

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.06.2018

PRONOUNCED ON: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.219 of 2016

Apollo Hospitals Enterprise Limited
represented by its Authorised Signatory

Plaintiff

Vs

Sai Apollo Medicals
Kadiri Anathapur, Andhra Pradesh

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC, read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act 1999, for the reliefs as stated therein.

For Plaintiff : Mr.Vineet Subramani

For Defendant : Set Exparte

JUDGEMENT

This Civil Suit has been filed, seeking a Judgement and Decree, against the Defendant, for the following reliefs:-

- a) permanent injunction, restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on Defendant's behalf from in any manner infringing the Plaintiff's registered trademark 'Apollo, 'Apollo Pharmacy', 'Apollo Clinic' and 'Apollo Hospital' either directly or by using any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark, 'Apollo, 'Apollo Pharmacy', 'Apollo Clinic' and 'Apollo Hospital'.

- b) permanent injunction, restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on Defendant's behalf from in any manner passing off their services as that of the Plaintiff's by either using the Plaintiff's registered trademark 'Apollo', 'Apollo Pharmacy', 'Apollo Clinic' and 'Apollo Hospital' either directly or by using any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark, 'Apollo', 'Apollo Pharmacy', 'Apollo Clinic' and 'Apollo Hospital'.
- c) permanent injunction, restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on Defendant's behalf from in any manner using the name/ mark 'Apollo' and 'Apollo Pharmacy', by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated, or pharmaceutical services, rendered by the Defendant.
- d) direction to the Defendant to surrender to the Plaintiff all materials, media, etc. whether for invoicing, advertising or any other purpose which contain or bear the Plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark, 'Apollo' and 'Apollo Pharmacy'.
- e) direction to the Defendant to render accounts of profits of the Defendant in favour of the Plaintiff to examine and ascertain the profits made by the Defendant and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the Defendant by using the mark 'Apollo' and 'Apollo Pharmacy' or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark, 'Apollo' and 'Apollo Pharmacy' towards damages as and when ascertained to be awarded to the Plaintiff and against the Defendant on account of use of the offending trademark.
- f) for damages of R.25,00,000/-
- g) for costs of the suit.

2. The case of the Plaintiffs is as follows:-

- a. The Plaintiff is a multi-specialty medical service provider and is a

pioneer in the field of treatment of various ailments. The Plaintiff also provides consultancy, management and operations services relating to healthcare and hospitals globally. The Plaintiff was incorporated as a public limited Company on 5.12.1979, by Dr.Prathap C.Reddy, who continues today as Founder and Executive Chairman. The Plaintiff's flagship Apollo Hospital at Chennai was started with just 150 beds. The first Apollo Pharmacy was established in 1988. The Plaintiff has Apollo Hospitals and Apollo Pharmacy outlets throughout India and abroad. The Plaintiff employed more than 70,000 persons with a turn over of Rs.5,178 crores in 2014-2015. The annual turn over has been increasing gradually. The Plaintiff had also established its Apollo Hospitals Educational and Research Foundation and Apollo Hospitals Educational Trust to provide Healthcare Education through various institutions.

b. The Plaintiff adopted a unique trademark, 'Apollo' with respect to all its hospitals and other medical undertakings. The Plaintiff had registered 'Apollo', 'Apollo Pharmacy', 'Apollo Hospital' and other associated marks. The trademarks are valid and subsisting in favour of the Plaintiff as on date. The Plaintiff had registered the trademark 'Apollo Pharmacy' under various classes of goods and services, including in No.1785330 in Class 3 for various goods, No.1576790 in Class 5 for various kinds of pharmaceutical, medical veterinary, sanitary, etc. types of products, No.1836922 in Class 5 for various goods, No.1718078 in Class 10 for various kinds of surgical, medical, dental, veterinary, etc. apparatus and instruments, No.1785333 in Class 24 for various types of goods, No.1718084 in Class 35 for retailing of pharmaceutical products, No.1718086 in Class 41 for educational, training, etc. activities and

No.1576795 in Class 42 for medical services which includes dispensing pharmaceutical products and services. The Plaintiff had also registered the trademark, 'Apollo' in No.1576799 in Class 42 with respect to all medical services. The Plaintiff had obtained registration of the trademark, 'Apollo Hospitals' under No.1576796 in Class 5 (pharmaceutical and medical products) and No.1576797 in Class 42 (medical services which includes pharmaceutical services). Except the Plaintiff, no other person is entitled to use the said trademarks.

c. The Defendant is rendering its services and selling goods under the name and style of Sai Apollo Medicals, which is clearly deceptively, visually, phonetically and structurally similar to the Plaintiff's trademarks. The Defendant by falsely using the Plaintiff's name and registered trademarks and by passing off its services as that of the Plaintiff, is causing loss and injury to the Plaintiff's reputation, business and danger to the public at large. As is apparent from the Defendant's signboard, the dominant aspect is 'Apollo'. Using the trade name, 'Sai Apollo Medicals' is a clear misuse of the Plaintiff's registered trademarks. The Defendant is illegally using the Plaintiff's registered trademarks. The Defendant is infringing on the Plaintiff's registered trademarks and passing off its services and sells goods as the Plaintiff and usurp the business, custom, reputation and goodwill of the Plaintiff. The public are misled by the Defendant and the Plaintiff had received complaints regarding the same.

d. On 9.7.2015, the Plaintiff had sent a legal notice to the Defendant, calling upon it to cease and desist from using the words and marks deceptively similar or identical to its registered trademarks and there was no

reply for the same. The Plaintiff has already suffered substantial loss and damages to its reputation and goodwill, business, sales and revenues in view of the Defendant's illegal actions in infringement of its trademarks and passing of its services. Any further use by the Defendant of the Plaintiff's registered trademarks would cause serious loss and damages to the reputation and goodwill, business, sales and revenues of the Plaintiff. The balance of convenience is in favour of the Plaintiff. In such circumstances, this civil suit has been filed, seeking reliefs as stated above.

3. Since the reliefs sought were to protect the registered trademark of the Plaintiff and which can be categorised as seeking protection of the intellectual property right acquired by the Plaintiff, the issues raised are commercial in nature and consequently, the Commercial Division Court will have jurisdiction to entertain and examine the averments made in the plaint.

4. After service of notice to the Defendant on 24.06.2016 and despite listing the matter under the caption, 'Undefended Causes', the Defendant did not choose to file his written statement and hence the matter was posted under the caption, 'Undefended Board'. Thereafter, even when the matter was taken up for consideration on 4.11.2016, there was no representation for the Defendant either in person or through counsel and hence, the Defendant was set exparte and recording of evidence was ordered.

5. Accordingly, the Manager of the Plaintiff Company, S.M.Mohan Kumar, had filed the proof affidavit for his chief examination and receipt of 19 documents as documentary evidence to prove the suit claim. In the Evidence, he examined himself as PW.1 and marked Exs.P1 to P19 as documentary

evidence in order to prove the suit claim.

6. In the absence of evidence on the side of the Defendant, this Court can therefore only examine the evidence produced by the Plaintiff. Ex.P2 to Ex.P13 are the trademark registration certificates issued to the Plaintiff. Ex.P14 and Ex.P15 are the copies of the photos of the signboards of the Defendant and the Plaintiff. Ex.P19 is the copy of the legal notice issued to the Defendant. The documents marked by the Plaintiff, viz. Ex.P1 to Ex.P19, establish the right of the Plaintiff to exploit its registered trademarks to the exclusion of others.

7. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P19 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is are entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs.

28.06.2018

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - S.M.Mohan Kumar

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the copy of the board resolution dated 24.1.2007.

2. Ex.P2 is the trademark registration certificate no.1576795 dated 6.7.2007 in Class NO.42 for Apollo Pharmacy.

3. Ex.P3 is the trademark registration certificate no.1576790 dated 6.7.2007 in Class NO.5 for Apollo Pharmacy.

4. Ex.P4 is the trademark registration certificate no.1718084 dated 6.7.2007 in Class NO.35 for Apollo Pharmacy.
 5. Ex.P5 is the trademark registration certificate no.1718078 dated 6.7.2007 in Class NO.10 for Apollo Pharmacy.
 6. Ex.P6 is the trademark registration certificate no.1718086 dated 6.7.2007 in Class NO.41 for Apollo Pharmacy.
 7. Ex.P7 is the trademark registration certificate no.1785330 dated 6.7.2007 in Class NO.3 for Apollo Pharmacy.
 8. Ex.P8 is the trademark registration certificate no.1785333 dated 6.7.2007 in Class NO.24 for Apollo Pharmacy.
 9. Ex.P9 is the trademark registration certificate no.1836922 dated 6.7.2007 in Class NO.5 for Apollo Pharmacy.
 - 10.Ex.P10 is the trademark registration certificate no.1576796 dated 6.7.2007 in Class NO.5 for Apollo Hospitals.
 - 11.Ex.P11 is the trademark registration certificate no.1576797 dated 6.7.2007 in Class NO.42 for Apollo Hospitals.
 - 12.Ex.P12 is the trademark registration certificate no.1804010 dated 6.7.2007 in Class NO.35 for Apollo Hospitals.
 - 13.Ex.P13 is the trademark registration certificate no.1576799 dated 6.7.2007 in Class NO.42 for Apollo Hospitals.
 - 14.Ex.P14 is the copy of the photos of the Defendant's signboard.
 - 15.Ex.P15 is the photo of the Plaintiff's signboard.
 - 16.Ex.P16 is the 1st commemorative stamp issued in the name of Apollo Hospital.
 17. Ex.P17 is the copy of the 2nd commemorative stamp issued in the name of Apollo Hospital.
 18. Ex.P18 is the copy of auditor's certificate dated 19.02.2016.
 19. Ex.P19 is the copy of the legal notice dated 9.7.2015.
3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

28.06.2018

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Note to Office:-

Issue on 28.06.2018

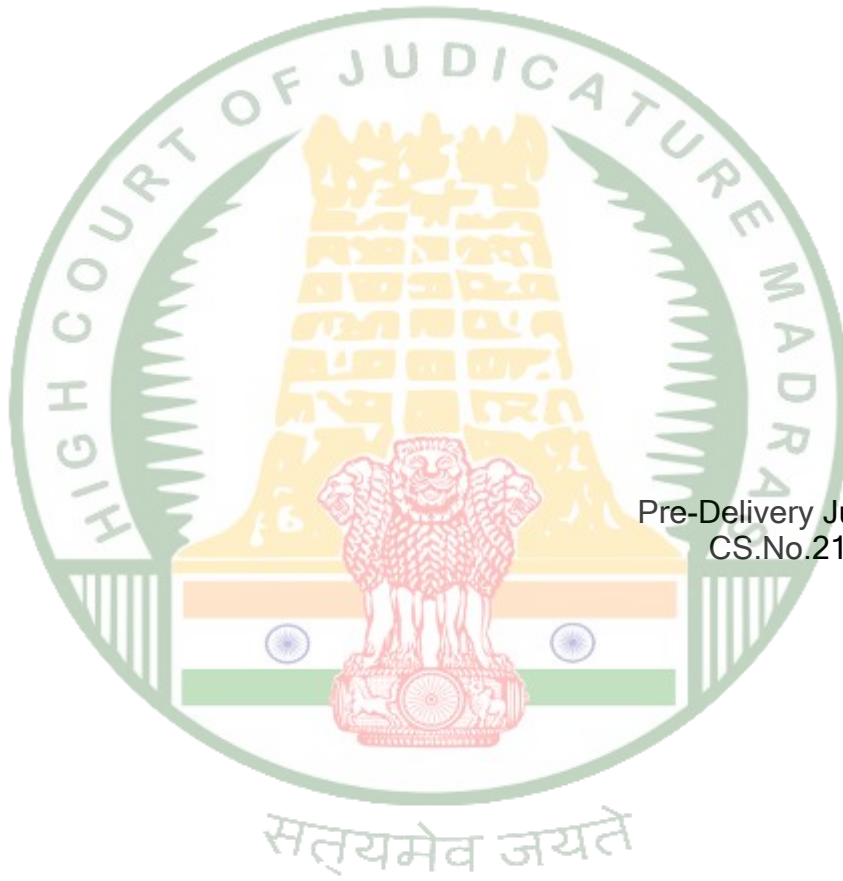
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement
CS.No.219 of 2016

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