

Application No.2574 of 2019
in
C.S.No.234 of 2019

S.VAIDYANATHAN,J.

This Application is filed seeking to appoint an Advocate Commissioner to visit the premises of the Respondent/Defendant, their godowns, warehouses and premises of the stockists, clearing and forwarding Agents, Transporters, or wherever the goods are found, break open the locks, if the premises are found locked, secure the services of police authorities if necessary, seize and take into actual physical custody.

2. This Court, today, passed common interim orders in O.A.Nos.348 and 349 of 2019 in the above Suit, which reads as follows:

"These applications have been filed, seeking for the following reliefs:

<i>Application No.</i>	<i>Relief</i>
O.A.No.348 of 2019	To grant an order of interim injunction restraining the Respondents/ Defendants, 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 Applicant's/Plaintiff's products by using a deceptively similar mark KAWINS or any other similar or identical mark and in any other manner whatsoever, pending disposal of the Suit;
O.A.No.349 of 2019	To grant an order of interim injunction

<i>Application No.</i>	<i>Relief</i>
	restraining the Respondent/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 Applicant's/Plaintiff's 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, pending disposal of the Suit;

2. According to the Applicant/Plaintiff viz. Cavinkare Private Limited, they ventured into several segments, viz. food, beverages and dairy industry under unique and distinctive brand names. One such brand is "CAVINS", which was honestly conceived and adopted by the Applicant for their dairy products in the year 2009. The said mark was derived out of the Applicant's trading style and well-known mark CavinKare for its dairy products. Owing to long, continuous, extensive use, promotion and the high quality of dairy products sold under the distinctive trademark, CAVINS has come to be associated exclusively with the Applicant and no one else.

3. It is further stated by the Applicant/Plaintiff that they have been advertising extensively their products through various electronic and print media including Newspapers, magazines and trade journals, under the mark CAVINS, which have been extensively distributed to all the dealers of the Applicant, throughout the country. While so, in March 2019, the Applicant came to know that the Respondent herein is selling its dairy products viz. Ice creams under a deceptively similar mark KAWINS and that the Respondent, who is well aware of the widespread reputation of the Applicant's products sold under the mark CAVINS, has adopted deceptively similar mark KAWINS only with a malafide intention to cause deception and confusion in the market.

4. Learned counsel for the Applicant submitted that the Respondent is using the deceptively similar mark KAWINS for selling

its products viz. Ice creams, which is allied and cognate to the Applicant's dairy products. He further submitted that the Respondent has made minor insignificant changes to the Applicant's registered trademark CAVINS to arrive at the deceptively similar mark KAWINS and that the mark KAWINS is visually and phonetically similar and an unwary customer of average intelligence is bound to be confused owing to stark similarity between the marks. He strenuously argued that unless exparte interim orders are granted in favour of the Applicant, it will cause irreparable loss to them.

5. Having perused the averments made in these Applications and in the light of the submissions made by the learned Counsel for the Applicant/ Plaintiff, this Court is convinced that a prima facie case has been made out by the Applicant/Plaintiff and therefore, the Applicant is entitled to the relief sought for in these Applications.

6. Accordingly, there shall be orders of interim injunction as prayed for in O.A.Nos.348 and 349 of 2019 returnable by 25.04.2019. The Applicant/Plaintiff shall comply with Order 39 Rule 3(a) C.P.C. within a period of one week from the date of receipt of a copy of this order. Notice. Private notice is also permitted.

List the above Applications along with the Civil Suit for hearing on 25.04.2019."

3. In the light of the aforesaid order, **Ms.V.Revathy, Advocate** (Enrollment No.1634/2014, Cell No.9789019582) having Office address at No.223, N.S.C. Bose Road, 3rd Floor, Y.M.C.A. Building, Chennai 600 001, is appointed as an Advocate Commissioner, with a direction to go to the premises of the Respondent or other places that may be pointed out by the Applicant/Plaintiff by taking inventory of offending goods with offending trademark labels.

4. To be noted, with regard to offending trademark labels/products Advocate Commissioner shall solely go by the aforesaid interlocutory order that has been passed by this Commercial Division today. In other words, the question as to whether a particular label/product is offending or not, shall be governed by the aforesaid interim order made by this Commercial Division.

5. It is made clear that the Advocate Commissioner will make an inventory and submit a Report to this Court, but shall not seize the same for the present. Prayer for seizure is reserved for being considered after the report of the Advocate Commissioner. In other words, it is not negatived, but it is reserved for being considered after the Advocate Commissioner files a Report with regard to inventory qua offending labels/products.

6. It is open to the Advocate Commissioner to seek local police assistance, if the need arises.

7. If the Office of the Respondent/Defendant is outside the State of Tamil Nadu and an extreme need arises, it is open to the Advocate Commissioner to present this order in the office of the Director General of Police, Tamil Nadu and seek suitable orders in this regard qua police assistance. If Advocate Commissioner makes such a request, the Director

General of Police, Tamil Nadu shall do the needful in this regard.

8. Initial remuneration for the Advocate Commissioner is fixed at Rs.50,000/- (Rupees Fifty Thousand only) and all out of pocket expenses including travel expenses and other incidental expenses shall be met by the Applicant/Plaintiff for the present, subject to the outcome in the Interlocutory Applications and the main suit.

9. Advocate Commissioner shall put on notice the Defendants and/or any other party/entity deemed appropriate in his/her discretion before inspecting any premises. It is open to the Applicant/Plaintiff and parties, who are put on notice, to file Memos of Inspection before the Advocate Commissioner. Considering the exigency of the situation, it is open to the Advocate Commissioner to serve notice at the time of inspection, but it shall be before the commencement of inspection. Advocate Commissioner to file a Report in this Court on 25.04.2019.

List this matter on 25.04.2019.

02.04.2019

Note to Registry:

Issue warrant and copy of this order by 03.04.2019.

(aeb)

S.VAIDYANATHAN,J.

(aeb)



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