

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.07.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.234 of 2019
and Application No.2574 of 2019
and Original Application Nos.348 & 349 of 2019

M/s.Cavinkare Private Limited,
'Cavin Ville', No.12,
Cenotaph Road,
Chennai - 600 018.
Rep.by its DGM - Legal & Secretarial
R.Thazhalan

Plaintiff

versus

M/s.Velavan Milk Products,
22-B, Devi Eshwari Nagar,
Thendral Nagar East,
Thirumullaivoyal,
Chennai - 600 062.

Defendant

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules, r/w Order VII, Rule 1 of the Civil Procedure Code, Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016), praying to grant a judgment and decree in favour of the plaintiff;

- (a) a permanent injunction restraining the defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from infringing the registered trademark CAVINS of the plaintiff by manufacturing, selling and/or distributing dairy products including ice creams under an almost identical mark KAWINS or any other similar or identical mark and in any other manner whatsoever;
- (b) a permanent injunction restraining the defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing dairy products including ice creams which would amount to passing off their products as and for the plaintiff's products by using a deceptively similar mark KAWINS or any other similar or identical mark and in any other manner whatsoever;
- (c) The defendant be ordered to surrender to the plaintiff for destruction all labels, cartons, containers, packaging, materials, blocks, dyes, prints, screen prints, notices, pamphlets, advertisements, hoardings, and other promotional materials bearing the mark KAWINS which is identical to the plaintiff's registered trademark CAVINS;

- (d) The defendant be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark and passing off;
- (e) a preliminary decree be passed in favour of the plaintiff directing the defendant to render true and faithful account of profits earned by them by use of the impugned packages and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts;
- (f) for entire costs of the suit.

For Plaintiff : Mr.P.Giridharan
For Defendant : Mr.M.Nallathambi

J U D G M E N T

Today, when the suit is taken up for consideration, the learned counsel appearing for the defendant has placed a letter dated 01.07.2019 before this Court, which reads as follows;

"Please refer to the above suit filed by your client in C.S.No.234 of 2019, in which we have entered appearance by change of vakalat for the respondent. Our client instructed us to settle the issue as they are not going to use the trade mark "Kawins". Since our client intend to carry on the business by using some other. We would request you to settle the issue. The suit may be decreed according to the undertaking given by our client kindly let us know your client's view in this regard."

2. The same is placed on record. Since the letter itself clearly indicates that the defendant is no longer using the trademark 'KAWINS', further adjudication is not required.

3. Hence, in view of the defendant's undertaking through the counsel to the effect that they are not going to use the trademark of the plaintiff, there shall be a permanent injunction restraining the defendant from infringing the registered trademark 'CAVINS' of the plaintiff and also by using the similar trademark 'KAWINS' with the plaintiff's trademark. Accordingly, the suit is decreed in respect of above two reliefs (clause a & b). With respect to the other reliefs, the suit is dismissed.

4. In fine, the Civil Suit is partly allowed. Consequently, connected Applications are closed. However, there is no order as to costs.

30.07.2019

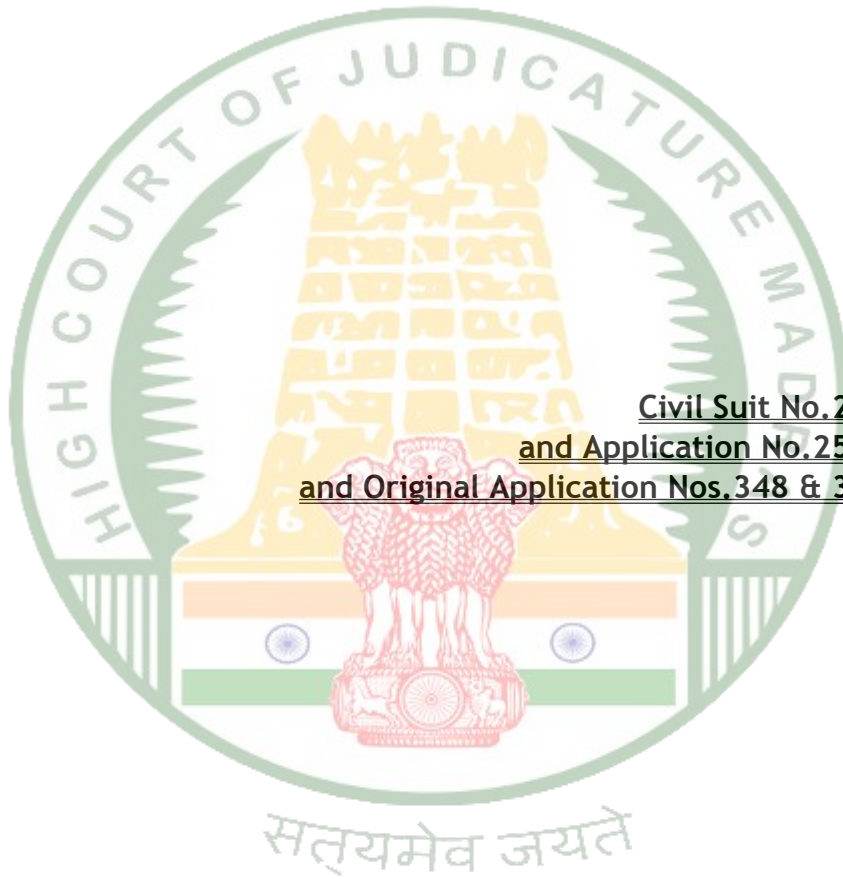
Speaking Order/Non Speaking Order
Index : Yes / No
Internet : Yes

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N.SATHISH KUMAR, J.,

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