

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM:

The HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No. 221 of 2016

Apollo Hospitals Enterprise Limited
Registered. Office at No.19, Bishop Gardens,
Raja Annamalai Puram, Chennai – 600 028.
Represented by its Authorized signatory.

.. Plaintiff

Vs

Sai Apollo Medicals,
14-65C CTM Road,
Madanapalli 517325.

.. Defendant

Prayer : Complaint filed under Order VII Rule I of the Code of Civil Procedure, Order IV Rule of the OS Rules read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999, praying to grant judgment and decree against the defendant:

a)Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner infringing the plaintiff's registered trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark

“Apollo”, “Apollo Pharmacy”, “Apollo Clinic” and “Apollo Hospital”;

b)Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off their services as that of the plaintiff's by either using the plaintiff's trademark “Apollo”, “Apollo Pharmacy”, “Apollo Clinic” and “Apollo Hospital” or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark “Apollo”, “Apollo Pharmacy”, “Apollo Clinic” and “Apollo Hospital”;

c)Permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name / mark “Apollo” and “Apollo Pharmacy” by themselves or in combination with other charters or words in connection with any pharmaceutical establishment operated, or pharmaceutical services, rendered by the defendant;

d)The defendant be directed to surrender to the plaintiff all materials, media, etc., whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark “Apollo” and “Apollo Pharmacy”;

e)The defendant be directed to render accounts of profits of the defendant in favour of the plaintiff to examine and ascertain the profits made by the defendant, and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the defendant by using the mark “Apollo” and “Apollo Pharmacy” or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark “Apollo” and “Apollo Pharmacy” towards damages as and when ascertained to the awarded to the plaintiff and against the defendant on account of use of the offending trade mark;

f)Award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only);

For Plaintiff : M/s.Vineet Subramani
For Defendant : set ex-parte

J U D G M E N T

सत्यमेव जयते

The plaintiff has filed the present suit for the relief as stated in prayer portion of this judgment.

2. The plaintiff is the Company incorporated under the provisions of the Companies Act, 1956. The plaintiff is a multi-specialty medical service

provider across the spectrum of medical and healthcare services and facilities right from diagnostic clinics, to general Hospitals, multi-specialty Hospitals, cancer Hospitals, training institutes/colleges, pharmacies, etc. and is and a pioneer in the field of treatment of various ailments. The plaintiff also provides consultancy, management and operations services relating to health care and Hospitals globally.

3 The plaintiff was incorporated as a public limited Company on 05.12.1979, by Dr.Prathap C. Reddy, *Padma Vibhushan* (2010), and *Padma Bhushan* (1991), who continues till today as Founder and Executive Chairman. Dr. Reddy was an established Doctor with a flourishing practice in Boston, USA, but left all that behind, and returned to India in 1971 to establish a socially motivated medical practice. On his return, he found that medical landscape in the Country plagued by gaps in infrastructure, delivery and affordability. He was motivated to establish a Hospital by the loss of a young patient, who could not afford to go abroad for treatment. This set the blueprint to build India's first multi-specialty private sector hospital to provide quality health care to Indians in India.

4 The plaintiff has approximately 10,000 beds across 55 Hospitals, about 2,122 stand-alone Apollo Pharmacy outlets (this does not include the Apollo Pharmacy outlets attached to the Apollo medical centers, such as Hospitals, Clinics, etc.), over 100 primary care and diagnostic clinics, 60,000 rural touch points providing healthcare access to 30 lakh people, 150 telemedicine units across 17 countries, health insurance services, global projects consultancy, 15 academic institutions and a Medical Research Foundation with a focus on global clinical trials, epidemiological studies, stem-cell and genetic research. The plaintiff's Hospitals have provided medical care to more than 35 lakhs patients from over 120 countries. The plaintiff employs more than 70,000 persons with revenues in excess of Rs.5,178 crores in FY 2014-15.

5 The plaintiff adopted the unique trademark "Apollo" to be used as its trademark with respect to all its Hospitals and other medical undertakings. Prior to the plaintiff, no other person had adopted the said "Apollo" trademark in the field of pharma, healthcare and medical services and products. The plaintiff has registered "Apollo", "Apollo Pharmacy", "Apollo Hospital" and other associated marks. Till date, there has been no

objection nor any limitation placed on the plaintiff's registered trademarks. The trademarks are valid and subsisting in favour of the plaintiff as on date.

6 The plaintiff has registered the trademark “Apollo Pharmacy” under various classes of goods and services, including in NO. 1785330 in Class 3 for various goods No.1576790 in Class 5 for various kinds of pharmaceutical, medical, veterinary, sanitary, etc. types of products No.1836922 in Class 5 for various goods No.1718078 in Class 10 for various kinds of surgical, medical, dental, veterinary, etc. apparatus and instruments No.1785333 in Class 24 for various types of goods No.1718084 in Class 35 for retailing of pharmaceutical products No.1718086 in Class 41 for educational, training, etc. activities; and No.1576795 in Class 42 for medical services which includes dispensing pharmaceutical products and services;

7 The plaintiff has registered the trademark “Apollo” in No.1576799 in Class 42 with respect to all medical services, which includes dispensing of pharmaceutical products and services. The plaintiff obtained registration of the Trademark “Apollo Hospitals” under No. 1576796 in

Class 5 (pharmaceutical and medical products) and No.1576797 in Class 42 (medical services which includes pharmaceutical services). And the plaintiff also has other registered marks associated with the “Apollo” brand.

8 Under these circumstances, the plaintiff came to know about the use of the word 'Apollo' in the name and style of Sai Apollo Medicals at No.14-65C CTM Road, Madanapalli – 517325 by the defendant. Immediately after knowing the usage of the word Apollo, the plaintiff sent a legal notice to the defendant on 09.07.2015, which is marked as Ex.P19. However, the defendant has failed to sent any reply. Therefore, the plaintiff approached this Court and obtained interim injunction on 07.06.2016 and the said interim order has been extended from time to time and is in force till date.

9 The learned counsel appearing for the plaintiff further submitted that, by virtue of plaintiff's use and promotion of its trademark, its good works in the field of healthcare, medicine, recognitions and awards received by it and its promoters, the trademarks, "Appollo" and "Apollo Pharmacy", registered by the plaintiff have become World famous.

Therefore, the learned counsel submitted that since the defendant is continuously and on a day-today basis infringing the registered trademarks of the plaintiffs, and also passing off their services under “Sai Apollo Medicals, the plaintiff has already suffered damage to its reputation, name, good will and business, which cannot be compensated monetarily, and hence, prayed for decreeing the suit.

10 Heard the learned counsel appearing for the plaintiff. Insofar as the defendant is concerned, though the suit summons were served on them, none appeared on behalf of the sole defendant and the service in respect of the sole defendant was completed on 30.05.2016. Therefore, the defendant was set ex-parte on 18.06.2019. Thereafter, this matter was listed before the learned Additional Master II for recording the ex-parte evidence. One Mr.S.M.Mohan Kumar is examined as PW1 on behalf of the plaintiff and marked nineteen documents as Exs.P1 to P19.

11 This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by the PW1.

12 From a perusal of the documents, viz., Exs.P.2 to P.13, which were all the trademarks registration certificates issued in the name of the plaintiff under various classes of goods and services, for medical services which includes dispensing pharmaceutical products and services, it is clear that the plaintiff is the registered proprietor of the trademark 'Apollo' and "Apollo Pharmacy" and they are the sole and exclusive user of the word 'Apollo', in the field of healthcare and medical products and services since its inception in 1979. The word 'APPOLO' is descriptive in nature and by virtue of using the word 'APPOLO' by the plaintiff, in respect of its pharmacy business, and its branded establishments, such as Apollo Cancer Hospital, Apollo Clinics, Apollo White Dental Clinics, the plaintiff has obtained the distinctiveness of the word 'APPOLO'. Therefore, this Court is of the view that the plaintiff obtained exclusiveness to use the word 'APPOLO PHARMACY' in respect of the pharmacy business of the plaintiff and it is well known all over the World, and by merely adding prefix to the word Apollo, viz., Sai Apollo, ending with the word, Medicals, to be specific, Sai Apollo Medicals would make no difference in the minds of the public.

13 Further, this Court compared the signboard of the plaintiff, marked as Ex.P15 and the defendant's signboard, marked as Ex.P14. On a perusal of the documents, it is clear that the defendant is using the word Apollo, which is the registered trademark of the plaintiff. In view of the exclusive right to use the word, "APPOLO PHARMACY" by the plaintiff, the adoption of the mark, "Sai Apollo Mecicals' ", either directly or by using the structurally,visually, phonetically, or deceptively similar with respect to the same services, by the defendants would clearly amounts to infringement of registered trademark of the plaintiff's. Therefore, the plaintiff proved his claim beyond doubt. Hence, the plaintiff is entitled to the decree as prayed for in the suit.

14 Accordingly, the suit is decreed as prayed for, with a cost of Rs.50,000/- and a damage of Rs.1,00,000/-.

WEB COPY

02.07.2019

dua

KRISHNAN RAMASAMY, J.

dua



C.S.No. 221 of 2016

02.07.2019

WEB COPY