

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.671 of 2015
and
A.No.5443 of 2015 and
O.A.Nos.843 & 844 of 2015

Mahindra Holidays & Resorts India Ltd.,
Mahindra Towers, 2nd Floor,
17/18, Pattulous Road,
Chennai – 600 002.
Rep.by its Constituted Attorney,
S.Sugavanam ... Plaintiff

Vs.

1.Alliance Holidays Pvt. Ltd.,
G-196, Raghuleela Megha Mall,
Opp: Poisur Bus Depot,
S.V.Road, Kandivali (West),
Mumbai – 400 067.

2.Amar Kishor Baragade
Director,
Alliance Holidays Pvt. Ltd.,
G-196, Raghuleela Megha Mall,
Opp. Poisur Bus Depot,
S.V.Road, Kandivali (West),
Mumbai – 400 067.

3.Saffron Synergies Pvt. Ltd.,
Sterling House,
5/7, Sorabji Santuk Lane,
Off. Dr.Cowasji Hormasji Lane,
Marine Lines (E),
Mumbai – 400 002.

... Defendants

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) A permanent injunction restraining the defendants, their directors, heirs, men, servants, agents, successors in business, legal representatives, assigns or any other person claiming through or under them, from in any manner using or otherwise dealing with the service mark/trade name CLUB MAHINDRA or its membership amounting to infringement of the plaintiff's registered trademarks or in any other manner whatsoever;

(b) A permanent injunction restraining the defendants, their directors, heirs, men, servants, agents, successors in business, legal representatives, assigns or any other person claiming through or under them, from in any manner using, selling, offering for sale, advertising, publicising or otherwise dealing with the membership of the plaintiff under the service mark/trade name CLUB MAHINDRA and/or any name/services mark bearing the word CLUB MAHINDRA or any other mark deceptively similar thereto, thereby passing off their services/business in any other manner whatsoever;

(c) The defendants be ordered to pay to the plaintiff, a sum of Rs.10,00,000/- jointly and severally, as damages for committing infringement of trademarks

and passing off its products/services/business as being associated with the plaintiff's services/business;

(d) The defendants be ordered to surrender to the plaintiff for destruction, name boards, invoices/bills, prints, brochures, screen prints and advertising material and any other material in the defendant's possession, which bears the mark/trade name CLUB MAHINDRA;

(e) A preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by use of the plaintiff's service marks/trade name CLUB MAHINDRA amounting to infringement of the plaintiff's registered trademarks and/or passing off and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

(f) The defendants be directed to remove any reference to the plaintiff's service mark/trade name CLUB MAHINDRA used in relation to the defendants from any portal including www.travelbizmonitor.com.

(g) For costs of the suit; and

(h) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case thus render justice.

For Plaintiff : Ms.R.Prashanthi

For Defendants : Set ex-parte

vide order dated 02.07.2019

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. The plaintiff is a company incorporated under the name and style of M/s.Mahindra Holidays & Resorts India Ltd., is a part of USD 16.9 Billion Multinational Mahindra Group which is one of the India's leading Industrial Houses. The plaintiff company is a part of the Leisure and Hospitality Sector of the Mahindra Group and the business was started in the year 1996 and is well known for their reliability, trust and customer satisfaction. The company's flagship brand 'Club Mahindra', today has a fast growing customer base of over 1,83,000 members and several beautiful resorts at several exotic spots in India and abroad. The plaintiff's company has been listed both in the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) with an increasing share value. This patently shows the rising popularity and the trust that public have towards the plaintiff's company and their business. The plaintiff company entered into hospitality business in the year 1996.

3. The plaintiff, in keeping with modern trends and for customer attraction, has coined and adopted various trademarks and devices with a view to identify their unique services and distinguish the same from third parties. "CLUB MAHINDRA", "MAHINDRA HOLIDAYS", "HAPPY FAMILIES" etc, and such other marks including their distinctive colour scheme, logos and other artistic features have all earned sufficient goodwill and reputation in the market and are associated only with the plaintiff.

4. Learned counsel for the plaintiff submits that the plaintiff company has applied for and/or obtained registration for the trademark CLUB MAHINDRA/MAHINDRA HOLIDAYS in various classes. The plaintiff's some of the registration trademark owned by it are as follows:

Sl.No.	Filing Date	Trademark	Regn.No.	Class
1	12.03.1998	CLUB MAHINDRA HOLIDAYS Device	794830	16
2	06.06.2003	CLUB MAHINDRA (label)	1204589	16
3	19.02.2007	CLUB MAHINDRA THE GOURMET HOLIDAYS (LOGO)	1532083	29, 30, 31, 32 & 42
4	24.09.2007	Club Mahindra Device	1605124	41 & 42

Sl.No.	Filing Date	Trademark	Regn.No.	Class
5	01.11.2007	Mahindra Holidays (word)	1617216	16, 41 & 42
6	20.11.2009	CLUB, MAHINDRA, HOLIDAYS Label	1622990	41 & 42
7	12.12.2007	Club Mahindra travel device	1630135	36, 39 & 42
8	28.01.2013	Club Mahindra Logo (Black Background)	2467554	16, 35, 36, 37, 39, 41 & 43

5. Therefore, the plaintiff is the registered proprietorship of the trademark "CLUB MAHINDRA". The plaintiff also spent considerable amount for advertisement for the purpose of marketing its services to the public a sum of Rs.17,463.31/- during the year 2014-2015. The plaintiff also achieved the revenue a sum of Rs.53,416/- during the year 2014-2015.

6. In this circumstances, during the month of August 2013, the plaintiff was shocked and surprised that the first defendant through its website www.allianceholiday.in was involved in the business of purchasing and selling the plaintiff's "Club Mahindra" memberships with a suggestive outlook as if it was authorised to do so by the plaintiff.

7. Learned counsel for the plaintiff further submitted that the plaintiff issued a cease and desist notice dated 05.08.2013 and the same has been marked as Ex.P11. However, the first defendant has not replied for the same. Thereafter, the first defendant removed the reference of "CLUB MAHINDRA". Therefore, the plaintiff has not taken any action against the defendants. However, the plaintiff became aware of an article/newsletter in the 3rd defendant's web portal www.travelbizmonitor.com covering the interview of the 2nd defendant. The article/newsletter in the 3rd defendant's web portal titled "Alliance Holidays to market India inventory of Club Mahindra" covers the interview of the 2nd defendant who had stated that "we are going to sell all Club Mahindra properties across India". The plaintiff states that they never allowed or permitted the 1st and 2nd defendant to deal with their properties or membership. The said article/interview with the 3rd defendant is clearly indicative that the 1st and 2nd defendants' intention to unduly capitalize on the goodwill and reputation vested with the plaintiff. Therefore, without any other opinion, the plaintiff approached this Court and filed the present suit.

8. After the admission of the suit, the suit summons were served on the defendants on 20.11.2015. In spite of the service of the suit summons, the defendants failed to appear before this Court. Therefore, the defendants were set ex-parte vide order dated 02.07.2019 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 Jaiminikumar, was examined as P.W.1 and Exs.P1 to P12 were marked.

9. It has already been set out supra that as many as 12 exhibits, namely Exs.P1 to P12 have been marked and the details of the 12 exhibits are as follows:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	Copy of the Power of Attorney (Marked after comparing and verifying with the original).	01.08.2018
2	Ex.P2	Copy of the Registration Certificate for Trade Mark CLUB MAHINDRA HOLIDAYS UNLIMITED (devise) under No.794830 in class-16 (Marked after comparing and verifying with the original).	
3	Ex.P3	Copy of the Registration Certificate for Trade Mark Club Mahindra (label) under No.1204589 in class-16 (Marked after comparing and verifying with the original).	

Sl. No.	Exhibits	Description	Dated
4	Ex.P4	Copy of the Registration Certificate for Trade Mark CLUB MAHINDRA THE GOURMET HOLIDAYS (LOGO) (label) under No.1532083 in classes-29, 30, 31, 32 and 42.	
5	Ex.P5	Copy of the Registration Certificate for Trade Mark Club Mahindra (device) under No.1605124 in classes-41 and 42 (Marked after comparing and verifying with the original).	01.05.2018
6	Ex.P6	Copy of the Registration Certificate for Trade Mark Mahindra Holidays (word) under No.1617216 in classes-16, 41 and 42.	
7	Ex.P7	Copy of the Registration Certificate for Trade Mark CLUB, MAHINDRA, HOLIDAYS (label) under No.1622990 in classes-41 and 42.	
8	Ex.P8	Copy of the Registration Certificate for Trade Mark Club Mahindra Travel Devise under No.1630135 in classes-36, 39 and 42.	
9	Ex.P9	Copy of the Registration Certificate for Trade Mark Club Mahindra Logo (Black Background) under No.2467554 in classes-16, 35, 36, 37, 39, 41 and 43 (Marked after comparing and verifying with the original).	
10	Ex.P10	Originals of plaintiff's CLUB MAHINDRA brochures and pamphlets.	
11	Ex.P11	The office copy cease and desist notice	05.08.2013
12	Ex.P12	The Screen shot of the web-site www.travelbizmonitor.com containing the defendant's interview.	

10. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Ex.P.1 to P.12.

11. On perusal of Exs.P2 to P12, it clearly seen that the plaintiff registered the trademark "CLUB MAHINDRA" under different classes and carrying out the business of hospitality. Therefore, it is clear that the plaintiff is the registered owner of the trademark "CLUB MAHINDRA", and they have the exclusive right to use the trade mark in respect of their product.

12. On perusal of Ex.P12, wherein the interview of the second defendant is published through third defendant's web portal titled under the name and style of "Alliance Holidays to market India inventory of Club Mahindra", which covers the interview of second defendant *"we are going to sell all Club Mahindra Properties across India"*, the plaintiff has not permitted the first and second defendant to deal with the properties or membership of the plaintiff. Therefore, the defendants 1 and 2 has no authority to publish any article with the third defendant portal and publishing the article with the third defendant's web portal amounts to using the registered trademark of the plaintiff "CLUB MAHINDRA" which clearly amounts to infringement of the trademark, as stated in Section 29 of the Trademarks Act. 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 defendants in the light of conduct of the defendants 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 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.

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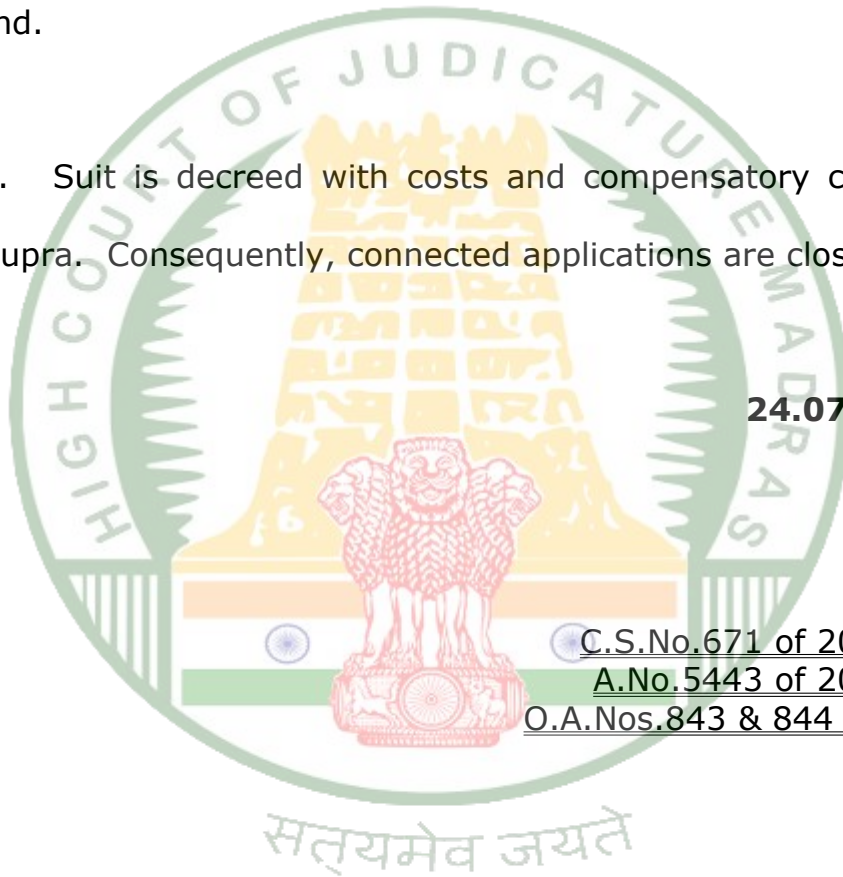
KRISHNAN RAMASAMY,J.

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.

24.07.2019

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