

HIGH COURT OF JUDICATURE AT MADRAS**DATED : 03.07.2019****CORAM :****THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY****C.S.No.183 of 2019
and
OA.Nos.245 to 246 of 2019**

M/s.T.V.SundramIyenger & Sons Pvt Ltd,
No.58, Elams Road, Teynampet, Chennai-600 018
Represented by its Chief Financial Officer,
Mr.S.Santhanagopalan ... Plaintiff

..Vs..

1. M/s.Sai Hari Agency
No.4/183, A.Nachinampatti
Salem Main Road,
H.Dodampatti Post Office,
Hosur Taluk
Dharmapuri District

2. Mr.Brinder Manchanda
3. Avnish Jain ... Defendants

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Suit filed under order IV RULE 1 of the O.S.Rules and ORDER VII Rule 1 of C.P.C. Read With Sections 27, 28, 29, 134 and 135 of the TRADE MARKS ACT, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts

Act, No.4 of 2016 praying for a judgment and decree (a) Permanent injunction restraining the Defendants by itself, their partners, affiliates, manufacturers, dealers, representatives, servants, agents, legal representatives, successor in business or any other person claiming under it from in any manner trading under, using advertising directly or indirectly or dealing in services under the mark TVS thereby infringing Plaintiff's registered trademark TVS or any mark deceptively similar to Plaintiff's registered trademark or in any other manner whatsoever; (b) A permanent injunction restraining the Defendants by itself, their partners, affiliates, manufacturers, dealers, representatives, servants, agents, legal representatives, successor in business or any other person claiming under it from in any manner trading under, using advertising directly or indirectly or dealing in services under the mark TVS that is identical and/or in any other manner whatsoever; (c) the Defendant be ordered to pay to the Plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement against Plaintiff's registered trademark and passing off; (d) The Defendant be ordered and decreed to deliver up for destruction to the Plaintiff all name board, sign boards, advertising materials, business cards, dies, blocks, labels, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationary items and such other sales promotional materials bearing and/or containing the impugned trademark TVS or any other similar or deceptively similar mark; (e) A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render accounts of profits made by it by use of the trademarks TVS which is identical and/or deceptively similar to the Plaintiff's mark and a final decree be passed in favour of the Plaintiff

for the amount of profits found to have been made by the defendants after the latter has rendered account; (vi) For costs of entire proceedings

For Plaintiff : Ms.Suba Shiny
For Defendants : Mr.R.Sathishkumar

JUDGMENT

When the matter is taken up for hearing, a Joint Memo of compromise dated 10.06.2019 has been filed on behalf of both the parties. The said Memo has been duly signed by both the parties and attested by their respective counsels. The terms of the Memo of Compromise reads as under:

"1. The Defendants jointly and severally agree and acknowledge that the plaintiff is the exclusive and rightful proprietor of the trade mark "TVS" in respect of all classes of goods/services and stated in paragraph 6 of the Complaint filed in the instant suit.

2. The defendants confirm that they have stopped using the trademark/ trade name in their office, billboards, brochures, presentations, websites, advertising campaigns or in any other stationery and promotional material, which would impinge any association between the plaintiff and the defendants. The defendants further

confirm that they shall not perform the aforesaid acts in the future in any manner whatsoever either directly or indirectly.

3. The defendants confirm that they have stopped using the mark "TVS" and has shall take all necessary steps to withdraw the Trademark Application TM No.3212263 before the Trade Marks Registry as per the relevant provisions of the Trade Marks Act, 1999 and further the Defendants undertake not to file application for Trademark Registration before any of the Regional Trademark Registries in India under the Trademarks Act, 1999 for the registration of the mark "TVS" in the name of any of the Defendants or their agents, men or representatives henceforth. The defendants also agree to write to the Trade Mark Registry immediately seeking to withdraw the above said trade mark application and a copy of the said letter with due acknowledgement from the Trade Mark Registry shall form part of the present memo of Compromise as Annexure A.

4. The defendants herein agree to subject themselves to a permanent injunction in terms of prayer at para 23 (a) and (b) of the plaint which is extracted herein below for the sake of clarify

(a) A Permanent injunction _____
 restraining the Defendants by itself, _____
 their partners, affiliates, _____
 manufacturers, dealers, _____
 representatives, servants, agents, _____
 legal representatives, successor in _____
 business or any other person claiming _____
 under it from in any manner trading _____
 under, using advertising directly or _____
 indirectly or dealing in services under _____
 the mark TVS thereby infringing _____

Plaintiff's registered trademark TVS or any mark deceptively similar to Plaintiff's registered trademark or in any other manner whatsoever;

(b) A permanent injunction restraining the Defendants by itself, their partners, affiliates, manufacturers, dealers, representatives, servants, agents, legal representatives, successor in business or any other person claiming under it from in any manner trading under, using advertising directly or indirectly or dealing in services under the mark TVS that is identical and/or deceptively similar as that of the Plaintiff's mark TVS so as to pass off the Defendant's services as and for that of the Plaintiff and/or in any other manner whatsoever;

5. The plaintiff hereby agree to waive off reliefs sought for in the plaint paras (c), (d), (e) and (f) which are extracted herein below for the sake of clarity.

(c) the Defendant be ordered to pay to the Plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement against Plaintiff's registered trademark and passing off;

(d) The Defendant be ordered and decreed to deliver up for destruction to the Plaintiff all name board, sign boards, advertising materials, business cards, dies, blocks, labels, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calenders, carry bags,

stationery items and such other sales promotional materials bearing and/or containing the impugned trademark TVS or any other similar or deceptively similar mark;

(e) A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render accounts of profits made by it by use of the trademarks TVS which is identical and/or deceptively similar to the Plaintiff's mark and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts;

(f) For costs of the entire proceedings.

6. Upon recording of the present memorandum of compromise, the parties will not have any claims against each other.

7. The defendants agree to pay to pay a sum of Rs.10 crores/- towards liquidated damages in the event of any breach of the above clauses by the defendants in any manner in order to compensate the injury that would ensue the plaintiff in view of such breach.

8. The plaintiff and the defendant pray that the present suit be decreed in terms of the present terms of compromise."

2. The learned counsel appearing on either side has submitted

that the suit may be decreed in terms of Memo of Compromise.

3. Recording the Joint Memo of Compromise dated 10.06.2019, this suit is decreed in terms of Joint Memo of Compromise. The Joint Memo of Compromise shall form part of the decree. No costs. Consequently, connected Applications stands closed.

03.07.2019

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Index:Yes/No

Internet:Yes/No



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KRISHNAN RAMASAMY, J

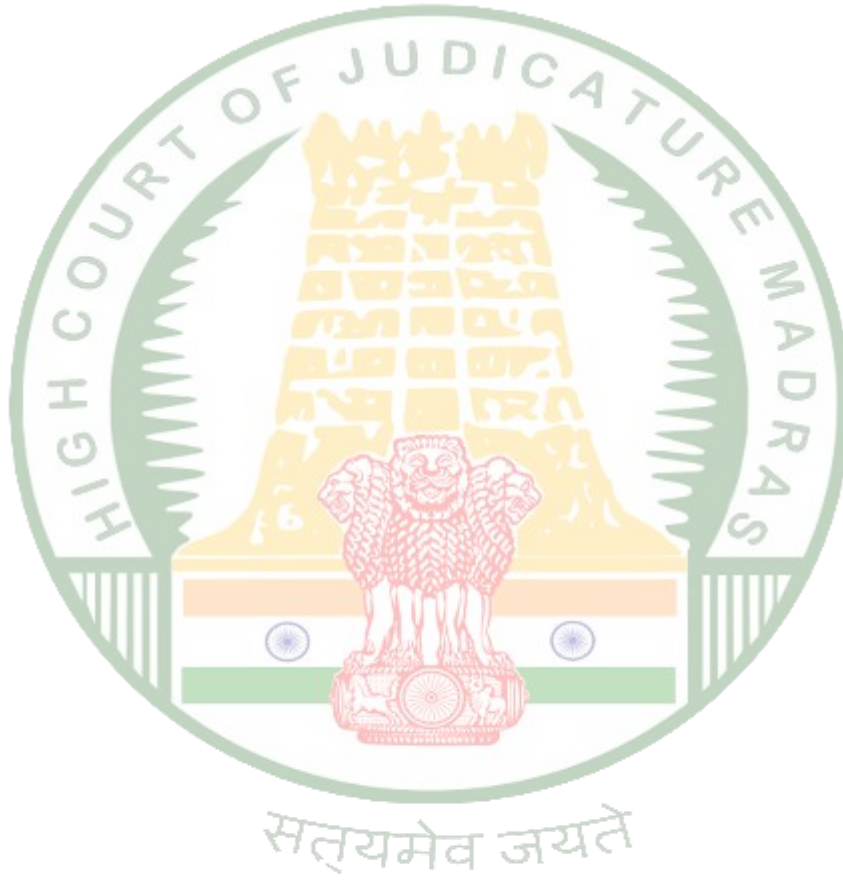
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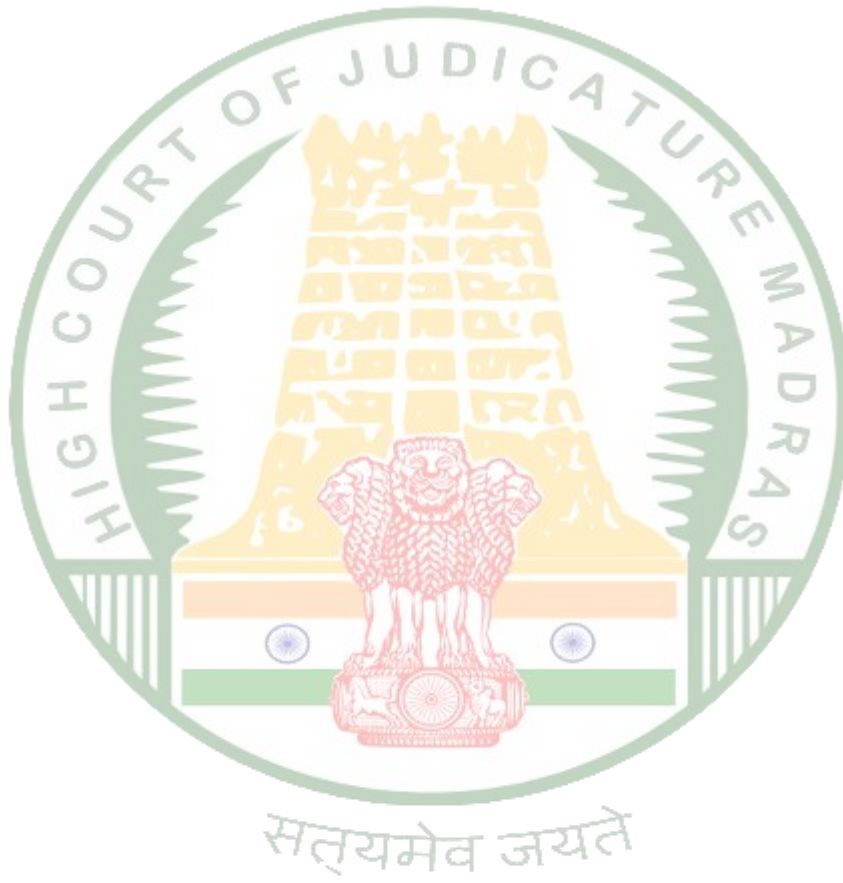
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