

C.S.No.399 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.399 of 2019 &

O.A.Nos.637 & 638 of 2019

M/s.Harith Tharang
Represented by its
Partner Mrs.RashmiSunil Sudhakar Shankar,
42 Bazulla Road,
T.Nagar, Chennai – 600 017. ... Plaintiff

Vs.

1. Mr.A.M.Hussain
2. Mr.M.N.Shyam
Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules and Order VII
Rule 1 CPC read with Sections 134 & 135 of Trade Marks Act and Section 7 of
the Commercial Courts Act, 2015 praying for the following judgment and
decree :

a) For a permanent injunction restraining the defendants by themselves,
their servants, licensees, agents and distributors or any one claiming through
them in any manner from committing infringement of plaintiff's registered trade

mark "Harith Tharang" in respect of plaintiffs by using identical and deceptively similar mark "Harith Tharang".

b) For a permanent injunction restraining the defendants by themselves, their servants, licensees, agents and distributors or any one claiming through them in any manner from committing passing off their services retail and whole sale in plants as and for or being connected with the business of the plaintiff's mark Harith Tharang in respect of beautification plants/plants by using identical and deceptively similar mark "Harith Tharang".

c) directing the defendants to pay a sum of Rs.5,00,000/- towards damages for infringement the plaintiff's trade mark, viz., Tharith Tharang

d) Directing the defendants to hand over all the information, files and other documents belonged to the plaintiff and taken away by the defendants while the second defendant left the employment of the plaintiff and hand over all the advertising materials containing the trade name of the plaintiff and stop using the trade name, trade mark/band name of the plaintiff hereinafter.

For Plaintiff : Mr.K.Venkatesan

For defendant : Mr.Krishnasamy Chinnasamy – D2

J U D G M E N T

The suit has been filed for the following reliefs :

a) For a permanent injunction restraining the defendants by themselves, their servants, licensees, agents and distributors or any one claiming through them in any manner from committing infringement of plaintiff's registered trade mark "Harith Tharang" in respect of plaintiffs by using identical and deceptively similar mark "Harith Tharang".

b) For a permanent injunction restraining the defendants by themselves, their servants, licensees, agents and distributors or any one claiming through them in any manner from committing passing off their services retail and whole sale in plants as and for or being connected with the business of the plaintiff's mark Harith Tharang in respect of beautification plants/plants by using identical and deceptively similar mark "Harith Tharang".

c) directing the defendants to pay a sum of Rs.5,00,000/- towards damages for infringement the plaintiff's trade mark, viz., Tharith Tharang

d) Directing the defendants to hand over all the information, files and other documents belonged to the plaintiff and taken away by the defendants while the second defendant left the employment of the plaintiff and hand over all the advertising materials containing the trade name of the plaintiff and stop using

the trade name, trade mark/band name of the plaintiff hereinafter.

2. When the matter was taken up today, the learned counsel for the second defendant filed an affidavit stating that the second defendant, after leaving the job from the plaintiff, has mistakenly created the website in the name of plaintiff and he has immediately deleted the same. Further, it is stated that by mistake the second defendant has created the account and it is neither willful nor wanton. It is also stated that the second defendant is jobless and is starving for food. It is further submitted that the first defendant is no way connected in this matter.

3. Hence, the suit is decreed with cost as prayed for as for as prayers 'a' and 'b' are concerned. With regard to the prayers 'c' and 'd', in view of the affidavit filed by the 1st defendant, the suit is dismissed. Consequently, the connected applications are closed.

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09.09.2019

vrc

Index : Yes/No
Internet : Yes/No

Speaking/Non-Speaking Order

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N.SATHISH KUMAR, J.

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