

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2018

Delivered on : 20.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

A.Nos.7341 and 7342 of 2018

in

O.A.Nos.470 and 471 of 2018

in

C.S.No.294 of 2018

N.Ranga Rao & Sons Private Ltd.,
PB No.52, Vani Vilas Road
Mysore- 570 004
and whose branch office is at
T.S.No.109, Block No.3, Poomagai
5th Street, Ekkaduthangal
Chennai- 600 097

..Applicant
in both applications

Vs.

1.Mahendra T.Thakkar
trading as Prakash Trading Co.
Pillaiyar Kulam, Inamkarisalkulam P.O
Srivilliputhur-626 125
and also at
Jalaram Parkchali, No.Jaska Road
Harij- 384 240, Gujarat

2.Tribhuvandas V.Thakkar
trading as Prakash Kumar Tribhuvandas
Jalaram Parkchali, No.1, Jaska Road
Harji- 384 240, Gujarat

..Respondents
in both applications

These application filed under Order XIV and Rule 8 of Original Sides Rules read with Order XXXIX Rule 2A and Section 151 CPC to punish the respondents for their wilful disobedience of the order this Court dated 28.04.2018 passed in O.A.Nos.470 and 471 of 2018 in C.S.No.294 of 2018 with exemplary costs.

For Applicant : Mr.Rajesh Ramanathan

For Respondents : Mr.B.Kumar
Senior Counsel
for Mr.K.Rajasekaran

COMMON ORDER

This common order will govern both these applications i.e., A.Nos. 7341 of 2018 and 7342 of 2018.

2. Both these applications have been filed by the sole plaintiff in the main suit complaining of wilful disobedience of orders of this Court dated 28.04.2018 made in O.A.Nos.470 and 471 of 2018 (continued until further orders on 13.08.2018 and operating now). Both these applications have been filed *inter alia* under Order XXXIX Rule 2-A of 'The Code of Civil Procedure, 1908' ('CPC' for brevity). Defendants 1 and 2 in the main suit are Respondents 1 and 2 respectively in both these applications.

3.From here on, parties in these two applications shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

4.To be noted, parties will be referred to by their respective ranks in the main suit and in O.A.Nos.470 and 471 of 2018 also as sole plaintiff and two defendants are

applicant and two respondents respectively in those two original applications also.

5. Product that is the nucleus of this lis is 'matches' or in other words, 'match boxes'. Plaintiff is primarily in agarbathi industry and Court is informed that a trademark with a bicycle (cycle) registered in favour of plaintiff, is the house mark of the plaintiff. As agarbathi and matches go hand in hand, plaintiff has been selling some of its agarbathis along with a complementary match box (matches) attached to the agarbathi carton. It is plaintiff's specific say that match box/matches given along with plaintiff's agarbathi carton is complementary. In other words, a customer /consumer purchasing agarbathis of the plaintiff, gets the match box free as an accompaniment, which is attached to the agarbathi carton. For this purpose, plaintiff has obtained registration of its aforesaid house mark (cycle) in Class 34 for safety matches. This registration of the plaintiff of its house mark Cycle for safety matches is with a rider/limitation that it is only for the purpose of being given as a complementary product with the agarbathis. However, besides this registration, it is submitted that plaintiff has not less than 14 trademark registrations for agarbathies and several other products in four different classes, namely Classes 3, 35, 41 and 43.

6. Defendants are admittedly in the business of manufacture and sale of safety matches.

7. Therefore, the central theme of the main suit is registration of Trademark 'Cycle' for safety matches by the plaintiff and therefore, the same shall hereinafter be referred to as 'suit TM'. Plaintiff claims that they have copyright also in artistic work in the suit TM.

8. According to plaintiff, defendants started applying a deceptively similar / identical mark i.e., Cycle on their safety matches leading to infringement of suit TM, Copyright in suit TM and passing off qua suit TM. Seeking injunctive reliefs with regard to these three aspects i.e., infringement of suit TM, infringement of Copyright in suit TM, passing off qua suit TM (besides other incidental and ancillary reliefs), main suit has been filed by the plaintiff. Considering the limited scope of the instant applications, which are essentially applications under Order XXXIX Rule 2-A of CPC, suffice to set out that a typical trademark registration of the plaintiff qua suit TM is as follows:



9. A typical depiction of the suit TM by the plaintiff on its safety matches carton is as follows:



10. Alleged offending mark used by the defendants on their safety matches and typical match boxes of defendants in this regard are as follows:



<https://hcservices.ecourts.gov.in/hcservices/>

11. At the time of inception of suit, along with the

main suit, plaintiff took out the aforesaid two interlocutory applications being O.A.Nos.470 of 2018 and 471 of 2018 with interim injunctive relief prayers with regard to infringement of suit TM and passing off qua suit TM respectively. Another application regarding infringement of copyright being O.A.No.469 of 2018 was also taken out, but this is stated only for completion of facts as it does not fall for consideration in the instant order owing to there being no interim order in O.A.No.469 of 2018.

12. Prayers in O.A.No.470 of 2018 and O.A.No.471 of 2018 read as follows:

'O.A.No.470 of 2018

To pass an order of interim injunction restraining the respondents by themselves, their servant, agents or any one claiming through them from in any manner infringing the applicant's registered trade mark CYCLE by using the identical and offending Trade mark CYCLE and/or the device of the cycle or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the Applicant's registered Trademark CYCLE WITH THE DEVICE OF CYCLE, either by manufacturing or selling or offering for sale or in any manner advertising the same, pending disposal of the suit.

O.A.No.471 of 2018

<https://hcservices.ecourts.gov.in/hcservices/>. To pass an order of interim injunction restraining the respondents by themselves, their

servant, agents or any one claiming through them from in any manner infringing the applicant's registered trade mark CYCLE by using the identical and offending Trade mark CYCLE and/or the device of the cycle or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the Applicant's registered Trademark CYCLE WITH THE DEVICE OF CYCLE, either by manufacturing or selling or offering for sale or in any manner advertising the same, pending disposal of the suit.

'b.To pass an order of interim injunction restraining the respondents for themselves, their servant, agents or any one claiming through them from in any manner infringing the applicant's copyright in the artistic work CYCLE BRAND Logo along with the unique and distinctive colour scheme, morefully specified contained in SCHEDULE A to the plaint, by use of identical logo that has an overall similarity to and is a colourable limitation of the applicant's CYCLE BRAND logo, either by manufacturing or selling or offering for sale or in any manner advertising the same, pending disposal of the suit;

c.To pass an order of interim injunction restraining the respondents by themselves, their servant, agents or any one claiming through them from in any manner passing off its products, under the offending Trademark CYCLE and/or the device of the cycle as and for the Applicant's products manufactured and marketed under the Mark CYCLE with the device of cycle in any manner whatsoever, pending disposal of the suit.

13. At the time of inception of suit, ex parte ad-interim injunctions were granted on 28.04.2018 by a common order made in O.A.Nos.470 and 471 of 2018. This common order reads as follows:

'The plaintiff N.Ranga Rao & Sons Private Ltd., has the benefit of a Trademark registered in the year 1954 and at that time, the business name of the plaintiff was N.Ranga Rao & Sons. The Trademark registration was dated 26.03.1954. Subsequently, it has become a private limited company and has been marketing the business in selling carrying Agarbathies under the Trademark 'Cycle Brand'.

2. In the plaint, the plaintiff has given the details of the various forms of the mark, which have been registered for its products. The Cycle logo is an exclusive Trademark of the plaintiff. The plaintiff has built up substantial reputation and goodwill and that is evident from the sales of the plaintiff's product, which in the plaint has been stated as being on the increasing scale from year to year. The plaintiff is doing extensive business across the country and also all over the world.

3. The learned counsel for the plaintiff actually claimed that the plaintiff's mark can easily be branded as a well known mark. Naturally when a competitor markets similar products under the very same Trademark of Cycle Brand, the plaintiff gets offended. In this case, it has been pointed out that the defendants had applied for

registration of a Trademark under 'Cycle Brand' and that has been specifically refused by the registering authority at Ahmedabad, Gujarat. This was on 10.01.2005. The defendants seem to be a persistent individuals. They have thereafter subsequently applied once again for the very same mark 'Cycle Brand' in the Chennai Office. This has been opposed by the plaintiff.

4. The fact is that the plaintiff has a registered Trademark. Owing to such registration, they have acquired recognised rights for protection from passing off and also protection from infringement. It is alleged that the defendants are passing off their products as if the products are that of the plaintiff.

5. The products of the defendants are safety matches. It is pointed out that even the plaintiff manufactures safety matches under the Trademark 'Cycle Brand' and along with the Agarbathies gives as compliment to each one of the customers, a packet of safety matches with the Trademark of 'Cycle Brand'. सत्यमेव जयते

6. At any rate, attempting to ride on the reputation of the plaintiff, who has a registered mark and which has been recognised for the past 63 years, should not be permitted. The learned counsel for the plaintiff was vehement that the plaintiff is entitled for an order of injunction restraining the defendants from infringing the Trademark of the plaintiff and also from passing off their products as that of the plaintiff.

7. In view of the facts stated above, there will be an order of interim injunctions as against the defendants as prayed for in O.A.Nos. 470 & 471

of 2018 till 20.06.2018.

8. Notice to the defendants through Court and also privately returnable by 20.06.2018.

9. A Requisite affidavit under Order 39 Rule 3-A to be filed in the Section on 03.05.2018.

10. Registry is directed to receive the papers even though 03.05.2018 falls during the vacation and there might be restrictions on receiving such papers.'

(underlying made by Court to supply emphasis and highlight)

14. Learned counsel for plaintiff Mr. Rajesh Ramanathan points out that a perusal of the aforesaid interlocutory orders, at the time of inception of the suit, will reveal that it primarily turns on Section 29 (4) of the Trade Marks Act, 1999 ('TM Act' for brevity) or in other words it turns on dilution of mark (suit TM in this case) principle.

15. Be that as it may, the aforesaid common interim order was continued and extended until further orders on 13.08.2018 vide orders of this Commercial Division, which reads as follows:

'At request of both sides, list this matter on 24.08.2018.

Interim order already granted in O.A.Nos.470 to 471 of 2018 and extended from time to time to continue until further orders.'

16. To be noted, the aforesaid interlocutory orders are continuing now. In other words, the interim orders are operating now.

17. While the interim orders are operating, sale of safety matches by the defendants, with the alleged offending mark continued unabated and such sale on the teeth of interim orders, which were operating, is clearly a violation of interim orders calling for punishment, is plaintiff counsel's say. Instant applications i.e., A.Nos.7341 and 7342 of 2018 are predicated on this basis.

18. Defendants, who entered appearance, have filed two applications i.e., O.A.Nos.7501 and 7502 of 2018 for vacating the interim orders in O.A.Nos.470 and 471 of 2018.

19. When things stood as above, plaintiff took out an application in A.No.7500 of 2018 with a prayer for appointment of an Advocate Commissioner and this Court vide orders / proceedings dated 04.10.2018 and 09.10.2018 appointed an Advocate Commissioner and the two orders dated 04.10.2018 and 09.10.2018 read as follows:

'Order dated 04.10.2018

Applicant herein is the plaintiff in the main suit. Defendants in the main suit are respondents herein. Parties herein are referred to by their ranks in the main suit for the sake

of convenience and clarity. This application for appointment of Advocate Commissioner has been taken out inter-alia under Order XXVI Rule 9 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) with Judges Summons under Order XIV Rule 8 of Original Side Rules.

2 To be noted, main suit is for alleged infringement of registered Trademark, infringement of copyright and passing off. Plaintiff is a leading manufacturer and supplier of incense sticks and other allied products including pooja oil and safety matches is plaintiff counsel's say. Plaintiff is having various trade mark registrations for its products under various classes, is his further say.

3 I heard Mr.S.Diwakar, learned counsel for plaintiff and Mr.Patrick, learned counsel for defendants.

4 It is the case of the plaintiff / applicant that defendants in the main suit / respondents in the instant application are offending and infringing the registered Trademark CYCLE and / or the device of CYCLE of the plaintiff besides infringing Copyright in artistic work CYCLE Brand Logo. Prayer in this application for appointment of Advocate Commissioner is, in my opinion, too sweeping, to be granted at this advanced stage of the main suit. However, considering the plaint averments, the averments in the affidavit filed in support of this application and the submissions made at the Bar by the learned counsel, I am inclined to appoint an Advocate Commissioner with a direction to inspect the premises of first and second

respondents herein, i.e., M/s.Prakash Trading Co., Pillaiyar Kulam, Inamkarisalkulam P.O., Srivilliputhur-626 125 and also at Jalaram Parkchali, No.1, Jaska Road, Harij-384 240, Gujarat, take note of the manufacturing activity therein, take an inventory of the stocks therein. It is open to the Advocate Commissioner to take note of any other activity or stock or materials available in the premises, which in the opinion of the Advocate Commissioner, will be relevant for the purpose of this suit and this application. It is open to the applicant / plaintiff to file a memo of inspection. However, it is made clear that Advocate Commissioner shall look into the matter at his discretion without being bound by the memo of inspection. It is also made clear that the Advocate Commissioner will not seize or cause cessation of the business of respondents in any manner, but would merely take note of the stock and other materials therein, which in the discretion of the Advocate Commissioner, is of relevance for this suit. Photographs that are considered necessary shall be taken.

5 Mr.M.Marudhachalam, Advocate, at No.137, Additional Law Chambers, High Court Buildings, Chennai-600 104 (Mobile No.9444310101), is appointed as Advocate Commissioner. Initial remuneration for the Advocate Commissioner is fixed at Rs.30,000/- (Rupees thirty thousand only), which shall be paid forthwith by the applicant/plaintiff before the Advocate Commissioner leaves for inspection. To be noted, besides this Rs.30,000/-, travel

fare, local transport, accommodation and other out pocket expenses of the Advocate Commissioner shall be met upfront by the applicant / plaintiff.

6 On visiting the aforesaid premises of defendants / respondents, if the learned Advocate Commissioner in his opinion finds it necessary to have police help for inspection, on a copy of this order being placed before the jurisdictional Inspector of Police (Station House Officer) or any of his higher police officers, necessary police help/aid shall be given to the Advocate Commissioner by the jurisdictional Police officers, for execution of this order by aforesaid Advocate Commissioner.

7 Report of the Advocate Commissioner shall be filed by 25.10.2018.

8 Post other interlocutory applications also on 25.10.2018.'

'Order dated 09.10.2018

Sole plaintiff in the main suit is the lone applicant herein. Defendants 1 and 2 in the main suit are respondents 1 and 2 respectively in this application.

2. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Orders were passed in this application after hearing both sides on 04.10.2018. Today, it is listed under the caption 'FOR BEING MENTIONED' at the instance of learned counsel for plaintiff.

4. Mr.Rajesh Ramanathan, learned counsel on record for plaintiff and Mr.B.Kumar, learned Senior Counsel leading the counsel on record for defendants are before this Commercial Division.

5. I heard both sides.

6. Taking me through the order dated 04.10.2018 and particularly a portion of paragraph 4, which reads as follows:-

'.... I am inclined to appoint an Advocate Commissioner with a direction to inspect the premises of first and second respondents herein, i.e., M/s.Prakash Trading Co., Pillaiyar Kulam, Inamkarisalkulam P.O., Srivilliputhur-626 125 and also at Jalaram Parkchali, No.1, Jaska Road, Harij-384 240, Gujarat, take note of the manufacturing activity therein, take an inventory of the stocks therein. It is open to the Advocate Commissioner to take note of any other activity or stock or materials available in the premises, which in the opinion of the Advocate Commissioner, will be relevant for the purpose of this suit and this application....'

learned counsel for plaintiff submitted that the Advocate Commissioner has been directed to inspect the premises of the defendants in Srivilliputhur, Tamil Nadu and Harij, Gujarat. Learned counsel submitted that it is necessary to empower the Advocate Commissioner to inspect other shops and premises in the market irrespective of whether they belong to defendants or not. This plea is made by learned counsel for plaintiff on the allegation that the alleged offending products are freely and widely in circulation in the market.

7. Responding to this, Mr.B.Kumar, learned Senior Counsel, on instructions, submitted that the alleged offending products are in fact freely in circulation in the market. Learned Senior Counsel, on instructions, submitted that the list of outlets and the quantum that is in circulation as well as other relevant details will be produced voluntarily by the defendants in the next listing on 25.10.2018.

8. Saying so, learned Senior Counsel opposed the request of the plaintiff seriously on the ground that if the Advocate Commissioner goes to the various shops and outlets, it might stigmatize the products of the defendants.

9. As defendants on their own volition have stated that the alleged offending products are freely in circulation and on their own volition have undertaken to furnish all relevant details in this regard in the next listing on 25.10.2018, I am of the view that there is no requirement for enlarging or amplifying the scope of my order dated 04.10.2018.

10. This order/proceedings shall be read as an integral part and parcel of earlier order dated 04.10.2018 made in the instant application.

11. List this matter on 25.10.2018.'

20. Pursuant to the aforesaid orders, Advocate Commissioner, who has executed the warrant, has filed a report dated 25.10.2018 with 7 enclosures and the same is before this Court. While plaintiff has not filed any objections, defendants have filed objections dated

09.11.2018 i.e., objections to the Advocate Commissioner's report.

21. In the aforesaid backdrop, the instant applications i.e., A.Nos.7341 and 7342 of 2018 fall for consideration.

22. In the instant applications *inter-alia* under Order XXXIX Rule 2-A of CPC, it was pointed out that defendants have filed a common counter affidavit dated 19.09.2018 . Therefore, pleadings are complete and the same have to be taken up first without reference to other interlocutory applications, is learned applicant counsel's say.

23. It is the specific plea of learned counsel for plaintiff that defendants, who are alleged to be in contempt, should purge themselves of contempt and come clean before this Court for having the luxury of contesting the interlocutory orders on merits.

24. Be that as it may, on a demurrer, even if the interlocutory applications are contested on merits and even if the interlocutory orders come to an end today, as the violation of interim orders is post 28.04.2018, till date, that will make no difference to the contest in the instant applications under Order XXXIX Rule 2-A. Therefore, by consent on both sides, instant two applications i.e.,

A.Nos.7341 and 7342 of 2018 were first taken up on the understanding that other interlocutory applications will be

taken up later i.e., in the ensuing listings.

25. Submissions made by Mr.Rajesh Ramanathan, learned counsel for plaintiff in the instant Order XXXIX Rule 2-A applications can be broadly summarized as follows:

(a)When the Advocate Commissioner application being A.No.7500 of 2018 was moved, defendants did not want the Advocate Commissioner to go from shop to shop and see if the alleged offending products of the defendants are available. Defendants submitted that this would stigmatize their products. More importantly, to restrict the scope of the Advocate Commissioner's warrant, defendants fairly submitted that the products with alleged offending mark are available in the market and it was also submitted that the defendants will voluntarily produce list of outlets, quantum that is in circulation as well as other relevant details. This is captured in Paragraph 7 of the order dated 09.10.2018 made in the application for appointment of Advocate Commissioner i.e., A.No.7500 of 2018. Though extracted supra, considering the importance of this aspect of the matter, it is necessary to reproduce Paragraphs 7 and 8 of Order dated 09.10.2018, which read as follows:

*'7. Responding to this, Mr.B.Kumar,
learned Senior Counsel, on instructions,*

submitted that the alleged offending products are in fact freely in circulation in the market. Learned Senior Counsel, on instructions, submitted that the list of outlets and the quantum that is in circulation as well as other relevant details will be produced voluntarily by the defendants in the next listing on 25.10.2018.

8. Saying so, learned Senior Counsel opposed the request of the plaintiff seriously on the ground that if the Advocate Commissioner goes to the various shops and outlets, it might stigmatize the products of the defendants.'

(b) The aforesaid voluntary disclosure of list of outlets, quantum that is in circulation and other relevant details have not been placed before this Court until this day and this, by itself, is a clear case of contempt, is learned counsel for plaintiff's say.

(c) Next submission on the side of the plaintiff is that though Advocate Commissioner has found defendant's safety matches with the alleged offending mark, Advocate Commissioner was prevented from visiting the manufacturing unit of defendants, which was barely half a kilometer away from the godown which Advocate Commissioner visited and in any event, the photographs produced by the Advocate

Commissioner as annexures to the report reveal that the defendant's products with the alleged offending mark are freely available in the market. Some photographs taken in the defendant's godown (annexed to the Advocate Commissioner's report) are as follows:



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(d) Sale is continuing unabated and a typical invoice dated 28.08.2018 with translation is as follows:-

BHAVANI TRADERS
 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838,

RETAIL INVOICE		CASHMEMO		PH (O) 02744-229255 MO. 9909466099	
BHAVANI TRADERS					
• Betel Leaves, Betel nuts Wholesale Traders Address: No.33, Thakur Kanchansingh Market, Opp. Old Vegetable Market, Main Bazar DEESA - 385535					
Bill Book No. 4		Bill No. 301		Date: 28/08/2018	
Mr/ Sri, Kailash Bhai Parikh					
Tin No. _____			Place _____		
Details	HSN Code	Item	Price	Amount	
Cycle Match Box		1	45/-	45/-	
Amount in figure			Total	45/-	
			Vat %		
			Total Amount		
TIN No. 24020902810 O & E					
GST.24APTPT1293NIZP.			From, Bhavani Traders		
Subject To DEESA Jurisdiction			WEB COPY		
Goods Once Sold Cannot be taken back					
			Authorized Signatory		

According to learned counsel for plaintiff,
the aforesaid invoice shows sale of defendants'
products with alleged offending mark.

26. In response to the aforesaid submissions made by the plaintiff's counsel, Mr.B.Kumar, learned Senior Advocate appearing on behalf of learned counsel on record for defendants made submissions, which can be broadly summarized as follows:

In the common counter affidavit, defendants have categorically stated that even a single invoice has not been raised by the defendants for sale of products with offending mark from the date of receipt of notice of interim orders, which according to defendants is 01.05.2018. Learned counsel pivoted his submissions on this aspect of the matter heavily and submitted that this is a complete answer to the allegation of violation of orders passed by this Court. Learned counsel further submitted that objections made to the Advocate Commissioner going to the manufacturing unit is only in accordance with the scope of the warrant and therefore, that cannot be put against the defendants. Learned senior counsel also pointed out that the aforesaid invoice dated 28.08.2018 produced by the plaintiff is that of one Bhavani Traders and that there is nothing to show that it is relatable to the products manufactured by the defendants.

27. This Commercial Division has carefully considered the rival submissions in the light of the materials placed before this Commercial Division, particularly those that have been alluded to supra.

28. Before delving into rival submissions, a perusal of the objections to the Commissioner's report filed by the defendants shows that there is no serious objection and the only objection is that defendants objected to Commissioner's visit to the manufacturing unit in Srivilliputhur only in accordance with orders of this Court and that cannot be put against the defendants. Other contents of the 1½ pages objection do not relate to the inspection per se and therefore, it can be safely presumed that the Advocate Commissioner's report can be looked into.

29. A perusal of the photographs annexed to the Advocate Commissioner's report which have been extracted, scanned and reproduced supra show the date on which it was taken. Even according to the objection, there is no dispute or disagreement that these photographs were taken with regard to the products which were available in the defendants' godown at the time of inspection of Advocate

Commissioner.

30. A more important aspect of the matter is paragraphs 7 and 8 of the order of this Commercial Division dated 09.10.2018, which have been extracted and reproduced supra wherein the defendants had undertaken to submit the list of outlets, quantum that is in circulation as well as other relevant details voluntarily by 25.10.2018. There is no dispute or disagreement before this Commercial Division that such details have not been furnished to this Commercial Division as would be evident from the summary of submissions alluded to supra. Learned counsel for plaintiff raised this as a point in support of the instant application under Order XXXIX Rule 2-A CPC. There is absolutely no answer whatsoever from the defendants as to why these details have not been furnished.

31. On the contrary, the defendants have only relied on paragraph 3 of the counter affidavit in these applications that even a single invoice has not been raised after communication of the interlocutory orders to the defendants on 01.05.2018 and emphasised that this is a complete answer to the entire complaint in instant Order XXXIX Rule 2-A applications. This is ipse dixit of defendants. Be that as it may, if this argument is to be accepted, defendants ought to have furnished a list/quantum of products manufactured upto 01.05.2018 and should have given details as to what part of these manufactured products were

already made available for circulation in the market as of 01.05.2018 and what part has been retained in the defendants' godown. If the defendants had come clean with this aspect of the matter, they could have even sought permission of this Court to sell the existing products until the interlocutory applications or main suit are decided one way or the other. Defendants have not chosen to do any of these, notwithstanding Paragraphs 7 and 8 of the aforesaid order dated 09.10.2018 made in the Commissioner application. On the contrary, report of the advocate commissioner clearly shows that the products of the defendants with alleged offending mark are freely available and to be noted, the inspection of the commissioner was on 15.10.2018 at Srivilliputhur and on 17.10.2018 at Harij, Gujarat. Most pertinent aspect to be noted is, there is no manufacturing date in these products. Assuming for a moment that no invoice has been raised after 01.05.2018 with the alleged offending mark, there should have been no sale of the product with alleged offending mark of the defendants for 7 months now and if there has been no sale of the products, the defendants by their own volition on 09.10.2018 having stated that the products are freely available for circulation in the market should have furnished the above mentioned particulars which they had undertaken to do. To be noted, the only explanation on the side of defendants is that these are products which were

manufactured prior to 01.05.2018. In this regard (as mentioned supra), it has to be seen that manufacturing date is not given in the safety matches of the defendants and it is submitted by learned senior counsel for defendants that it is not necessary to show the date of manufacture in some products and safety matches is one such product and therefore, the date of manufacture has not been given in the safety matches of the defendants.

32. The argument of the defendants that invoice dated 28.08.2018 cannot be correlated with the defendants may have become a matter for trial if defendants had produced the details/particulars they had undertaken on their own volition to produce. Therefore, this argument of the defendants that the invoice dated 28.08.2018 cannot be correlated with the defendants only shows that the defendants' products are being bought and sold in the market freely even after the interim order dated 28.04.2018, which is now operating.

33. Learned counsel for plaintiff, Mr. Rajesh Ramanathan pressed into service a judgment of the Himachal Pradesh High Court at Shimla being ***Kaushalya Devi Vs. Kaushalya Devi and others*** reported in ***2017 SCC Online HP 1010***.

Attention of this Commercial Division was drawn to Paragraphs 52 and 53 of the said judgment, which read as follows:

' 52. The primary object of Rule 2-A of Order 39 of the Code is not to punish a person, who has disobeyed the order of injunction, but to enforce the order. Wilful disobedience, no doubt, invites wrath of penal action as envisaged in the said provision, hence, where any action is done in violation of a order or stay or injunction, it is the duty of the Court, as a polilcy, to set the wrong right and not to allow perpetuation of the wrong doing. These provisions are intended to maintain majesty of judicial order, to preserve rule of law and to ensure faith of litigants in the administration of justice. It is a curative provision and its purpose is to ensure that the direction of the Court is implemented, disobedience of order is remedied and status quo ante is restored.

53. It is surprising, if not shocking, that inspite of the application lying pending for such a long time and despite the respondents having sufficient time at their disposal neither tendered apology nor offered to purge the contempt. There is no remorse whatsoever on their part. Therefore, this Court is left with no other option to allow the application by directing the respondents to first purge the contempt.'

34. Hon'ble Supreme Court in *Surya Vadanam case (Surya Vadanam V. State of Tamil nadu)* reported in **AIR 2015 SC 2343** held as a general principle that violation of an interim or interlocutory order should be viewed seriously and if it is not viewed seriously it will have wide spread deleterious effect on the authority of Courts to implement their interim or interlocutory orders and compel their adherence.

35. Be that as it may, in the judgment of the Division Bench of Allahabad High Court reported in **Smt. Jaganathiya Vs. State of U.P [2006(3) AWC 2600]**, authored by Hon'ble Justice B.S. Chauhan, as His Lordship then was, it was held that provisions of Order XXXIX Rule 2-A and principles governing an application under Order XXXIX Rule 2-A of CPC are akin to proceedings under Section 12 of the Contempt of Courts Act and proceedings/provisions for violation of orders of Court are intended to preserve the majesty of the Court and to ensure utmost respect and honour for the Rule of Law. The principle is, unsullied stream of justice cannot be disturbed in any manner by violation of orders of Court as that would have a direct and deleterious effect on the majesty of the rule of law. In the **Century Floor Mills Ltd., Vs. S. Suppiah** reported in **(1975) 2 MLJ 54**, this Court held that violation of orders of an order of injunction granted by a Civil Court or any disobedience qua injunction

granted by a civil Court is such that it is the duty of the Court as a matter of judicial policy to undo the wrong done owing to such disobedience of Court's order. This Commercial Division notices that this view is a phenomenon in jurisprudence in this regard across the country.

36. In the United Mine Workers case (**United States V. United Mine Workers**) reported in **330 US 258 (1947)** in USA in 1947, the United States of Supreme Court examined as to whether the trial court acted appropriately while issuing a restraint order to prevent a labour strike organised by coal miners. The United States of Supreme Court observed that great reverence must be given to the orders issued by Courts and due respect and compliance be given to the orders issued by Courts and if one who defies the public authority and wilfully refuses his obedience does so at his peril.

37. This commercial Division has no difficulty in accepting the submissions that Order XXXIX Rule 2-A CPC and other analogous provisions are indented to maintain majesty of the judicial order, to preserve rule of law and to ensure faith of litigants in the administration of justice. There can be no two opinions about the position that such provisions are sanctus and its purpose is to ensure that directions of the Court are implemented and disobedience of

orders are remedied by ensuring restoration of status-quo. In the light of the aforesaid context, learned counsel for plaintiff insisted that punitive damages should be levied on the defendants and added that it can go to the credit of any charitable cause at the discretion of this Court.

38. As this Commercial Division has found that there is sufficient material to show that the defendants have violated the orders of this Court, particularly owing to non-compliance of Paragraphs 7 and 8 of earlier proceedings of this Commercial Division dated 09.10.2018 in A.No.7500 of 2018 and owing to not providing the particulars which the defendants by their own volition undertook to do, this Commercial Division finds it appropriate to impose punitive damages of Rs.2,00,000/- (Rupees Two Lakhs only) on the defendants.

39.The aforesaid sum of Rs.2,00,000/- shall be paid to the Hon'ble Chief Justice Relief Fund of this Court i.e, Madras High Court by the defendants within three weeks from the date of this order being pronounced in open Court.

40. Besides aforesaid punitive damages, defendants shall ensure that Paragraph 3 of their counter affidavit is strictly adhered to until the other interlocutory applications are heard out and decided one way or the

other.

41. Be that as it may, both parties shall expedite the disposal of O.A.Nos.470 and 471 of 2018.

42. Besides punitive damages, it is necessary that the orders of this Court are enforced, implemented and strictly adhered to. This is to uphold the majesty and dignity of the rule of law and to ensure that unsullied stream of justice flows in the course of rule of law with no impeding factors and obstructions by way of breach of orders of Court.

43.A perusal of orders appointing Advocate Commissioner dated 04.10.2018 and 09.10.2018 would reveal that this Court had made it clear that the Advocate Commissioner should only take inventories and not seize the alleged offending material. In the light of the orders in the instant applications now, it is deemed appropriate that the jurisdictional police authorities have to seize the offending material. As it is necessary to identify the offending material, the same Advocate Commissioner who was appointed earlier, namely, Mr.M.Marudhachalam, Advocate, at No.137, Additional Law Chambers, High Court Buildings, Chennai-600 104 (Mobile No.9444310101), is appointed again to identify the offending material in accordance with the

inventories and also in any other place where it is found irrespective of whether it forms part of the inventory or not and also irrespective of whether it is found at place/s which he has already visited or not. Remuneration for Advocate Commissioner shall be Rs.50,000/- (Rupees Fifty Thousand Only) (besides out of pocket / travelling expenses) and this shall be paid by the plaintiff subject to the outcome of other interlocutory applications and/or main suit. The entire exercise of seizing offending materials shall be completed within three weeks from the date of this order being pronounced in open Court. Registry shall communicate this order to the Director General of Police, Tamil Nadu, who shall instruct the jurisdictional District Superintendent/s of Police to do the needful to seize the offending material identified by the Advocate Commissioner. Director General of Police, Tamil Nadu shall also send necessary communications to his counter part in Gujarat and also do all that is required for seizure in Gujarat. To be noted, the seizure is by the law enforcing agency, i.e., by the police and not by the Advocate Commissioner.

44. Both applications are ordered on above terms.

45.Though these two applications are being disposed of by this common order, the matter shall be listed under the caption 'FOR REPORTING COMPLIANCE' and the compliance report shall be filed by the Advocate Commissioner in this regard in that listing.

List on 10.01.2019.

Sd/-M.S.J
20.12.2018

//Certified to be a true copy//

Dated this the day of 2019

jj 26.03.2019

COURT OFFICER(O.S)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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