IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

DATE OF DECISION : 16.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2470 of 2016

Sri Narasu's Coffee Company Ltd
rep.by its Managing Director
P.Sivanantham .. Appellant/Plaintiff

-vs-

1. Narasu's Sarathy Industries
No.96, Suramangalam Main Road
Salem 636 009
a firm by its partners B.Nitish Harihar
and B.Jayashree

2. B.Nitish Harihar
3. B.Jayashree .. Respondents/Defendants

Memorandum of Grounds of Civil Miscellaneous Appeal under Order XLIII, Rule 1 of the Civil Procedure Code, against the order dated 28.4.2016 made in I.A.No.4 of 2016 in O.S.No.5 of 2016 on the file of the learned Principal District Judge, Salem.

For Appellant :: Mr.Rajesh Ramanathan
for Mr.I.Arokiasamy

For Respondents :: Mr.K.Rajasekaran

JUDGMENT

This civil miscellaneous appeal has been directed against the impugned fair and decretal order dated 28.4.2016 made in I.A.No.4 of 2016 in O.S.No.5 of 2016 on the file of the learned Principal District Judge, Salem, rejecting the application filed under Order 39, Rules 1 and 2 read with Section 151 of Civil Procedure Code for grant of interim injunction against the respondents, their men, agents, servants, staff or any one claiming under them seeking to restrain them from using the word trade mark 'Narasu's' in any manner.

2. Mr.Rajesh Ramanathan, learned counsel for the appellant, assailing the impugned decretal order, argued that when the appellant/plaintiff is the prior user of the trade mark 'Narasu's' since the year 1926 and the respondents/defendants have started the business only in the year 2015 about 90 years later than the appellant company and also committed infringement of the trade mark, the application filed by the appellant/plaintiff under Order 39, Rules 1 & 2 read with Section 151 of the Civil Procedure Code to pass an order of interim injunction against the respondents/defendants restraining them from using the trade mark 'Narasu's' in any manner for any purpose by any means till the disposal of the suit, ought to have been allowed. Explaining further the background of the case, Mr.Rajesh Ramanathan pleaded that it is an admitted case that Narasu's Coffee Company was founded by one Mr.Lakshmi Narasimhan, who was also called as 'Narasu' in the year 1926. However, when he was having some financial crisis followed by litigations, his properties inclusive of the business of Narasu's Manufacturing Company Private Limited were sold in Court auction in the year 1966. The partners of the firm Narasu's Coffee Company had authorised Mr.R.P.Sarathy to take part in the auction. Accordingly, Mr.R.P.Sarathy also, taking part in the auction sale, purchased the properties in his name using the funds of the firm Narasu's Coffee Company that has been admitted in the benami release deed. Subsequently, on 27.8.2006 also, a retirement deed was also entered into between the parties of the firm. By virtue of the retirement deed, all the other partners of the firm had gone out of the firm after receiving a sum of Rs.26.5 crores and then the Managing Director of the plaintiff and his wife Mrs.Lalitha alone were the remaining partners of the firm Narasu's Coffee Company and they were continuing as the partners of the same till it was constituted as a limited company. From 1.4.2009, the firm was converted as a limited company with the name Sri Narasu's Coffee Company Limited and it was duly incorporated under the Companies Act. While so, the said R.P.Sarathy had also executed a benami release deed on 17.7.75 declaring that the properties purchased in the Court auction sale in R.E.P.No.106 of 1965 in O.S.No.86 of 1964 and also obtained a sale certificate in the year 1972 from the learned Additional Subordinate Judge, Salem in his name and the properties of the said Narasu's Manufacturing Company Limited were also purchased out of and with the funds of the firm Narasu's Coffee Company. Mr.R.P.Sarathy had no independent or exclusive right over the properties, because he was holding the properties on behalf of the firm Narasu's Coffee Company and he is not the absolute owner of the properties. However, in order to avoid future complications, he has also released his rights over the properties. Therefore, when the firm Narasu's Coffee Company were converted into a limited company, all the assets and liabilities of the firm were taken over by the

appellant/plaintiff. Even after the retirement of the other partners from the firm on 27.8.2006, the firm was run and administered by the Managing Director of the appellant/plaintiff as the managing partner of the firm and he has also invented new techniques for developing the business of the firm, as a result, the annual turnover of Narasu's Coffee Company from the year 1.4.2005 to 31.3.2006 increased to Rs.65 crores and the annual turnover for the year 2007-2008 had increased due to the effective, sincere and good administration of the firm by its managing partner Mr.P.Sivanantham resulting in so many companies, firms and individuals marketing the products like tea, masala powder, rasam powder, garlic paste, curry leaves powder etc., with the word and trade mark 'Narasu's' that made a unique change in the minds of the consumers. In view thereof, the annual turnover of the appellant/plaintiff firm for the year 2009-10, 2010-11, 2011-12 2012-13, 2013-14, 2014-15 having steadily increased from Rs.81,86,00,000/-, Rs.103,52,00,000/-, Rs.93,75,00,000/-, Rs.103,40,00,000/-, Rs,117,30,00,000/- Rs.1,23,97,29,253/- respectively.

3. Continuing his arguments, the learned counsel for the appellant submitted that when Mr.R.P.Sarathy and his daughters B.Jayashree and B.Latha had retired from the firm, Mr.P.Sivanantham, his wife Mrs.Lalitha alone were the partners of the firm and then the minor son of Mr.P.Sivanantham by name Shrudeep was also inducted into the firm as its partner. Besides, a deed of retirement was also executed by the outgoing partners on 27.8.2006 and the retiring partners after receiving a sum of Rs.26.50 crores from Mr.P.Sivanantham have clearly indicated in their retirement deed that they have received money towards their share and they have no claim whatsoever in any of the assets and liabilities of the firm and the goodwill shall be retained by the firm and therefore, the plaintiff's firm Narasu's Coffee Company is entitled to the assets and liabilities of the firm including goodwill. Hence, the trade mark/word mark 'Narasu's' is the exclusive property of the firm. When the matter stood as above, the respondents/defendants by using the trade mark 'Narasus's and the device of a lady drinking coffee from a cup holding it in her hand within a circle, have infringed the trade mark of the appellant/plaintiff, which compelled the appellant to file a civil suit in O.S.No.291 of 2007 on the file of this Court against the Narasu's Roller Flour Mills and its partners along with the original applications for interim injunction and this Court, after considering the claims and counter claims made by both parties, was pleased to hold that the word mark 'Narasu's exclusively belong to the firm Narasu's Coffee Company. In view of the order passed by this Court on 7.11.2007, the appellant/plaintiff is the only exclusive owner of the trade mark 'Narasu's and no one could use it in any form and in any

way for any purpose. Again the appellant/plaintiff company also filed another civil suit before this Court in C.S.No.698 of 2011 against the respondent/defendant for an injunction restraining the defendant from committing acts of infringement of the plaintiff's registered trade mark 'Narasu's and this Court again passed an order on 28.2.2017 in A.Nos.858 to 860 of 2011 in C.S.No.698 of 2011, following the earlier order passed in O.A.Nos.422 to 427 of 2007 in C.S.No.291 of 2007 on 7.11.2007. In addition thereto, the appellant/plaintiff also had filed application for registration of the trade mark 'Narasu's' per se before the Trade Marks Registry, Madras and appreciating the case of the appellant, the Trade Marks Registrar also has granted a trade mark certificate in respect of the word Narasu's per se on 5.1.2010. Therefore, the appellant/plaintiff is the absolute owner entitled to use the word 'Narasu's per se and no one else could use it in any manner for any purpose. In view of the certificate of registration for the word 'Narasu's per se having been issued in favour of the appellant/plaintiff, they have also taken steps to manufacture vermicelli under the name and style of Narasu's Besh Besh Vermicelli and they had also planted machineries and started the production to sell the same from 5.8.2017 onwards. In the meanwhile, the appellant came to know through newspaper that the first respondent herein was also selling vermicelli with the name Narasu's Vermicelli and they have also made advertisement in the Tamil newspapers Daily Thanthi, Dhinamalar, Dhinakaran and Kalaikadir in respect of the product dated 5.11.2017. As the first respondent had done such mischief with an ulterior motive to cause damage to the reputation of the appellant without any right or interest for the trade mark 'Narasu's, they should not be allowed to use the same in any way.

4. Arguing further, the learned counsel for the appellant submitted that after filing C.S.No.291 of 2007, a cross suit in C.S.No.360 of 2007 was also filed by Narasu's Roller Flour Mills seeking permanent injunction against the Narasu's Coffee Company from using the trade mark. This Court, after hearing both O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007 and O.A.Nos.491 & 492 of 2007 in C.S.No.360 of 2007, passed an interim order on 7.11.2007 holding clearly that the appellant/plaintiff will have exclusive rights over the marks owned by them and also held that the word marks, Narasu's, Narasu's Coffee, Narasu's Delite and Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed within a circle, belongs to the exclusive use of the plaintiff in respect of coffee and coffee products. Equally this Court, in the same order, has also made it clear that the Narasu's Roller Flour Mills has got the right to use the word marks Narasu's Power, Narasu's Vetri, Narasu's Wheel and euR!; with the device of a lady sipping coffee from a cup held in her hand enclosed within

a circle and found with a dotted oval shaped outline, in relation to all types of wheat products. Aggrieved by the order holding in favour of the respondents/defendants that they also have a right to use the word marks Narasu's Power, Narasu's Vetri, Narasu's Wheel etc., the appellant/plaintiff filed O.S.A.Nos.234 to 237 of 2008 and by order dated 29.8.2016, the Hon'ble First Bench of this Court also directed the suits to be disposed of so that the entire controversy can be decided. In the meanwhile, R.P.Sarathy filed O.S.No.106 of 2009 seeking partition of the Narasu's Coffee Company partnership properties in collusion with other erstwhile partners, namely, B.Latha and B.Jayashree. As the said suit was not maintainable legally, the appellant filed application for rejection of the plaint on the ground that the outgoing partners were not entitled for partition of partnership firm's properties since they were already compensated for retirement and since the application was rejected by the District Court, Salem. C.R.P.No.2379 of 2012 was filed before this Court and this Court, taking note of the fact that the respondents/defendants have categorically admitted that the suit properties were the properties of the firm and having received consideration by way of deed of retirement, it is not open to the respondents to raise a self contradictory plea, allowed the civil revision petition accepting the prayer for rejection of the plaint. Again aggrieved by the order rejecting the plaint, the respondents/defendants filed Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the appellant/plaintiff was again constrained to file C.S.No.698 of 2011 against the respondents/defendants to grant a decree of permanent injunction restraining the defendants, their partners, legal representatives, dealers from committing acts of infringement of the registered trade marks of the plaintiff Narasu's and Narasu's with the device of a lady drinking coffee from a cup within an oval device by use of trademarks Narasu's per se and the label Narasu's in English with a device of a lady sipping from a cup or any other mark similar thereto in respect of the food products inter alia maida, sooji, atta, flour products. Accordingly, following the order dated 7.11.2007, interim order of injunction was granted.

5. Concluding his arguments, the learned counsel for the appellant submitted that when this Court had passed an interim order on 7.11.2007 and this has been again followed with the consent of both parties to abide by the terms of paragraph 15 of this Court's order dated 7.11.2007, the respondents/defendants cannot once again form a partnership firm under the name and style of Narasu's Sarathy Industries, which is a blatant infringement of the appellant's trade mark. When it was consistently argued and explained with substantial evidence that the order dated 7.11.2007 marked as Ex.P18 and the word Narasu's has been exclusively assigned only to the plaintiff, the said

word mark should not be prefixed to any other business or other activity by anybody. But the Court below declined to accept the case of the appellant that the interim order dated 7.11.2007 cannot be violated, therefore, till the disposal of the suits injunction shall be granted against the defendants not to use the word or trade mark Narasu's in any other manner. Referring to Section 29(4) of the Trade Marks Act, it has been further canvassed that the legislature has mandated the necessity of showing (a) that the mark has reputation in India, (b) that the mark has distinctive character and (c) use by the infringer is without due cause. Therefore, when the respondents have executed the deed of retirement on 27.8.2006 confirming that they do not have any right over the assets of the firm and also agreed to retire from the firm Narasu's Coffee Company on receipt of Rs.26.50 crores, the appellant/plaintiff has clearly established that the trade mark Narasu's coffee has a distinctive character in favour of the appellant/plaintiff and the respondents/defendants have infringed upon their exclusive right without any due cause. On this basis, the trial Court ought to have granted interim injunction as per Section 29(4) of the Trade Marks Act. Taking support from a judgment of the Apex Court in M/s Power Control Appliances and others v. Sumeet Machines Private Limited, (1994) 2 SCC 448 for the proposition that it is a settled principle of law relating to trade mark that there can be only one mark, one source and one proprietor, because it cannot have two origins and as such, one trade mark cannot be used in rivalry and in competition with each other. Based on the said ratio, the learned counsel for the appellant argued that as against the first user of the trade mark, the respondents being a rival party, cannot be allowed to use the same in competition with the first user, the appellant herein.

6. Taking support from another judgment in Ramdev Food Products Private Limited v. Arvindbhai Rambhai Patel and others, (2006) 4 SCC 726, the learned counsel for the appellant argued that the Apex Court has held that when a prima facie case has been made out and balance of convenience has been established in favour of the plaintiff clearly showing that loss of goodwill and reputation have occasioned to the appellant, the Court below should have accepted the claim of the appellant that if the first two pre-requisites are established, irreparable loss could be presumed to have taken place. Moreover, when the registration of trade mark and the user thereof were also established, that would lead to the conclusion that the appellant/plaintiff has made out a prima facie case for the grant of interim order. As the same has not been granted, the impugned decretal order is liable to be interfered with. Placing reliance on the judgment of the Delhi High Court in Bloomberg Finance LP v. Prafull Saklecha, (2014) 207 DLT 35, the learned counsel for the appellant argued that the impugned decretal order should be set

aside, as the appellant/plaintiff has established their case that the defendants have infringed upon their registered trade mark after 10.8.2006 reaching a memorandum of understanding with an agreement to retire from Narasu's Coffee Company coupled with the deed of retirement dated 27.8.2006.

7. A detailed counter affidavit has been filed by the respondents. Mr.K.Rajasekaran, learned counsel for the respondents has contended that Mr.R.P.Sarathy and the maternal grandfather of the second respondent being the founder of the business of the predecessor firm Narasu's Coffee Company, was later renamed as Sri Narasu's Coffee Company. The said R.P.Sarathy along with his brothers, sisters and mother during the year 1966 have acquired coffee business through one of the sister concerns and started Narasu's Coffee Company under the name of Narasu's. Since Mr.R.P.Sarathy and his family members are being identified by the friends, relatives, traders and consumers as family of Narasu's, R.P.Sarathy had decided to diversify the business for the benefit of his family members and started many firms for the common benefit of all the members. Hence, the trade mark Narasu's with or without the device of lady holding a cup has become the trade mark of R.P.Sarathy and his family. In due course, the trade mark Narasu's has been used conspicuously and prominently for long years for the authorised business, namely, Narasu's Roller Flour Mills, Narasu's Spinning Mills, Narasu's Sarathi Jewellery and Narasu's Sarathy Institute of Technology controlled and managed by Smt.Mahalakshmiammal Educational Trust. These firms are also the registered proprietor of Narasu's trade mark. As a sequel to earlier ventures, Mr.R.P.Sarathy thought it fit to incorporate branches for manufacture and sale of dhalls and pulses and also to allocate the same to one of his daughters Smt.B.Jayashree, the third respondent herein, who could not venture into any of the family businesses unlike his other descendants. In pursuance of the above, on 21.8.2015, a deed of partnership was entered into between the second respondent and his mother for constituting the first respondent firm Narasu's Sarathy Industries and this was witnessed by R.P.Sarathy himself. Finally it was decided in the family meeting that Mr.R.P.Sarathy's younger daughter Smt.B.Latha's company, namely, Narasu's Sarathy Enterprises Private Limited manufacturing and dealing in flour, wheat and wheat products being earlier registered proprietor of Narasu's per se and in combination with prefix/suffix would apply to the trade mark Narasu's for the processed pulses excluding wheat and wheat products and as such, an application for trade mark Narasu's in class 30 was made on 24.8.2015. Since then, Narasu's Sarathy Enterprises has been engaged in processing and selling various types of dhalls. As heavy investments have been made in setting up several institutions to the extent of Rs.2 crores, it is not a simple and plain trade mark dispute and it is a family

dispute between the brothers and sisters of deceptive trade mark dispute. When the suits were filed in the year 2007, written statements were also filed and the trial Court has framed the issues. Even the proof affidavits in lieu of chief examination were also filed. Now the suits are ripe for trial and the pendency of the appeal causes delay of the trial. Therefore, the Hon'ble First Bench of this Court in its order dated 29.8.2016 directed the listing of the suits before the Master of this Court for accepting documents on 1.11.2016 with a further direction to list the suits for supplementary issues and on conclusion of the evidence, the suits be listed for a direction for final hearing. Therefore, when the suits are ripe for trial, a direction be issued to take up the suits for final hearing by dismissing the civil miscellaneous appeal.

8. Arguing further, Mr.Rajasekaran submitted that since the dispute dates back to 2007 and it is a dispute between the son on the one hand and father and sisters on the other hand, it is primarily a family dispute between siblings. This Court also in its order dated 7.11.2007, while dealing with the interim applications, had given a finding that by virtue of the retirement deeds, Mr.Sivanantham of Narasu's Coffee Company, Narasu's Roller Flour Mills and his father, sister, brother in law retired from the Narasu's Coffee Company leaving the goodwill to the firms, they have become joint owners as recognised under Section 24 of the Trade Marks Act. Moreover, the contentions made by the appellant that after the deed of retirement and memorandum of understanding, the appellant/plaintiff should also use the trade mark Narasu's has been repeatedly rejected by all the Courts below. Now the order of this Court under Ex.P18 dated 7.11.2007 has not granted exclusive right for the plaintiff for using the trade mark Narasu's and in fact it has conferred only a joint ownership of the trade mark to both parties. Again attributing delay on the part of the appellant to face the trial, Mr.Rajasekaran argued that the appellant/plaintiff had not taken any steps to complete the trial. When the order dated 7.11.2007 was passed in O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007 and in O.A.Nos.491 & 492 of 2007 in O.S.No.360 of 2007 rejecting the case of the appellant/plaintiff, they preferred an appeal in O.S.A.Nos.234 to 237 of 2008 and the Hon'ble First Bench of this Court also by its order dated 29.8.2016 declined to interfere with the arrangement made. Therefore, without facing the trial, the appellant cannot come to this Court repeatedly. When the title of the appellant/plaintiff has not been established before the trial Court and also before the appellate Court, it is too early for the appellant to claim exclusive ownership of the trade mark Narasu's, more particularly, when Ex.P18 order passed by this Court confers joint ownership to both parties, there is no point in going further claiming exclusive ownership. When

the impugned order is neither perverse nor arbitrary, the appeal is liable to be dismissed. In support thereof, he has also relied upon the judgment of the Apex Court in Gujarat Bottling Co.Ltd.and others v. Coca Cola and others, (1995) 5 SCC 545 for the proposition that the grant of interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court, applying three tests --- (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The trial Court has passed the order on 7.11.2007 marked as Ex.P18 and this order has been confirmed by the appellate Court. Again this Court in A.Nos.858 to 860 of 2011 in C.S.No.698 of 2011 on 28.2.2017 has directed to follow the interim arrangement made by this Court till the disposal of the suits, hence, the appellant may be directed to cooperate with the disposal of the suits.

9. Again referring to the judgment of the Apex Court in Vishnudas Trading as Vishnudas Kishendas v. Vazir Sultan Tobacco Co.Ltd., Hyderabad and another, (1997) 4 SCC 201, the learned counsel for the respondents has argued that the Apex Court in the said judgment has held that if a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no bona fide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude the other traders or manufacturers from getting registration of separate and distinct goods which may also be grouped under the broad classification. Again referring to the order passed by this Court in Sri Krishna Sweets Private Limited v. Mr.M.Murali, (2017) 8 Mad LJ 588 asserting that any conclusion arrived at on the materials placed before this Court in the appeal would have an impact on the trial of the suits, Mr.Rajasekaran requested this Court to direct the trial Court to take up all the suits expeditiously for disposal, by dismissing the appeal.

10. Heard learned counsel for the parties.

11. It has been claimed by the appellant/plaintiff that Narasu's Coffee Company was founded by late Mr.Lakshmi Narasimhan, who was called as Narasu in the year 1926. As the said Lakshmi Narasimhan was facing some financial crisis, litigation started and finally his properties were sold in Court auction in the year 1966. The partners of the firm Narasu's

Coffee Company had authorised Mr.R.P.Sarathy to take part in the Court auction. Accordingly, taking part in the Court auction, he purchased the properties in his name with the funds from the firm Narasu's Coffee Company. However, retirement deed was entered into between the partners of the firm on 27.8.2006 and by virtue of the same, all the other partners of the firm had gone out of the firm on receiving a sum of Rs.26.50 crores. The memorandum of understanding signed by all the partners of Narasu's Coffee Company and Narasu's Roller Flour Mills dated 10.8.2006 shows that there was a payment of Rs.26.50 crores to Mr.R.P.Sarathy to retire from Narasu's Coffee Company. The deed of retirement dated 27.8.2006 signed by outgoing partners of Narasu's Coffee Company also confirms that they and their successors have no right or claim whatsoever on any of the assets of the firm. The above memorandum of understanding and the retirement deed clearly show that the properties purchased are the properties of the firm Narasu's Coffee Company, the appellant company. However, from 17.2.2016, the said firm Narasu's Coffee Company was incorporated into a company with the name Sri Narasu's Coffee Company Private Limited, who is the plaintiff herein. Since a huge claim has been made on the retirement deed marked as Ex.P13 before the trial Court stating that while going out of the firm Narasu's Coffee Company the outgoing partners have already stated in the retirement deed that they have received Rs.26.50 crores from P.Sivanantham towards their share and therefore they have no right or share or claim in any of the assets and liabilities of the firm and all the assets and liabilities of the firm inclusive of the goodwill shall be retained by the firm, as such, the appellant company had become entitled to the assets and goodwill of the firm and they have been doing exclusive business using the trade mark Narasu's in respect of coffee, instant coffee, tea, masala powder, idly ready mix, chilly powder, dhal, puliotharai mix, rasam powder, garlic paste, curry leaves powder and three in one coffee instant and instant tea, chicory powder, sukku coffee powder and vermicelli with the device of a lady drinking coffee from a cup holding it in her hand with the word 'Narasu's'. When the said business was going on smoothly, the respondents also started interfering with the trade mark. Therefore, the appellant/plaintiff filed a suit in C.S.No.291 of 2007 on the file of this Court against Narasu's Roller Flour Mills and its partners along with interim applications. This Court, entertaining the O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007 along with the applications filed in the cross suit, by order dated 7.11.2007 passed an interim order directing as follows:-

> "14. Therefore, the partners of Narasu's Coffee Company alone (plaintiff in C.S.No.291 of 2007) would be the joint owners of the trade marks listed in Serial Nos.1 to 4 of the Tabular

Statement in paragraph-10 above. Similarly, the partners of Narasu's Roller Flour Mills alone (plaintiff in C.S.No.360 of 2007) would be the joint proprietors of the trade marks listed out in Serial Nos.5 to 10 in the Tabular Statement. Once this division and clear cut demarcation is arrived at, on account of the retirements of partners from these firms, it could be easily seen that Narasu's Coffee Company had secured exclusive right to use the word "Narasu's" both in English and Tamil with the device of a lady sipping coffee from a cup enclosed within a circle, in so far as coffee, coffee bean, coffee powder etc., are concerned. Similarly, Narasu's Roller Flour Mills had acquired proprietary rights over the same word mark and device mark in relation to Wheat products, Atta, Suji, Maida etc. What could at the most be prevented by either of the parties, is the encroachment by the other, into their respective territories. In other words, Narasu's Coffee Company cannot use the word mark and the device mark in relation to goods other than coffee and coffee products. Similarly, Narasu's Roller Flour Mills, cannot use the word mark and the device mark in relation to any product other than Wheat, Atta, Maida, Suji etc., for which they had applied for and/or obtained registration.

15. In view of the above, a journey into the law relating to infringement or passing off, of a trade mark or copy right, is wholly unnecessary for deciding the dispute on hand. Prima facie, the partnership firms own these trade marks and hence the partners who now constitute these firms will have exclusive rights over the marks owned by them. Hence, all the applications are disposed of with the following directions:-

(a) The word marks Narasu's, Narasu's Coffee, Narasu's Delite and Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed within a circle, can be used by the plaintiff in C.S.No.291 of 2007 viz., Narasu's Coffee Company, to the exclusion of the defendants, in respect of coffee beans, coffee powder, chicory powder, roasted coffee, instant coffee and liquid coffee included in clause 30, subject to any restriction (including disclaimer, if any) that had been imposed under the Certificates of Registration bearing trade mark Nos.337509, 337510, 73371 and 73369 and the defendants in C.S.No.291 of 2007 are restrained from using the same word mark and device mark in respect of these goods such as coffee and coffee products.

(b) The trade marks Narasu's Power, Narasu's Vetri, Narasu's Wheel and euR!; with the device of a lady sipping coffee from a cup held in her hand enclosed within a circle and found within a dotted oval shaped outline, may be used by Narasu's Roller Flour Mills in relation to all types of Wheat products including Atta, Maida, Suji, Rough Bran, Bran Flakes, Wheat Atta to the exclusion of Narasu's Coffee Company.

(c) If Narasu's Coffee Company, carries on business in Wheat products, it shall not use the above same or similar word mark and the device mark for those products. Similarly, if Narasu's Roller Flour Mills carries on business in coffee products, it shall not use the same or similar word mark or device mark in relation to such products.”

12. The appellant/plaintiff, aggrieved by the said order, filed O.S.A.Nos.234 to 237 of 2008 and the Hon'ble First Bench of this Court, by order dated 29.8.2016, refusing to interfere with the discretionary order of the trial Court, directed the parties to cooperate with each others for disposal of the pending suits Therefore, the interim order dated 7.11.2007 directing the appellant and the respondents cannot be violated. When the order says that Narasu's Coffee Company can be allowed to use the word marks Narasu's, Narasu's Coffee, Narasu's Delite and Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed within a circle, by the plaintiff in C.S.No.291 of 2007 viz., Narasu's Coffee Company, to the exclusion of the defendants, in respect of coffee beans, coffee powder, chicory powder, roasted

coffee, instant coffee and liquid coffee included in clause 30, subject to any restriction (including disclaimer, if any) that had been imposed under the Certificates of Registration bearing trade mark Nos.337509, 337510, 73371 and 73369 and the defendants in C.S.No.291 of 2007 are restrained from using the same word mark and device mark in respect of these goods such as coffee and coffee products and again this Court has made it clear that the trade marks Narasu's Power, Narasu's Vetri, Narasu's Wheel and euR!; with the device of a lady sipping coffee from a cup held in her hand enclosed within a circle and found within a dotted oval shaped outline, may be used by Narasu's Roller Flour Mills in relation to all types of Wheat products including Atta, Maida, Suji, Rough Bran, Bran Flakes, Wheat Atta to the exclusion of Narasu's Coffee Company and again made it clear that if Narasu's Coffee Company, carries on business in Wheat products, it shall not use the above same or similar word mark and the device mark for those products and similarly, if Narasu's Roller Flour Mills carries on business in coffee products, it shall not use the same or similar word mark or device mark in relation to such products, the respondents/defendants cannot issue any licence to anybody till the disposal of the suits. The said order was also confirmed by the Hon'ble First Bench in its order dated 29.8.2016 passed in O.S.A.Nos.234 to 237 of 2008.

13. Yet again, it is also seen that this Court in A.Nos.858 to 860 of 2017 in C.S.No.698 of 2011 by order dated 28.2.2017 directed both the parties to follow the interim arrangement made by this Court and the relevant paragraphs of the order read as follows:-

> “3. Both sides fairly conceded before this court to follow the interim arrangement made by this Court, till the disposal of the suit.
>
> 4. Hence, there shall be an interim order in terms of the order dated 7.11.2007 in O.A.Nos.422 to 427 of 2007 in O.S.No.291 of 2007 and O.A.Nos.491 and 492 of 2007 in C.S.No.360 of 2007 passed by this Court. The above order passed by this Court shall bind the parties till the disposal of the main suit.
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> With the above observation, these Applications are disposed of.”

14. The above directions passed by three Courts are to be complied with by both parties. Besides, the trade mark Narasu's has been obtained by the appellant on 15.6.1978, therefore, after the retirement deed was entered into between the appellant and the respondents, as per Section 29(4) of the Trade Marks

Act, only a registered proprietor of a trade mark is entitled to use it and if a registered trade mark is infringed by a person who not being a registered proprietor, he/she cannot be permitted in law to use the mark. In this context, Section 29(4) of the Trade Marks Act can be usefully extracted hereunder:-

> "(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which--
>
> (a) is identical with or similar to the registered trade mark; and
>
> (b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and
>
> (c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark."

The Apex Court also, in M/s Power Control Appliances and others v. Sumeet Machines Private Limited, (1994) 2 SCC 448, while dealing with a similar issue, has settled the law relating to the trade mark holding that there can be only one mark, one source and one proprietor, because it cannot have two origins and as such, one trade mark cannot be used in rivalry and in competition with each other. In view of the above, the appellant Sri Narasu's Coffee Company Limited being the registered proprietor, the family members have no right to use the trade mark in dispute, hence, the respondents should not have granted any licence or assignment to any third party or give any licence or assignment pertaining to the trade mark Narasu's and the device of lady sipping coffee from a cup held in her hand enclosed within a circle for any products to any third party, as it is a clear breach and violation of the order dated 7.11.2007 passed in C.S.No.291 of 2007 confirmed by the Hon'ble First Bench in O.S.A.Nos.234 to 237 of 2008 dated 29.8.2016 and yet again confirmed by this Court in A.Nos.858 to 860 of 2017 in C.S.No.698 of 2011 on 28.2.2017. In these facts and circumstances, looking at the conduct of the respondents in granting licence or assignment to third party will cause prejudice and irreparable injury to the appellant/plaintiff, if the prayer for interlocutory injunction is disallowed, following the judgment in Ramdev Food Products Private Limited case cited supra holding that when a prima facie case has been made out in favour of the plaintiff showing loss of goodwill and reputation have occasioned to the appellant/plaintiff, this Court finds that the respondents/defendants have given away the dealership to various firms or individuals without the permission of the trial Court or any Court. Hence, this Court is inclined to restrain the respondents not to give licence pertaining to the trade mark in question to any third party during the pendency of the civil suits. Accordingly, the respondents/defendants are hereby injuncted not to grant any licence or assignment to any third party till the disposal of the suits. Resultantly, if the respondents/defendants give or has given any licence or assignment pertaining to the trade mark Narasu's and the device of lady sipping coffee from a cup held in her hand enclosed within a circle for any products to any third party after the order dated 7.11.2007 confirmed by the Hon'ble Division Bench by order dated 29.8.2016 and again reiterated by another order dated 28.2.2017, the same cannot be legally valid, hence, they are also injuncted not to use it.

15. For the aforementioned reasons, the civil miscellaneous appeal stands allowed and the impugned decretal order is set aside directing both the parties to abide by the interim arrangement as ordered by this Court on 7.11.2007 and on 28.2.2017 till the disposal of the suits. Consequently, C.M.P.No.17519 of 2016 stands closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ss

To

1. The Principal District Judge
Salem

2. The Section Officer
VR Section High Court, Madras

+1 cc to Mr.I.Arokiasamy Advocate sr79133
+1 cc to Mr.K.Rajasekaran Advocate sr79391

br(co)
aa20/09/2019