clause (xvii) of Section 2(1)(c) of the said Act reads as follows: 'intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semi-conductor integrated circuits'.

6. As the lis pertains to intellectual property rights relating *inter alia* to a trademark, 'specified value' is of no consequence for determining jurisdiction in the light of Section 134(1) of the 'Trademarks Act, 1999' ('TM Act' for brevity) is their say. After perusing the plaint, I am satisfied that the submission in this regard deserves to be accepted. This Commercial Division will exercise jurisdiction over this suit under first proviso to Section 7 of the said Act.

7. Jurisdiction thus determined.

8. I now turn to the stage of the suit. Learned counsel appearing for the plaintiff thus far has filed a memo dated 21.08.2018, which reads as follows:

'MEMO FILED BY THE COUNSEL ON RECORD FOR PLAINTIFF'

The counsel on record for plaintiff above named submits as follows:

We, the counsel on record for the plaintiff hereby submits

that we have no instructions from the plaintiff in the above matter.

It is therefore, prayed that this Hon'ble Court may be pleased to take the same on record and thus render justice.

Dated at Chennai on this the 21st Day of August 2018

(s/d)

Counsel on record for plaintiff.'

9. In the light of the narrative supra, this suit is dismissed for default/non-prosecution. Consequently, all applications are closed. No order as to costs.

21.08.2018

Speaking/Non-Speaking order

Index : Yes/No
vsm

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M.SUNDAR, J.

vsm



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