

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.190 of 2019
and
A.No.1980 of 2019 and
O.A.Nos.256 & 258 of 2019

M/s.Ayngaran Coffee,
No.28, Sarangapani Koil Eash Street,
Kumbakonam – 612 001.

Also Branch at,
31/33, Anjugam Nagar, Jawaharlal Road,
Jafferkhanpet, Chennai – 600 083.

A Partnership firm represented by one its Partner
A.Ramachandran.

... Plaintiff

Vs.

K.Vijayan, Proprietor,
M/s.OM Kumbakonam Ayngaran Coffee,
No.1 A, Selvam Nagar,
Medical College Road,
Thanjavur.

... 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) Granting permanent injunction restraining the
defendant, their men, servants, agents or anyone
claiming through or under them from in any manner

infringing the plaintiff's registered trademark "KUMBAKONAM AYNGARAN COFFEE" by using the offending trademark "OM KUMBAKONAM AYNGARAN COFFEE" or any other trademark which is similar or in any way deceptively similar to or colorable imitation of the plaintiff's registered trademark either name board or marketing coffee or any products or in any manner advertising the same.

(b) Granting permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff's copyright in the registered trademark "KUMBAKONAM AYNGARAN COFFEE" by using the offending trademark "OM KUMBAKONAM AYNGARAN COFFEE" or any other trade mark which is similar or in any way deceptively similar to or colorable imitation of the plaintiff's registered trademark either by name board or marketing coffee or any products or in any manner selling the same.

(c) Granting permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off their coffee and food snacks as that of the plaintiff's by using the registered trademark "OM KUMBAKONAM AYNGARAN COFFEE" or any other trademark which is similar or in any way deceptively similar to or colorable imitation of the plaintiff's

registered trademark either by name board or marketing coffee or in any manner selling the same.

(d) Directing the defendant to render true and faithful account of profits earned by them through the sale of the coffee bearing the offending trademark "OM KUMBAKONAM AYNGARAN COFFEE" and directing payment of such profits to the plaintiff by way of damages for passing off committed by the defendant.

(e) Directing the defendant to surrender to the plaintiff the entire stock of unused offending goods under the trademark "OM KUMBAKONAM AYNGARAN COFFEE" together with cartons, labels, name boards, printing blocks, boxes etc bearing the trademark "OM KUMBAKONAM AYNGARAN COFFEE" for destruction.

(f) Directing the defendant to pay a sum of Rs.10,00,000/- (Ten lakhs) towards infringement of Registered trademark, copyright and passing off of the trademark "OM KUMBAKONAM AYNGARAN COFFEE" as and for those of the plaintiff's "KUMBAKONAM AYNGARAN COFFEE".

(g) Directing the defendant to pay the plaintiff the cost of the suit and

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

For Plaintiff : Ms.N.Devi
For Defendant : Set ex-parte
vide order dated 24.06.2019

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 has submitted that the plaintiff is engaged in the business of manufacture, marketing, preparation and selling of traditional Kumbakonam coffee, tea and other hot beverages under the trademark "KUMBAKONAM AYNGARAN COFFEE" written in Tamil language. The plaintiff has started its first shop/business on 19.01.2014 in Kumbakonam under the trademark "KUMBAKONAM AYNGARAN COFFEE". The plaintiff with its hard work and sheer effort has started its business in various other places in Tamilnadu such as Mannargudi, Thanjavur, Chennai etc. At present, the plaintiff have over 35 Nos. of shops/business in Mannargudi, Thanjavur and Chennai. The plaintiff is the first to adopt the said trademark for the said business

honestly and is continuing to use the same with out any interruption and commercial break. The plaintiff has been using the said trademark till date continuously since 2014.

3. It is further submitted that the plaintiff has spent over Rs.10 lakh on advertisement and promotion of its business under the trademark "Kumbakonam Ayngaran Coffee". The annual sales turnover of the plaintiff is increasing year after year. The plaintiff has put in lots of money, effort and man power in developing its business under the trademark "Kumbakonam Ayngaran Coffee". In order to protect its brand, trademark, the plaintiff has applied and obtained the trademark Registration under No.2672510 in class 30 and has filed various other applications in order to protect the trademark "KUMBAKONAM AYNGARAN COFFEE" under the Trademark Act, 1999 and Copyright Act, 1957.

4. Learned counsel further submitted that inspite of all the notices and warnings, during the month of January 2019, the plaintiff came across the shop of the defendant with the board "OM KUMBAKONAM AYNGARAN COFFEE" in Thanjavur which is similar

and identical to that of the plaintiff's registered trademark "KUMBAKONAM AYNGARAN COFFEE". The trademark adopted by the defendant is both visually, phonetically and structurally similar and identical to that of the plaintiff. Except for some minor additions the colour scheme, getup etc of the label/board device of the trademark is similar and/or deceptively similar to that of the plaintiff's trademark. The mala fide intention of the defendant in making unlawful profit is crystal clear by the simple glance of the two trademarks of the plaintiff and defendant. Therefore, plaintiff filed the present suit restraining the defendant from infringing the plaintiff's trademark and copying "KUMBAKONAM AYNGARAN COFFEE".

5. Subsequently, after the admission of the suit, the suit summons was served on the sole defendant on 12.04.2019. 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 24.06.2019 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.A.Ramachandran, was examined as P.W.1 and Exs.P1 to P5 were marked.

6. It has already been set out supra that as many as 5 exhibits, namely Exs.P1 to P5 have been marked and the details of the 5 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The copy of the Trademark Certificate dated 05.02.2014.
2	P2	The copy of the Legal User Certificate dated 09.08.2018
3	P3	The Copy of the Warning Notice in Tamil Newspaper dated 26.01.2018.
4	P4	The photograph of defendant shop
5	P5	The copy of the trademark label

7. 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.5.

8. On a perusal of the documents, this Court found that trademark of the plaintiff namely "KUMBAKONAM AYNGARAN COFFEE" got registered through Ex.P1. The plaintiff has also obtained legal user certificate, which is marked as Ex.P2. Further,

the plaintiff also filed their photo copy of the name board and the same is marked as Ex.P.5 and the defendant's photo copy of the name board as Ex.P.4. On perusal of Exs.P.4 and P.5, it is seen that the defendant is not only copying the trademark of the plaintiff 'KUMBAKONAM AYNGARAN COFFEE' but also copying the colour scheme and design. Therefore, this Court found that the defendant's copying the plaintiff's trademark 'KUMBAKONAM AYNGARAN COFFEE' will amount to infringement of the trademark, as stated in Section 29 of the Trademarks Act. Accordingly, the plaintiff proved the claim. Therefore, the plaintiff is entitled to the decree as prayed for.

9. 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.

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

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

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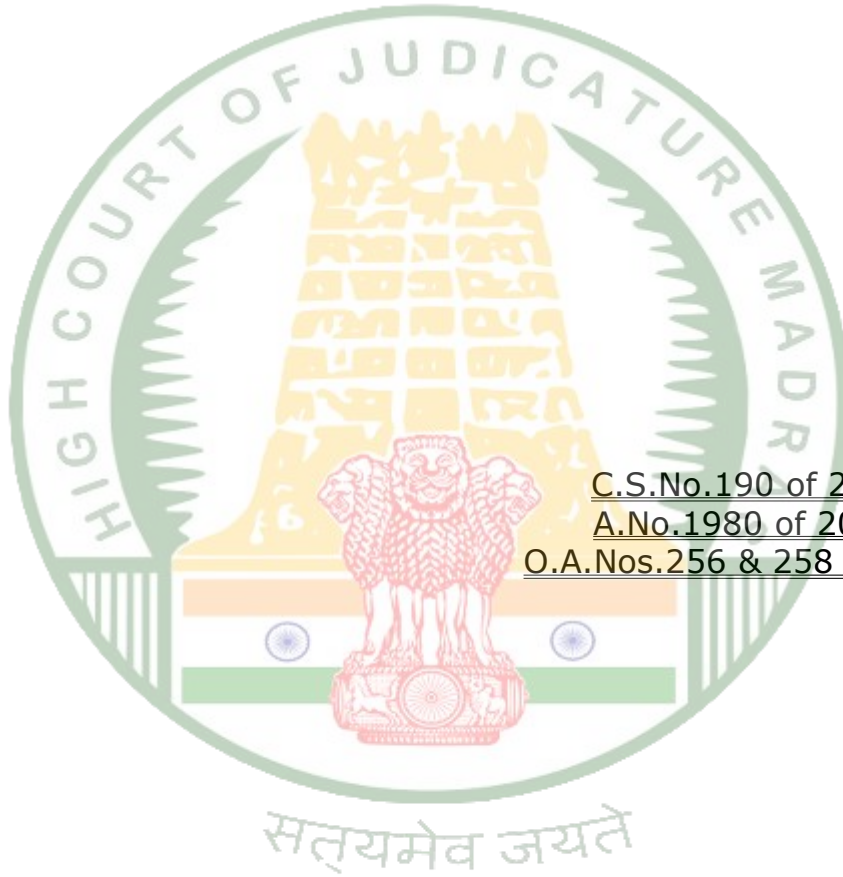
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