

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.47 of 2015
and
A.No.445 of 2015 and
O.A.Nos.80 to 82 of 2015

Hatsun Agro Product Ltd.,
Having registered office at,
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097
And also carrying on its business at,
Old No.AD-83/New No.AD13,
Anna Nagar, Opp.IOB Towers Branch,
Chennai – 600 040. ... Plaintiff

Vs.

Arokiya Fresh Mineral Water Company,
No.725, Dr.Abdulkalam Street,
Phase III, Sathuvacharai,
Vellore – 632 009. ... Defendant

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

(a) For permanent injunction restraining the
defendant by itself, its agents, servants or any one
claiming through it from in any manner infringing the
plaintiff's trademarks as described in the Schedule
hereunder by using the offending trademark "AROKIYA"
or any other trademark or marks which are in any way

identical or deceptively similar or colourable imitation of the plaintiff's trademarks as described in the Schedule to the plaint.

(b) For permanent injunction restraining the defendant by itself, its servants or agents or anyone claiming through it from in any manner passing off its products as that of the plaintiff by using the offending trademark label AROKIYA or by using any other trademark or trademark label which is similar, deceptively similar or identical to that of the plaintiff's trademark label either by manufacturing or selling or offering for sale or in any manner advertising the same.

(c) For permanent injunction restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the plaintiff's trademarks as described in the Schedule hereunder by using the offending trade name 'AROKIYA Fresh mineral water company' or any other trade name which is in any way identical or deceptively similar or colourable imitation of the plaintiff's trademarks as described in the Schedule to the plaint.

(d) Directing the defendant to surrender to the plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc for destruction.

(e) Directing the defendant to render true and faithful accounts of the products earned by them through the sale of the offending products bearing the

offending trademark label and directing payment of such profits to the plaintiff.

(f) Directing the defendant to pay to the plaintiff the cost of the suit.

(g) Granting such further or other reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Plaintiff : Mr.Ashish Jain Kumar
for M/s.Surana & Surana
For Defendant : Set ex-parte
vide order dated 01.08.2019

J U D G M E N T

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

2. Learned counsel for the plaintiff submits that the plaintiff is using the trademark "AROKYA" with respect to its milk and other dairy products continuously since the year 1998 and as a result it has earned enormous amount of goodwill and reputation.

3. The plaintiff, being in the field for nearly two decades expanded the sales to each and every nook and corner of South

India by promoting its celebrated trademark "AROKYA" by way of extensive sales promotion and advertising in all medias, like Television, radio, magazines, newspapers, pamphlets etc. This stands fortified by the annual turnover of the plaintiff along with the promotional expenses incurred by the plaintiff since the date of inception as seen in Exs.P11 to 12.

4. The plaintiff has very huge network of distribution and marketing and because of the huge network and organized distribution and marketing, its products are available everywhere. That apart, travelling public also comes to know about the plaintiff's products due to the extensive availability because of huge networking of marketing Ex.P13. The plaintiff has also carried out effective advertisement campaign and continues to carry out the campaign at huge cost through all media. The present trademark, in fact has acquired the status of well known mark.

5. The plaintiff has been vigilant and cautious to protect its rights with respect to the trademark "AROKYA" and has applied for registration of the trademark in the appropriate classes under the Trademarks Act, 1999 ('the Act') and has also obtained registrations

which may be encapsulated hereunder:

S.No.	Trademark	Class	Filing Date	No.	Status	Exhibit No.
1	Arokya Fresh (Creamy Milk)	29	14.06.1995	669001	Registered	--
2	Arokya Milk	29	13.02.2006	1421082	Registered	Ex.P14
3	Arokya Milk	29	13.02.2006	1421080	Registered	Ex.P15
4	Arokya Milk	29	13.02.2006	1421081	Registered	Ex.P16
5	Arokya (Label)	32	25.11.2005	140211	Registered	Ex.P17
6	Arokya	29	25.11.2005	1402212	Advertised	--
7	Arokya (Label)	29	25.11.2005	1402205	Registered	Ex.P18
8	Arokya	32	25.11.2005	1402206	Registered	Ex.P19
9	Arokya Milk (Label)	29	14.08.2014	2791526	Pending	--
10	Arokya Milk (Label)	29	14.08.2014	2791527	Pending	--
11	Arokya Milk (Label)	29	14.08.2014	2791528	Pending	--
12	Arokya Milk (Label)	29	14.08.2014	2791529	Pending	--

6. During March 2005, the plaintiff came across packaged drinking water in sachets marked by one Arokiya Fresh Mineral Water Company at Door No.725, Dr.Abdul Kalam Street, Phase-III, Satuvacheri, Vellore. The plaintiff issued a cease and desist notice to the said Arokiya Fresh Mineral Water Company, which is marked as Ex.P20. The said notice was met by a reply notice, which is

marked as Ex.P21 contending that the mark of the defendant is not similar to that of the plaintiffs. Thereafter, the defendant chose not to carry on any business for reasons best known to them.

7. During November 2008, the plaintiff's marketing personnel again came across herbal water sachets with the offending trade name "AROKIYA HERBAL WATER" which is marked as Ex.P22. Thereupon, once again the plaintiff sent a communication calling upon the said "AROKIYA HERBAL WATER" to refrain from using the plaintiff's trademark "AROKYA" in respect of their herbal water, which is marked as Ex.P23. It was the understanding of the plaintiff that the defendant thereafter ceased to carry on any business.

8. During November 2014, the defendant Company under the trade name Arokiya Fresh Mineral Water Company commenced business at Door No.725, Dr.Abdulkalam Street, Phase-III, Satuvacheri, Vellore in packaged drinking water using the trademark AROKIYA by marketing 20 liter bubble top water cans with the offending trade name AROKIYA, which is marked as Exs.P24 & P25. Therefore, without any other opinion, the plaintiff approached this

Court and filed the present suit.

9. After the admission of the suit, the suit summons was served on the sole defendant on 27.03.2015. In spite of the service of the suit summons, the defendant failed to appear before this Court. Therefore, the sole defendant was set ex-parte vide order dated 01.08.2019 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.P.Sivasakthivel, was examined as P.W.1 and Exs.P1 to P26 were marked.

10. It has already been set out supra that as many as 6 exhibits, namely Exs.P1 to P26 have been marked and the details of the 26 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The authorization letter from plaintiff company to represent the plaintiff in the suit dated 05/ 0/2011.
2	P2	The attested photocopy of Incorporation certificate of the company dated 04.03.1986.
3	P3	The attested photocopy quality certificate ISO 22000.
4	P4	The attested photocopy certificate of quality.
5	P5	The attested photocopy certificate of food safety management ISO 22000.

S.No.	Exhibits	Description of Documents
6	P6	The attested photocopy certificate of environmental management standard ISO 14001.
7	P7	The attested photocopy of food safety systems certificate 22000:2005.
8	P8	The attested photocopy of certificate of quality management system ISO 9001:2008
9	P9	The attested photocopy of certificate by BIS.
10	P10	The attested photocopy of certificate by food safety and standard authority of India dated 11.04.2012.
11	P11	The attested photocopy of Chartered Accountant's certificate for sales turnover and advertisement expenses dated 26.02.2014.
12	P12	The attested photocopy of advertisements in various medias.
13	P13	The attested photocopy of list of distribution channels of the plaintiff's product "AROKYA".
14	P14	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1421082 dated 13.02.2006.
15	P15	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1421080 dated 13.02.2006.
16	P16	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1421081 dated 13.02.2006.
17	P17	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1402211 dated 25.11.2005.
18	P18	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1402205 dated 25.11.2005.
19	P19	The attested photocopy of certificate of Registration of the Trademark "AROKYA" in class 29 under No.1402206 dated 25.11.2005.

S.No.	Exhibits	Description of Documents
20	P20	The attested photocopy of notice from plaintiff's advocate to defendant dated 27.03.2005.
21	P21	The attested photocopy of reply to notice from defendant's advocate to plaintiff's advocate dated 05.04.2005.
22	P22	The attested photocopy of Arokya Herbal Water Pouch.
23	P23	The attested photocopy of notice from plaintiff to Arokya Herbal Water dated 07.11.2008.
24	P24	The attested photocopy of photograph of defendant's water can with Trademark "AROKIYA" dated 18.11.2014.
25	P25	The attested photocopy of invoice of purchase of defendant's bubble top watercan dated 18.11.2014.
26	P26	The attested photocopy of defendant's label.

11. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Exs.P.1 to P.26.

12. On perusal of Exs.P.14 to P.19, it is clearly seen that the plaintiff is using the trademark "AROKYA" since 1998. Further, this Court finds that the plaintiff has obtained distinctiveness for the use of the word "AROKYA" in respect of its products by virtue of usage of the word since 1998 in relation to its Milk products. In view of the above fact, certainly, the plaintiff is entitled to use the word

"AROKYA" exclusively in relation to their business. Such being the case, the defendant, without any registration is adopting the whole registered trademark of the plaintiff "AROKYA", and merely, by adding an "I" after four letters in the registered trademark with the plaintiff would make no difference or distinction. The use of the defendant's trademark by copying the plaintiff's trademark amounts to infringement as the infringement trademark is phonetically similar to the trademark of the plaintiff. The attempt made by the defendant is only to deceive the vendees/buyers that the product of the defendant also comes from the plaintiff. Hence, the act of the defendant is a clear case of infringement in terms of Section 29 of the trademarks Act, 1999. Further, the act of the defendant in adopting the identical trademark of the plaintiff in all respects is totally illegal and unlawful and the defendant has no right to adopt any trademark which is identically similar to that of the plaintiff's trademark. Further, this Court holds that the act of the defendant amounts to infringement and accordingly, the plaintiff has proved the claim. Therefore, the plaintiff is entitled to the decree as prayed for.

13. Learned counsel for plaintiff requests this Commercial

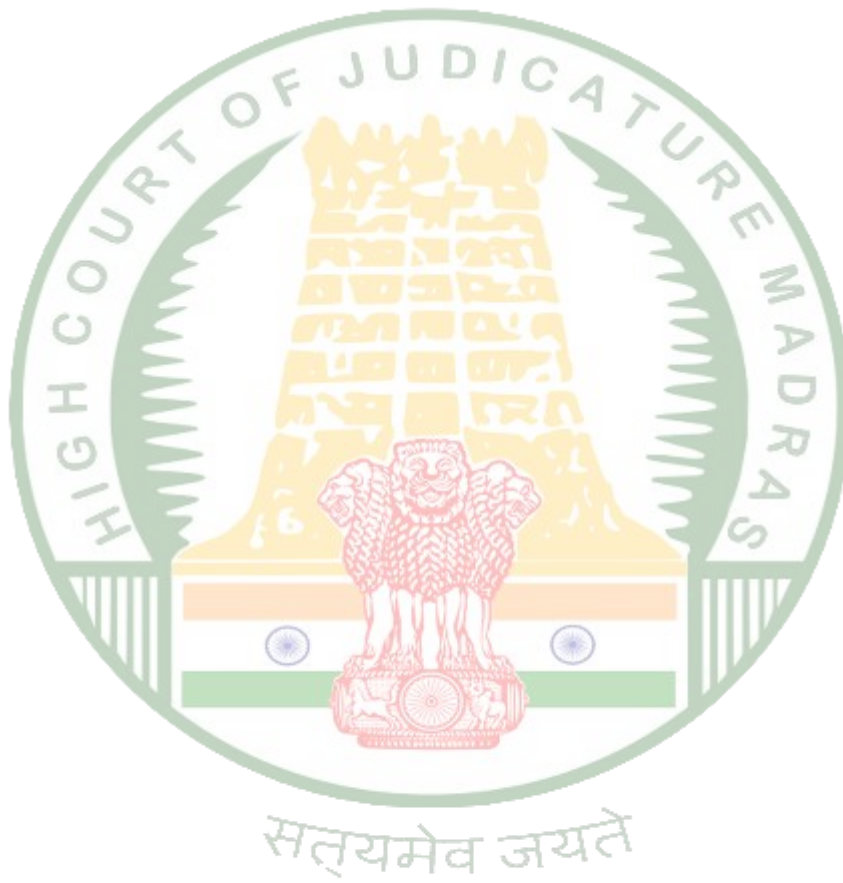
Division to consider imposing compensatory costs/exemplary costs on defendant in the light of conduct of the defendant which has been referred to supra. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the 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 defendant's approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.1 lakh (Rupees One Lakh only) on the defendant.

14. Plaintiff will obviously be entitled to costs as the plaintiff has incurred substantial expenditure in carrying this suit to its logical end.

15. Suit is decreed with costs and compensatory costs as set out supra. Consequently, connected applications are closed.

28.08.2019

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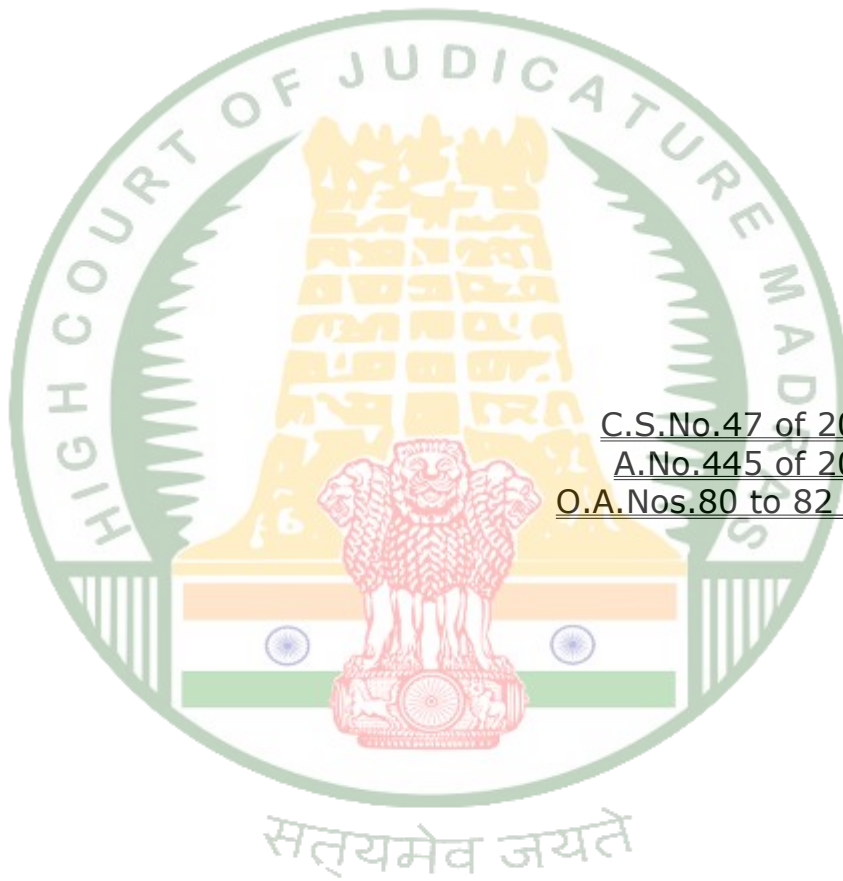


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