

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.(Comm.Div.)No.120 of 2019

and

O.A.Nos.129 & 130 of 2019 & A.No.1155 of 2019

1.Aqua Pump Industries
rep. by its Managing Partner,
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore 641 034,
Having their branch office at
New No.10, Old No.26,
Errabalu Chetty Street, Parrys Corner,
Chennai - 600 001.

2.Aqua Sub Engineering
rep. by its Managing Partner,
Mr.Ramaswamy Kumaravelu
Thudiyalur Post,
Coimbatore 641 034,
Having their branch office at
New No.10, Old No.26,
Errabalu Chetty Street, Parrys Corner,
Chennai - 600 001.

...Plaintiffs

Versus

Rickon Engineering
rep. by its Partners
Mr.Babubhai Gordhanbhai Chodvadiya,
Mr.Himmat Bachubhai Borad,
12, Kailash Estate,
Opp. Municipal Garden,
Near Panchal Wadi,
Virtnagar Odhav,
Ahmedabad 383 315,
Gujarat.

...Defendant

Prayer:

Plaint filed under Order IV Rule 1 O.S.Rules and Order VII, Rule 1 of the C.P.C read with Section 27, 134 & 135 of the Trade Marks Act, 1999 seeking for the following reliefs:

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiffs' registered Trade Mark TEXMO/TEXNA as such or prefix or suffix in any Electric Motor, Oil Pump, Water Pump, Coolant Pump, Gear Box or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXNA or in any manner infringing the Plaintiffs Registered Trade Mark Nos.315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO/TEXNA as such or with prefix or suffix in any Electric Motor, Oil Pump, Water Pump, Coolant Pump, Gear Box or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' Trade Mark TEXMO/TEXNA or in any manner pass off the plaintiffs' goods.

(c) directing the defendant to surrender to the plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark TEXNA or other deceptively similar to the plaintiffs' Trademark TEXMO,

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark TEXNA on the goods referred prayer (a) & (b) and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts

(e) directing the defendant to pay to the Plaintiffs the costs of the suit.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Mr.Leonard Arul Joseph Selvam

J U D G M E N T

Today(03.06.2019), when the matter is taken up for hearing, the learned counsel appearing for the plaintiffs submitted that the parties have resolved their disputes and she has also filed a Memo of Compromise dated 30.04.2019, before this Court.

2. The said Memo of Compromise reads as follows:

" 1. The terms Plaintiffs and Defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2. The defendant submits to a Judgment and Decree as below:-

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiffs' registered Trade Mark TEXMO/TEXNA as such or prefix or suffix in any

Electric Motor, Oil Pump, Water Pump, Coolant Pump, Gear Box or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXNA or in any manner infringing the Plaintiffs Registered Trade Mark Nos.315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO/TEXNA as such or with prefix or suffix in any Electric Motor, Oil Pump, Water Pump, Coolant Pump, Gear Box or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs Trade Mark TEXMO/TEXNA or in any manner pass off the plaintiffs' goods.

3. The defendant undertakes to withdraw the Trade Mark Application under No.3839461 dated 22.05.2018 with respect to Electric Motor, Oil Pump, Water Pump, Coolant Pump, Gear Box bearing the deceptively, phonetically and visually similar trade mark TEXNA in Class - 07, advertised in the Trademark Journal No.1857 dated 09.07.2018.

4. The defendant undertakes hereby not to assert any right in respect of the expression TEXMO/TEXNA by filing Trademark Applications or using the same or similar sounding

expression or its logo for any goods in future.

5. The defendant also undertake to withdraw any Application in respect of TEXMO/TEXNA or any other similar sounding marks that have already been filed that is not within the knowledge of the plaintiffs.

6. The defendant shall not make any application for registration of the Trademark TEXMO/TEXNA as such or with prefix or suffix in any goods manufactured and sold by the defendant in future.

7. The defendant undertakes not to oppose or initiate any Rectification proceedings against the plaintiffs' Trademark Applications or their Registered Trademarks.

In view of the decree for permanent injunction the Plaintiffs have given up the reliefs contained in prayers c, d & e in para 20 of the suit including cost of the suit."

3. The aforesaid Memo of Compromise is taken on file and the same shall form part of the judgment.

4. This Civil Suit itself is decreed in terms of the Memo of Compromise filed by the plaintiffs' counsel. However, there shall be no order as to costs. Consequently, connected Applications are closed.

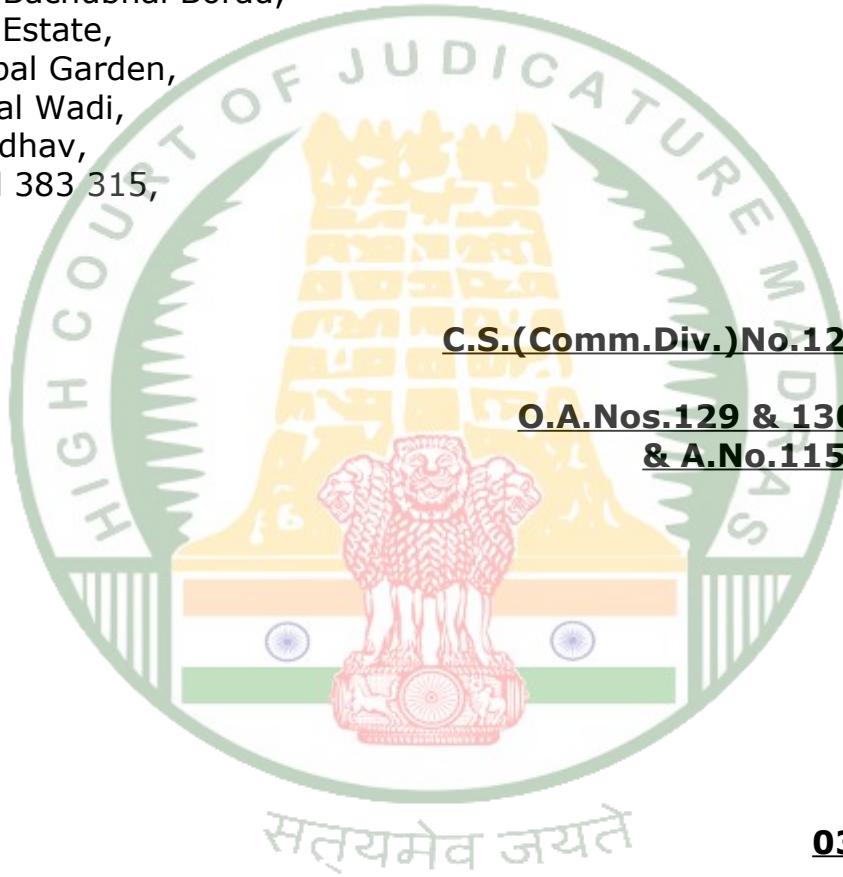
03.06.2019

mrr

Index : Yes/No

To

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