

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.980 of 2017
and
O.A.Nos.1279 and 1280 of 2017

M/s.Adyar Ananda Bhavan Sweets and Snacks
represented by its Partner Mr.K.T.Venkatesan
Muthulakshmi Bhavan,
No.9, M.G.Road,
Shastri Nagar, Adyar,
Chennai - 600 020.

..Plaintiff

Vs.

Sai Ananda Bhavan
KPN Complex, Chennai High Way,
Near Umarani Hospital,
Krishnagiri - 635 001.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules and Order VII Rule 1 CPC, read with Sections 134 & 135 of The Trade Marks Act, 1999, praying to

a) Declare that the Defendant is infringing the Plaintiff's Registered Trademark Number:1225607 in respect of its restaurant business carried under the name 'Adyar Ananda Bhavan'.

b) grant a permanent injunction restraining the Defendant, their men, agents, or persons, acting on their behalf, from in any manner infringing the Plaintiff's right in trademark bearing No: 1225607 in respect of its business under the name 'Adyar Ananda Bhavan' by running a restaurant with identical name and logo or in any manner similar name and logo to that of the Plaintiff;

c) grant a permanent Injunction restraining the Defendants, its men, agents and servants from in any manner passing off its business as that of the Plaintiff's by using the name 'Adyar Ananda Bhavan' with or without a similar logo, or by any other identical name or deceptively similar name as that of the Plaintiff, with or without any deceptively similar or similar logo as that of the Plaintiff in its registered mark bearing no.1225607 or any of the other names and logos for which registration has been applied for by the Plaintiff;

d) Direct the Defendants to pay the costs of the suit;

e) Pass such further or other reliefs as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr. K.Harishankar

For Defendant : Mr.V.Regunathan

JUDGMENT

There is a sole plaintiff and a lone defendant in the instant suit.

2. Mr.K.Harishankar, learned counsel on record for sole plaintiff and Mr.V.Regunathan, learned counsel on record for sole defendant are before this Commercial Division.

3. Both learned counsel submit that parties to this lis have settled the suit amicably amongst themselves and have reduced the same to writing by way of a 'Memo of Compromise dated 29.11.2018' (hereinafter referred to as 'said MOC' for brevity) which has been placed before me.

4. To be noted, said MOC has been duly signed by the sole plaintiff as well as the lone defendant and their respective counsel.

5. On the side of plaintiff, Mr.R.Saravana (S/o. V.Ramamurthy), whom this Commercial Division is informed is Zonal Manager in plaintiff partnership firm, is before this Commercial Division. A generic authorization dated 23.10.2018, signed by a partner of the plaintiff firm, who has verified/signed the plaint and the self attested photo copy of photo identity card of Mr.R.Saravana, (Voter identity card) have been placed before this Commercial Division.

6. Mr.R.Saravana, submits that he has been working with the plaintiff firm for over 13 years now, he has understood the terms of said MOC, he has authority to represent plaintiff firm and requests that a compromise decree may please be passed in terms of said MOC.

7. With regard to sole defendant Mr.V.Regunathan, counsel on record for lone defendant informs this Commercial Division that the sole defendant 'SAI ANANDA BHAVAN' is a partnership firm and two individuals namely Ms.M.Savithri (W/o.Murthy) and Mr.M.Cheran (S/o.Murthy) (Mother and Son) constitute the partnership firm.

8. To be noted, the said MOC has been signed by Mr.Cheran, representing the sole defendant partnership firm. In this regard, learned

counsel undertakes to furnish a photo copy of the partnership deed of sole defendant to learned counsel for plaintiff within seven working days from today.

9. With regard to the presence of sole defendant for recording said MOC, learned counsel for sole defendant submits that they are in Krishnagiri and they have some difficulty in traveling to this Court for being present for recording said MOC. On this basis, learned counsel prays that this Court may please dispense with the presence of the sole defendant for recording said MOC. To support this plea, it is pointed out that said MOC has been duly signed by both parties in the presence of each other and their respective counsel.

10. In the light of the aforesaid narrative, presence of sole defendant for recording said MOC is dispensed with.

11. Be that as it may, said MOC reads as follows:

'MEMO OF COMPROMISE FILED BY THE PLAINTIFF AND DEFENDANT

The Plaintiff and Defendant above named submit as follows:

1. The Plaintiff has instituted this civil suit bearing C.S.No.980 of 2017 seeking, inter alia, a declaration that the Defendant is infringing the Plaintiff's registered Trademark and consequential injunctions restraining infringement of Trademark and passing-off and for other reliefs. O.A.No.1279 of 2017, is filed seeking interim injunction restraining the

Respondent from infringing the Applicant/Plaintiff's Trademark bearing registration no.1225607 and O.A.No.1280 of 2017 is for interim injunction restraining the Respondent/Defendant from passing off using the Plaintiff's mark.

2.The Defendant has filed his Common Counter Affidavit in O.A.Nos.1279 & 1280/2017 denying the Plaintiff's allegations of infringement. However, the Defendant has approached the Plaintiff to resolve the matter amicably by way of this Memo of Compromise, to which the Plaintiff has agreed. The Defendant acknowledges and consents to be bound by the terms and conditions contained in this Memo of Compromise. The parties have now settled the disputes in the present suit on the terms contained hereinafter:

- i. The Defendant shall not use the following trademarks of the plaintiff.*



WEB COPY

- ii. The Defendant shall not use any other marks deceptively similar to the above said trademarks as part of their restaurant name or in any of their business activities including in business promotion materials, or in any form of advertisement, business cards, calendars, websites, letter pad, stationeries, signboards, name boards outside the Defendant's restaurant or in any other documents or in any other*

media.

- iii. The Defendant shall always use its mark only in conjunction with the prefix "SAI" and shall not use the words 'Ananda Bhavan' without the prefix 'SAI'. The Defendant is free to use any other Prefix or suffix along with the word 'SAI'.
 - iv. The Defendant agrees to use its mark "SAI ANANDA BHAVAN" in relation to its existing and future business activities after modifying the oval border around the word SAI ANANDA BHAVAN and shall not use any logo or device, which is similar or deceptively similar to the Plaintiff's logo and
 - v. The Defendant agrees to use its logo which is annexed along with this Memorandum of Compromise and undertakes not to use any logo which is deceptively similar to the Plaintiff's logo in future.
 - vi. The Plaintiff and Defendant agree that upon signing of this Memo of Compromise they shall jointly pray to the Hon'ble High Court to record the compromise terms and pass a decree in terms of the compromise in the suit.
- Dated at Chennai on this 29th day of November 2018.

sd/-
Plaintiff

sd/-
Defendant

sd/-
Counsel for Plaintiff

sd/-
Counsel for Defendant



12. In the light of the narrative supra, there shall be a compromise decree in the instant suit in terms of said MOC. Aforesaid generic certificate dated 23.10.2018, photo identity card of plaintiff's representative (self attested) and said MOC shall all form part of this compromise decree.

13. Suit is decreed on above terms. There shall be no order as to costs. Consequently, all connected interlocutory applications are closed.

सत्यमेव जयते

03.12.2018

Speaking order/Non-Speaking Order

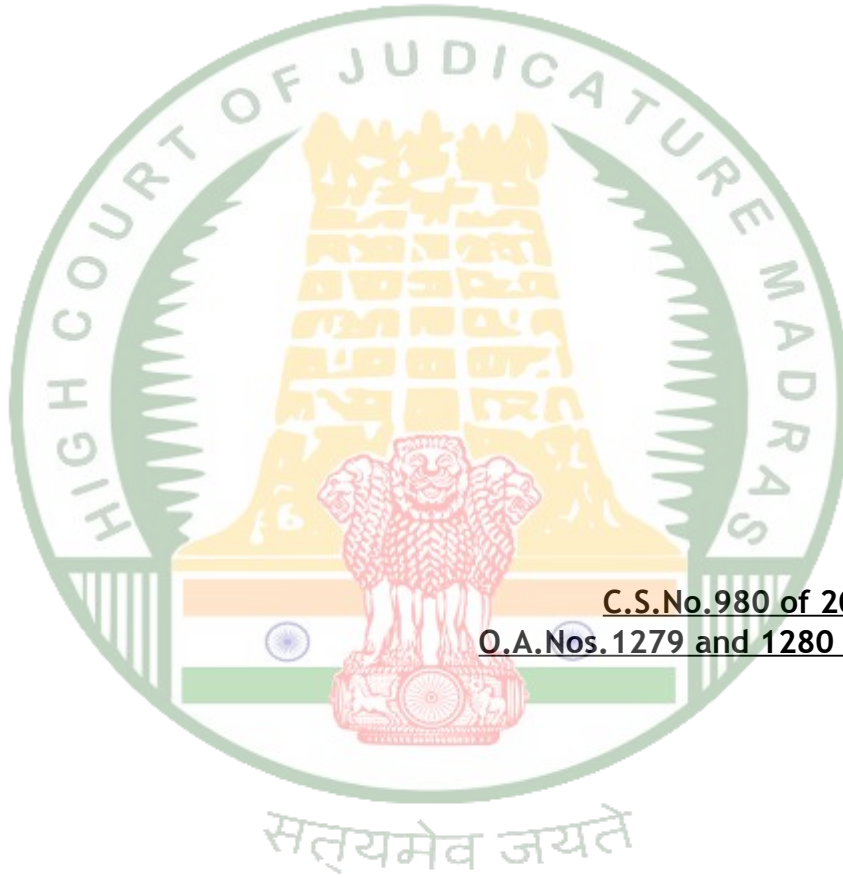
Index : Yes/No

vsm/mp

WEB COPY

M.SUNDAR, J.

vsm/mp



C.S.No.980 of 2017 and
O.A.Nos.1279 and 1280 of 2017

WEB COPY

03.12.2018