

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.220 of 2016

and

A.No.1996 of 2016

Apollo Hospitals Enterprise Ltd.,
Regd. Office at No.19, Bishop Gardens,
Raja Annamalaipuram,
Chennai-600 028.
rep by its Authorised Signatory.

.. Plaintiff

Vs.

Praja Apollo Pharmacy,
Door No.7/38,
Cross Road,
Kalkiri Chittor Dist.

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 of CPC, Order IV Rule 1 of the Original Side Rules read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 seeking (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 trade mark '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 trademark 'Apollo', Apollo Pharmacy', 'Apollo

Clinic' and 'Apollo Hospital' or 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) defendant be directed to surrender to 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 plaintiff's trademark 'Apollo' and 'Apollo Pharmacy', (e) defendant be directed to render accounts of profits of defendant in favour of plaintiff to examiner and ascertain the profits made by the defendant, and thereafter on enquiry final decree be passed and an order for rendition of accounts of profits made by defendant by using the mark 'Apollo' and 'Apollo Pharmacy' or any structurally, visually, phonetically or deceptively similar mark to plaintiff's trademark 'Apollo' and 'Apollo Pharmacy' towards damages as and when ascertained to be awarded to the plaintiff and against defendant on account of use of the offending trademark; (f) award damages of Rs.25,00,000/-, (g) an order for costs of proceedings and (h) such other order or orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Plaintiff : Mr.Vineet Subramani

For Defendant : Mr.K.Ramanatha Reddy

JUDGMENT

Mr.Vineet Subramani, learned counsel on record for plaintiff company is before this Commercial Division. Mr.K.Ramanatha Reddy, learned counsel

on record for the sole defendant and Mr.K.Paramesh, his client are also present before this Commercial Division.

2 Both learned counsel submit that parties have entered into a memorandum of compromise dated 28.02.2018. This memorandum of compromise dated 28.02.2018 has been duly signed by both sides and their respective counsel. It has been placed before me and is captioned 'Consent Terms'. However, both learned counsel request me to treat this as 'Memorandum of Compromise'.

3 Both learned counsel make a request to this Commercial Division to the effect that a compromise decree may please be passed in terms of the aforesaid memorandum of compromise.

4 To be noted, on the side of plaintiff, a memo dated 28.02.2018 has been filed, wherein it has been brought to the notice of this court that the authorised signatory for the plaintiff is unable to be present before this Commercial Division today as he is indisposed. This is noted and the presence of the authorised representative of the plaintiff for recording before this Commercial Division the memorandum of compromise is dispensed with.

5 Aforesaid memorandum of compromise captioned 'Consent Terms', dated 28.02.2018 reads as follows :

"1.The Plaintiff is represented by its Vice President (Finance & Legal), Mr.S.Obul Reddy, and the Defendant is represented by its Proprietor, K.Paramesh. Both parties have appointed Advocates to represent them in the proceedings in CS No.220/2016 which is pending before this Hon'ble Court.

2. Whereas the Plaintiff is the undisputed owner and user of the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital", which have also been registered by Plaintiff under the Trademarks Act, 1999, and as such the marks are the exclusive, sole and absolute property of the Plaintiff.

3. Whereas the Defendant was calling itself, and operating its business under the name and style, and passing itself, its goods and services off, as "Praja Apollo Pharmacy" without authorisation, leave or license from the Plaintiff for the use of the Plaintiff's marks and property which was causing confusion in the minds of the public and was further causing loss to the Plaintiff's business and reputation.

4. Whereas the Plaintiff issued Notice dated 17.08.2015 to the Defendant calling upon it to cease and desist from using the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" and/or passing off its goods and services by using the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

5. Whereas the Plaintiff was compelled to file suit in CS No.220 of 2016 seeking inter alia a permanent injunction and monetary compensation against the Defendant for such unauthorised misuse of the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

6. Whereas the Defendant has approached the Plaintiff for a settlement and has agreed to cease using the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any derivative or modification of the marks. The Defendant has also agreed to stop using the name "Praja Apollo Pharmacy", and has agreed to operate under a different name and style excluding the marks 'Apollo', 'Apollo Pharmacy' and 'Apollo Hospital' and without reference to any of the aforesaid marks.

7. The Defendant acknowledges, admits, agrees, undertakes, covenants and affirms as follows :

7.1. The Plaintiff is the sole, exclusive and absolute owner of the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

7.2.The Defendant is not entitled to use the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" in any manner in relation to any goods or services.

7.3.The Defendant shall not, now or in future, at any time, directly or indirectly, itself or through any third parties, in any manner, use the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any derivative, modification, or similar mark.

8.The Defendant represents and warrants, and specifically induces the Plaintiff to enter into this settlement by way of these Consent Terms by its representation that the Defendant has changed its name and style from 'Praja Apollo Pharmacy' to 'Praja Pharmacy'.

9.In the above circumstances, the Parties jointly pray that this Hon'ble Court may be pleased to decree CS No.220 of 2016 as follows:

9.1.That it be declared the Plaintiff is the sole, exclusive and absolute owner of the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

9.2.That it be declared no person is entitled to use the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" in relation to any goods or services without the prior permission of the Plaintiff.

9.3.That it be declared the use by any person other than the Plaintiff of the marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" constitutes an unauthorised and illegal use of the said marks and an infringement of the registered trademarks thereof.

9.4.Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner infringing the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or indirectly or by using any structurally, visually, phonetically or

deceptively similar mark to the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

9.5. Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner passing off goods and services by using the Plaintiff's marks "Apollo", "Apollo Pharmacy" and "Apollo Hospital" either directly or indirectly or by using any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospital".

9.6. Grant a Permanent Injunction restraining the Defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on the Defendant's behalf from in any manner using the mark/name or doing business under the name and style of "Praja Apollo Pharmacy".

9.7. That the Defendant shall be liable to pay damages without contest for any use of the trademarks "Apollo", "Apollo Pharmacy" and "Apollo Hospitals" by the Defendant after the date of entering into this consent terms.

9.8. No costs."

6 Mr.K.Paramesh, affirms that he has understood the 'Consent Terms' and that he is agreeable for a compromise decree to be passed in terms of memorandum of compromise.

7 There shall be a decree in this suit, i.e., C.S.No.220 of 2016 in terms of the aforesaid memorandum of compromise dated 28.02.2018, which shall form part of the decree.

8 To be noted, this is a compromise of a suit within the meaning of Order XXIII Rule 3 of Code of Civil Procedure, 1908 ('CPC' for brevity). I

deem it appropriate to extract Order XXIII Rule 3 of CPC which reads as follows :

“1. x x x x x x x x x

2. x x x x x x x x x

3. Compromise of suit.--Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation.--An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

(Underlining made by the Court to supply emphasis and to highlight)

9 It has become necessary to include this in this decree to make it clear that covenants 9.1, 9.2 and 9.3 in the memorandum of compromise dated 28.02.2018 will be enforceable only against the defendant. It has

become necessary to make this clarification as the aforesaid three clauses are couched in a language with vast amplitude and width. Plaintiff may have a right in rem qua registered trademarks, which are subject matter of the suit, but this suit is an action in personem and compromise decree in this suit is under Order III Rule 3 of CPC.

10 The suit is disposed of on the above terms. No costs. Consequently, connected application is closed.

28.02.2018

Index : Yes/No

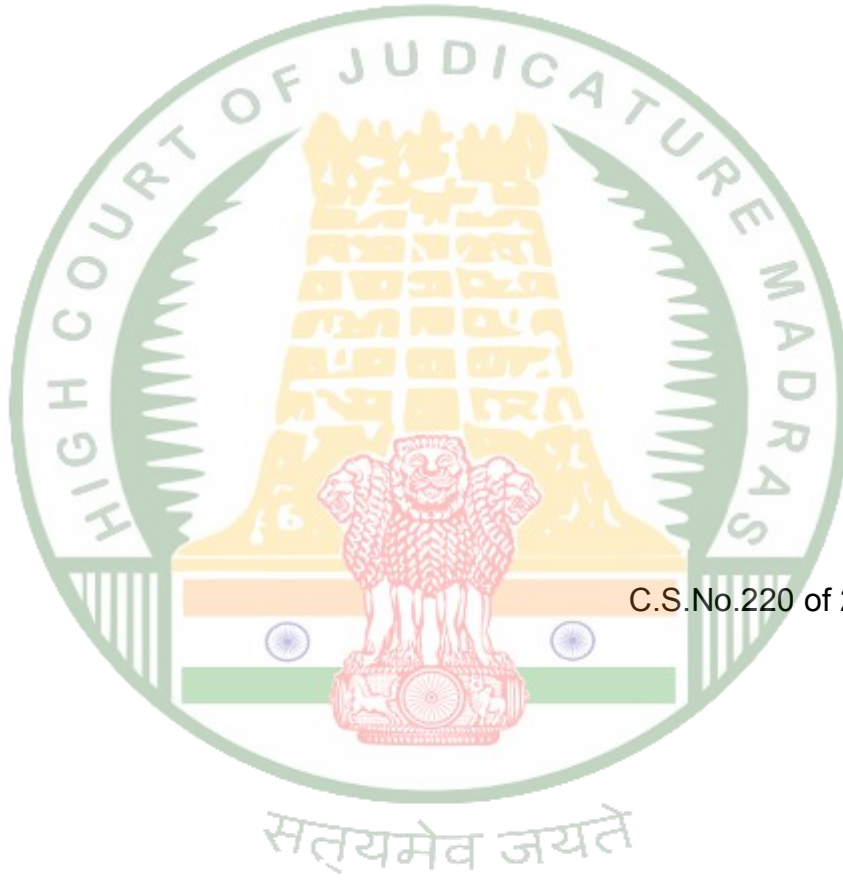
vvk



WEB COPY

M.SUNDAR, J.

vvk



C.S.No.220 of 2016

WEB COPY

28.02.2018