

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.93 of 2008

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- 1.A.D.Padmasingh Isaac
Trading as
Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai – 600 040
- 2.M/s.Aachi Masala Foods (P) Ltd.,
No.6, Ground Floor,
15th Street, Anna Nagar, 'G' Block,
Chennai – 600 040
Represented by its Director,
Ashwin Pandian
- ... Plaintiffs
- Vs.
- 1.Roshnini Industries,
Kamarajar Road,
Madurai – 625 009.
- 2.Thirupathi Products,
Choolaimedu,
Chennai – 600 094.
- ... Defendants

Plaint filed under Order VII Rule 61 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) granting a permanent injunction, restraining
the defendants, by itself, its servants, agents,
distributors, or anyone claiming through him from

manufacturing, selling, advertising and offering for sale of Masala spices or food preparations in Class 29 & 30 using trademark Aachi or Aarcee or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trademark which is in any way visually or deceptively or phonetically similar to the plaintiffs' trademark Aachi or in relation to any spice or food preparation in Class 29 & 30 items and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trademark which is in any way visually, or phonetically similar to the plaintiffs' registered trademark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe the plaintiff's registered trademark.

(b) directing the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationary and all other materials containing/bearing the name Aarcee and packets or other deceptively similar trademark used in the pouches and packets in respect of asafetida or masalas.

(c) directing the defendant to render an account of profits made by them by the use of the impugned trademark on the goods referred and decree the suit for the profits found to have been made by the defendant, after the defendant have rendered accounts:

(d) directing the defendant to pay to the plaintiffs the costs to the suit, and

(e) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : M/s.C.Daniel & Gladys Daniel

For Defendants : Set ex-parte
vide order dated 11.07.2019

J U D G M E N T

The suit have been filed by the plaintiffs for the relief of permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. The first plaintiff originally started trading under the name and style of Abishek Enterprises. The first plaintiff was engaged in the business of manufacturing and marketing spices and condiments under the trademark Aachi. The mark was first adopted in the year 1995. The trading style of the first plaintiff was subsequently changed to Naveen Enterprises and subsequently Aachi Spices and Foods. The first plaintiff trading as Aachi Spices and Foods was registered under the CST on 28.12.2006 and 03.01.2007 respectively Exhibits P11 and P12. With the growth of

the organization Nazareth Foods Pvt. Ltd., was incorporated to undertake the manufacturing activities Ex.P9.

3. After the mark acquired distinctiveness the first plaintiff applied for registration of the Trademark Aachi on 04.05.2000. The registration was granted in favour of the first plaintiff and the first plaintiff is the Registered proprietor of the trademark Aachi as depicted in Ex.P3. The mark Aachi (word) and (device) has been registered under Nos.1318495, 922595, 922594 & 1357284 in Classes 30, 32, 29 as set out in Exhibits P4 to P8.

4. The second plaintiff was incorporated to both market and manufacture the Aachi products of the 1st plaintiff. The 2nd plaintiff is the licensee of the 1st plaintiff. Ex.P13 is the license granted by the 1st plaintiff in favour of the 2nd plaintiff.

5. The plaintiffs have been manufacturing and marketing spices and other food products since 1995 for the past 25 years under the Trademark Aachi. The turnover of the plaintiffs in the year 2006 was about Rs.230 crores. The mark Aachi acquired tremendous reputation and goodwill and the trade and public associate the trademark Aachi only with the plaintiffs.

6. While so, the plaintiffs came to know of the use of the trademark Aarcee with respect to Asafetida in September 2007. The plaintiffs came forward with the above suit in January 2008. On 07.02.2008, ex-parte order of interim injunction was granted in favour of the plaintiffs. The order of interim injunction is still in force.

7. The trademark Aarcee is deceptively similar to the trademark Aachi belonging to the plaintiffs. The mark Aachi is registered in favour of the plaintiffs under Exs.P4 to P8. The use of the trademark Aarcee by the defendants with respect to Asafetida amounts to infringement under Section 29 of the Trademarks Act, 1999.

8. After the admission of the suit, the suit summons was served on the defendants on 23.02.2010. In spite of the service of the suit summons, the defendants failed to appear before this Court. Therefore, the defendants 1 and 2 were set ex-parte vide order dated 11.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the

plaintiff one Mr.B.Gnanasambandam, Deputy General Manager – Legal, was examined as P.W.1 and Exs.P1 to P14 were marked.

9. Heard the learned counsel appearing for the plaintiffs. As far as the defendants are concerned, it is from the order of this Court, dated 11.07.2019, that despite suit summons were served on the defendants 1 and 2 and their name is printed in the cause list, none appeared on behalf of them. Therefore, the defendants 1 and 2 were set ex-parte.

10. On the side of the plaintiff, the plaintiff, name B.Gnanasambandam, Deputy General Manager of the plaintiffs Company examined himself as PW1 and marked 14 documents as Exs.P1 to P14.

11. This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by the PW1. On perusal of Exs.P1 to P8, this Court found that the trademark "Aachi" is registered with the Registrar of trademarks. Therefore, the plaintiffs are the proprietors of the trademark "Aachi".

12. On the other hand, the defendants are using the trademark "Aarcee". This is not only deceptively similar but also phonetically similar. The defendants simply removed the word 'I' of the trademark of the plaintiffs and added "EE". Therefore, the defendants are clearly infringing the whole trademark of the plaintiffs "Aachi", as stated in Section 29 of the Trademarks Act, 1999. Therefore, the plaintiffs are entitled to the decree as prayed for.

13. Learned counsel for plaintiffs requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendants in the light of conduct of the defendants which has been referred to supra. Learned counsel also pointed out that the defendants has compelled plaintiffs to carry this matter for a substantial time in this Court, expending money, energy and effort. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the instant case, defendant pursuing the trademark registration

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applications on the teeth of opposition, but evading conventional modes of service, compelling substituted service and not appearing before this Court even after service being effected through substituted service, in the considered view of this Commercial Division will qualify as a vexatious defence (within the meaning of Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendants approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.50,000 (Rupees Fifty Thousand only) on the defendants.

14. Plaintiffs will obviously be entitled to costs as the plaintiffs have incurred substantial expenditure in carrying this suit to its logical end.

15. Suit is decreed with costs and compensatory costs as set out supra.

AT

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