

C.S.No.514 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.514 of 2011

M/s.Arvind Laboratories,
3/17, Valluvar Salai,
Ramapuram, Chennai – 600 089.
Represented by its Partner
Mr.T.Devanathan

... Plaintiff

Vs.

Mr.Gopal Bnerjee
Trading as Eye Witness,
3, Pratapaditya Road,
Kolkata – 700 026.

.. Defendant

Civil Suit filed under Order VII Rule 1 CPC and Order IV Rule 1 of O. S.
Rules read with Sections 27, 134 & 135 of Trade Marks Act 1999 praying for the
following judgment and decree :

a) granting a permanent injunction restraining the defendant, by itself, its
servants, agents, distributors or any claiming through them from manufacturing,
selling, advertising and offering for sale using the trademark 'Eye Witness' with
respect to Detective Agencies by using any other trade mark which is in any way

visually phonetically or deceptively similar to the plaintiff's registered Trade Mark 'Eyetex', or in any manner infringing the plaintiff's registered Trade Mark Nos.124824, 271583 and 296914 in Class 3.

b) Directing the defendant to surrender to the plaintiff all the packing material, carton, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark or other deceptively similar Trade Mark.

c) for a preliminary decree in favour of the plaintiffs directing the defendant to render an account of profits made by them by use of the trademark 'Eye Witness' on the goods referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts;

d) directing the defendant to pay to the plaintiffs the costs of the suit.

For Plaintiff : Ms.Gladys Daniel

For defendant : Mr.K.S.Elango
for Mr.M.Velmurugan

J U D G M E N T

The suit has been filed for permanent injunction restraining the defendant and their men from using or infringing the trademark of the plaintiff as that of the defendant or using similar or deceptively similar trademark of the plaintiff, to

surrender all the materials with infringed trademark of the plaintiff and for preliminary decree directing the defendant for rendition of accounts, for damages and for costs.

2. When the matter was taken up today, the learned counsel appearing for the defendant filed an affidavit and submitted that the impugned mark 'Eye Witness' is used in respect of 'Detective Services' in Class 42 whereas the plaintiff's trademark 'Eyetex' is used in respect of 'Cosmetics' which falls under class 3.1 and that both the trademarks are entirely different from each other, trading channels are different, intended purposes are different and class of customer for both the products are different and that their trademark is inherently distinct from that of the plaintiff's trademark and the defendant will not use the impugned trademark in respect of goods related to 'Cosmetics'.

3. The affidavit filed by the defendant is taken on record. The plaintiff also has no issue if the defendant is not using the trademark in the cosmetic business.

4. In view of the above, there shall be an order of permanent injunction against the defendant not to use the trademark 'Eye Witness' or Eyetex' in

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respect of cosmetics. With the above observation, the suit is disposed of. No cost.

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vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order



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N.SATHISH KUMAR, J.

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