

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

C.S.No.295 of 2013
and
O.A.Nos.331 & 332 of 2013

M/s.Leela.P.Clothing Private Limited,
Represented by its Director P.Santhosh Sharma
Having registered office at No.19, Gandhi Nagar,
1st Main Road, Adyar,
Chennai - 600 020. .. Plaintiff

Vs

M/s.STYLE ONE DRESSES,
Represented by its Proprietor Kuthus Gani,
Nos.106 and 108 Municipal Building,
Shanmugam Road,
West Tambaram, Chennai - 600 045. .. Defendant

Prayer : Complaint under Order IV Rule 1 of Original Side Rules r/w Order VII
Rule 1 and 2 of C.P.C, praying सत्यमेव जयते

a) Permanent Injunction restraining the Defendant its Proprietor,
agents, servants, men, distributors, stockist or any one acting under or
through them from in any manner from committing infringement of
Plaintiff's registered Trade Mark and Copyright "STYLE ONE" by using or
misusing or duplicating the Plaintiff's registered Trade Mark and Copyright
"STYLE ONE", name with deceptively similar, name with phonetic
resemblance, etc.

b) Permanent Injunction restraining the Defendant, its Proprietor, agents, servants, men, distributors, stockist or any one acting under or through them from in any manner from passing off their sales/goods/services as that of the Plaintiff's

c) Directing the Defendant to pay the costs of the suit to the Plaintiff.

For Plaintiff : Mr.M.Ravindhar

For Defendant : set exparte

J U D G M E N T

The Plaintiff is a company incorporated under The Companies Act, 1956 and is engaged in the business / administration of readymade and textiles garment outlet for the past several years under the name and style of "STYLE ONE". The plaintiff has been doing the business at No.19 Gandhi Nagar, 1st Main Road, Adyar, Chennai - 600 020. The trademark of the defendant got registered with the Registrar of Trademark bearing Number 1667135 in class 35, dated 05.01.2011. Further the plaintiff obtained the copyright for its trademark, with the Registrar of Copyrights vide No. A-82791/2008 dated 29.05.2008. Therefore, the plaintiff submits that they are the Proprietor of the registered trademark and copyright for the trade name "STYLE ONE". According to the plaintiff that they are using the trade name "STYLE ONE" since 2008, therefore, they have made application in the year 2008 itself. However, the said name was registered on 05.01.2011.

2. By virtue of the usage of the name “STYLE ONE” in respect of the plaintiff’s business, the word “STYLE ONE” though it appears descriptive in nature, it obtained the distinctiveness in respect of the business of the plaintiff. So therefore, the plaintiff is the exclusive user of the trademark “STYLE ONE” for its business alone.

3. The learned counsel for the plaintiff submitted that the plaintiff had spent considerable time and money to develop the business under the name and style “STYLE ONE” through the advertisements in media.

4. In these circumstances, the plaintiff came to know about the use of the word “STYLE ONE” by the defendant in the month of January 2012. Therefore, they issued a legal notice on 25.01.2012 itself and informing about the infringement and requested the defendant to stop further infringement of trade name of the plaintiff business. However, after the receipt of the notice the defendant issued a reply notice on 01.02.2012, wherein the defendant claimed that they started their business only in the recent past. Therefore, the plaintiff submits that the defendant admitted the fact that they are using the name “STYLE ONE”. Hence, plaintiff

entitled to have the remedy before this Court. Even after the receipt of the legal notice, the defendant continued to use the word “STYLE ONE” and till date the defendant has been carrying on the business. Originally the plaintiff filed a suit before the City Civil Court, Chennai, in O.S.No.963 of 2012 and the same was withdrawn due to the reason that the jurisdiction was not comes under the City Civil Court to file the suit for infringement of trade mark and thereafter he filed the present suit before this Court.

5. This Court issued summons and the same was served to the sole defendant on 03.06.2013. However, he was not appeared after the receipt of summons. Therefore, the sole defendant was set ex-parte, vide order dated 23.09.2013. Thereafter, it was posted before the Master and on behalf of the plaintiff Mr.N.Madhavarajan, was examined as PW-1 through the PW-1 Exhibit Nos. P-1 to P-9 are marked.

6. Heard the counsel appearing for the plaintiff and this Court also perused the proof affidavit and Exhibit Nos. P-1 to P-9 documents. Ex.P-2 is the original trade mark registration certificate dated 05.01.2011 and Ex.P-3 is the original copyright registration certificate dated 29.05.2008.

7.The plaintiff also filed the photo copy of the defendant's business pamphlets and the same has been marked as Ex.P-5. On the perusal of the pamphlet, it appears that the defendant is carrying on the business under the name and style of "STYLE ONE DRESSES". No doubt, the plaintiff is the registered Proprietor of the trade mark "STYLE ONE", in terms of Section 29 (1) of the Trademark Act, 1999 read with Section 17 of the Trademark Act, 1999. The plaintiff as the legal protection, against the usage of its registered trade mark, either as a whole or in part of the name of the infringed mark in the present case. The defendant has been using the plaintiff's whole mark STYLE ONE as part of the trade name of the defendant i.e., "STYLE ONE DRESSES". It is clearly infringement of registered trademark of the plaintiff, certainly the defendant is not entitled to copy the registered trademark of the plaintiff. Therefore, this acts of the defendant, is clearly amounts the infringement of trademark in terms of Section 29 of Trademarks Act, 1999. Therefore, this Court is of the view that the defendant is infringing the trademark of the plaintiff and the plaintiff is entitled for the relief as prayed for.

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8. Accordingly, the suit is decreed as prayed for with the exemplary cost of Rs.50,000/-. Consequently, the connected applications are closed.

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Index : Yes/No
Internet : Yes
Speaking / Non-speaking Order

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