IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.07.2019

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.S.No.199 of 2016

M/s. Muthu Pharmacy P Ltd,
represented by its Managing Director
S.Srinivasan,
No.204, Vellala Street,
Purasawalkam,
Chennai 600 084. ... Plaintiff

Vs.

M.Muthulakshmi,
Proprietrix,
M/s. New Muthu Pharmacy,
No.39, Thiruvengadasamy Street,
Pulianthope High Road,
Chennai 600 012. ... Defendant

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Prayer:- This Civil Suit (Commercial) has been filed under Order IV Rule 1 of O.S. Rules r/w. Order VII Rules 1 of C.P.C r/w. Section 27(2), 29, 134 & 135 of the Trademarks Act 1999 prays for a decree and judgment against the defendants for

(a) Granting a permanent injunction restraining the defendant, by himself, his servants, agents, distributors, or

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anyone claiming through him from manufacturing, selling, advertising and offering for sale using the same name M/s. MUTHU PHARMACY or any other similar trade mark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark / name which is in any way visually or deceptively or phonetically similar to the plaintiff trade mark / name MUTHU PHARMACY and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards, website, internet advertising or any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiff's registered trade mark No.1069852 in any manner infringing the plaintiff's registered trade marks referred herein.

b) Granting a permanent injunction, restraining the defendant, by herself, her servants, agents, distributors, or anyone claiming through or under her any business for marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertising the mark/name MUTHU PHARMACY in relation to the pharmaceutical or any other business the impugned trade mark/ name which is

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in any manner deceptively or phonetically confusingly similar to the plaintiffs trade mark / name MUTHU PHARMACY or in any other manner pass off their business or goods as and for that of the plaintiff.

c) directing the defendant to surrender to the plaintiff all the packing material, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing / bearing the name NEW MUTHU PHARMACY or other deceptively similar trademark used in the pouches and packets bearing the word NEW MUTHU PHARMACY.

d) directing the defendant to render an account of profits made by them by the use of the impugned trade mark and the service referred and decree the suit for the profits found to have been made by the defendants, after the defendant has rendered accounts.

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e) directing the defendant to pay to the plaintiff the costs to the suit

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For plaintiffs : Mr. Babu Rangasamy
for Babu Rangasamy Associates

For defendant : Mr. D.Kanaga Sundaram

JUDGEMENT

The plaintiffs have filed the present suit for permanent injunctions and for directions.

2. Today, when the matter is called, the learned counsel appearing for the plaintiff and the defendant submitted that pending Suit, the parties have arrived at a settlement between themselves and also filed a Memo of Compromise to that effect. The Memo of Compromise is duly signed by the plaintiff and defendant and their respective counsels. The counsel appearing for the parties submitted that the suit may be decreed as per the terms of the Memo of Compromise and the terms of the Memo of Compromise reads as follows :-

" The plaintiff has filed the suit

a) seeking a permanent injunction restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using

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the same name M/s. MUTHU PHARMACY or any other similar trade mark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark / name which is in any way visually or deceptively or phonetically similar to the plaintiff trade mark / name MUTHU PHARMACY and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards, website, internet advertising or any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiff's registered trade mark No.1069852 in any manner infringing the plaintiff's registered trade marks referred herein.

b) Granting a permanent injunction, restraining the defendant, by herself, her servants, agents, distributors, or anyone claiming through or under her any business for marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertising the mark/name MUTHU PHARMACY in relation to the pharmaceutical or any other business the impugned trade mark/ name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs trade

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mark / name MUTHU PHARMACY or in any other manner pass off their business or goods as and for that of the plaintiff.

c) directing the defendant to surrender to the plaintiff all the packing material, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing / bearing the name NEW MUTHU PHARMACY or other deceptively similar trademark used in the pouches and packets bearing the word NEW MUTHU PHARMACY.

d) directing the defendant to render an account of profits made by them by the use of the impugned trade mark and the service referred and decree the suit for the profits found to have been made by the defendants, after the defendant has rendered accounts.

e) directing the defendant to pay to the plaintiff the costs to the suit.

Now pursuant to the filing of the suit and notice in the above suit the defendant has changed the name of her pharmacy as M/s. Sri Lakshmi Medicals w.e.f. 30.06.2016 and the Change in Constitution has been duly incorporated in the necessary forms before the Directorate of Drugs Control Zone-1, Chennai.

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Therefore the defendant agrees for the suit to be decreed in so far as the prayers A, B and C and the plaintiff agrees to give up the prayers/reliefs sought in D & E herein.

It is therefore prayed that tis Hon'ble Court may be pleased to pass a judgement and decree by granting the relief in so far as prayers A, B and C and dismiss the suit in so far as reliefs D & E and pass such further or other orders as may deem fit in the circumstances of the case and thus render justice. "

3. Considering the fact that the matter has been settled between the parties, the Civil Suit is decreed in terms of the Memo of Compromise. The said Memo of Compromise shall form part of the decree. No costs.

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mrp
Index : Yes/No
Internet : Yes/No
Speaking order/non speaking order

Note : Issue Order copy on 18.07.2019

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KRISHNAN RAMASAMY, J.,

mrp

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