

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.499 of 2019 &

O.A.No.783 of 2019

M/s.TVS Srichakra Limited,
Having its Office at :
Old 14, New No.28,
5th Floor, Sudarsan Building,
Whites Road, Royapettah,
Chennai – 600 014, Tamil Nadu
Represented by its President cum authorized signatory
Mr.P.Srinivasavaradhan

.. Plaintiff

Vs.

1. M/s.Nemson Rubber Industries,
Survey No.86/1, 86/2,
Block No.69, 70, Plot No.44 to 53,
Opp Bharat Petrol Pump,
Moti Naroli, Kim, N.H.-8,
Surat, Gujarat,
Represented by its Partner,
Mr.Patel Manjulaben Hitendrabhai
2. Mr.Patel Manjulaben Hitandrabhai
3. Mr.Patel Kapilaben Baldevbhai
4. Mr.Patel Hinaben Kamalbhai

.. Defendants

Civil Suit filed under Order VII Rule 1 CPC and Order IV Rule 1 of Original Side Rules read with Sections 27, 28, 29, 134 & 135 of Trade Marks Act and Sections 51, 55 and 62 of the Copyright Act 1957 of the Commercial Courts Act, 2015 praying for the following judgment and decree :

a) For a permanent injunction restraining the defendants by themselves, its men, servants, agents, distributors, stockists, representatives or any one claiming through them from in any manner infringing or enabling others to infringe the plaintiff's said Trademark by use of the said Trademark or any other mark deceptively similar to the plaintiff's said Trademark as a whole or in parts or in any mark similar to the plaintiff's well-known Trademark "O TVS TYRES" with identical and/or deceptively similar colour scheme, get up and layout or in any other manner.

b) For a permanent injunction restraining the defendants by themselves, its men, servants, agents, distributors, stockists, representatives or any one claiming through them from in any manner committing acts of copyright infringement by printing stocking and using the said Trademark or any mark as depicted in the plaintiff's said Trademark or confusingly similar to it in any manner whatsoever.

c) the defendants be ordered to deliver and destruct all products manufactured and sold bearing the said infringing Trademark and new infringing

Trademark as a whole or in parts, and to destruct all Compact Disks (CD's), Floppy disks, digital versatile Disks, (DVDs), Hard Disks and all other means of both internal as well as electronic storage in the defendant's possession, custody and control containing the said infringing and new infringing Trademark as a whole or in parts or any mark similar to plaintiff's said Trademark.

d) a preliminary decree be passed in favour of plaintiff directing the defendant to render account of profits made by use of the said infringing Trademark and New infringing Trademark and a 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 later have rendered accounts ;

e) The defendant be ordered and decreed to pay to the plaintiff a sum of Rs.20,00,000/- as damages for acts of infringement of the said Trademark under the Trademarks Act, 1999 and infringement of Copyright under the Copyrights Act, 1957 respectively committed by the defendant by manufacture and sale of goods under the said Trademark as a whole or in parts;

f) for costs of the suit. सत्यमेव जयते

For Plaintiff : Mr.Savitha Kesav Jagadeesan

For defendants : Mr.Arun C Mohan

J U D G M E N T

The suit has been filed for the following reliefs :

a) For a permanent injunction restraining the defendants by themselves, its men, servants, agents, distributors, stockists, representatives or any one claiming through them from in any manner infringing or enabling others to infringe the plaintiff's said Trademark by use of the said Trademark or any other mark deceptively similar to the plaintiff's said Trademark as a whole or in parts or in any mark similar to the plaintiff's well-known Trademark "O TVS TYRES" with identical and/or deceptively similar colour scheme, get up and layout or in any other manner.

b) For a permanent injunction restraining the defendants by themselves, its men, servants, agents, distributors, stockists, representatives or any one claiming through them from in any manner committing acts of copyright infringement by printing stocking and using the said Trademark or any mark as depicted in the plaintiff's said Trademark or confusingly similar to it in any manner whatsoever.

c) the defendants be ordered to deliver and destruct all products

manufactured and sold bearing the said infringing Trademark and new infringing Trademark as a whole or in parts, and to destruct all Compact Disks (CD's), Floppy disks, digital versatile Disks, (DVDs), Hard Disks and all other means of both internal as well as electronic storage in the defendant's possession, custody and control containing the said infringing and new infringing Trademark as a whole or in parts or any mark similar to plaintiff's said Trademark.

d) a preliminary decree be passed in favour of plaintiff directing the defendant to render account of profits made by use of the said infringing Trademark and New infringing Trademark and a 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 later have rendered accounts ;

e) The defendant be ordered and decreed to pay to the plaintiff a sum of Rs.20,00,000/- as damages for acts of infringement of the said Trademark under the Trademarks Act, 1999 and infringement of Copyright under the Copyrights Act, 1957 respectively committed by the defendant by manufacture and sale of goods under the said Trademark as a whole or in parts;

f) for costs of the suit.

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2. When the matter was taken up today, Mr.Arun C.Mohan undertakes to

file vakalat for the defendants and submitted that they will not infringe the Trademark of the plaintiff and the alleged goods seized also would be destroyed and he submitted to the decree.

3. In view of the specific undertaking given by the learned counsel for the defendants and the statement made by the counsel, the suit is decreed with cost in respect of prayers 'a' and 'b'. As far as the prayers 'c', 'd' and e are concerned, the suit is dismissed. Consequently, the connected application is closed.

09.09.2019

vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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