

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.370 of 2016

Shyam Enterprises Private Limited
1, Cathedral Road
Chennai – 600 -86
Rep by its Director
Mr.A.Ravikumar Reddy

.. Plaintiff

Vs.

A3R Amaravati
#601, 1st Main, C Block
ACES Layout
Kundanahill
Bangalore – 560 037

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 CPC, Sections 27, 28, 29, 134 & 135 of the Trademarks Act, 1999 seeking permanent injunction restraining the defendant, its directors/partners/proprietor as the case may be, successors-in-business, assigns, heirs, servants, agents, representatives and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/ trading style A3R AMARAVATI in respect of hotel and hospitality service or other allied and cognate service/goods amounting to infringement of the plaintiff's registered trademark AMARAVATHI or as being in some way connected with the plaintiff and/or in any manner whatsoever; a permanent injunction restraining the defendant, its directors/partners/proprietor as the case may be, successors-in-business, assigns, heirs, servants, agents, representatives and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/ trading style A3R AMARAVATI in respect of

hotel and hospitality service or other allied and cognate service/goods amounting to passing off their services/goods as and for the goods and services of the plaintiff or as being in some way connected with the plaintiff and/or in any manner whatsoever; the defendant be ordered to pay to the plaintiff, a sum of Rs.10,00,000/- as damages for committing infringement of trademarks and passing off its products as and for the plaintiff's products or services; the defendant be ordered to surrender to the plaintiff all name boards, invoices/bills, prints, sign board, display cards, visiting cards, menu cards, hoardings, letter head, stationery products, bags, leaflet, brochures, blocks, moulds, plates, screen prints, packing and advertising material and any other material in the defendant's possession, which bears the trademark/trade name AMARAVATHI; to pass a preliminary decree in favour of the plaintiff directing the defendant to render account of profits made by use of the identical trademark/trade name AMARAVATHI amounting to infringement of the plaintiff's registered trademarks and/or passing off and to pass a final decree 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 and for costs of the suit.

For Plaintiff : Ms.Sheetal Srikanth

For Defendants : No appearance

JUDGMENT

This suit was filed in the year 2006, prior to the constitution of Commercial Division. Suit has been placed before this Commercial Division on 02.07.2019 and jurisdiction of this Commercial Division was determined on that day. The suit was directed to be posted on 13.07.2019 finally for filing written statement.

2. The suit was again listed before this Court on 30.07.2019.

On that day, learned counsel appearing for defendant submitted he

sent a letter to the defendant seeking proper instructions, but the defendant, despite receipt of the said letter, has failed to provide any reply and hence, he is withdrawing the vakalat filed on behalf of the defendant. Therefore, this Court directed the Registry to list this matter on 07.08.2019 by printing the name of the defendant in the cause list. On 07.08.2019, when the matter was taken up, none appeared on behalf of the sole defendant. Hence, the sole defendant was set *ex parte* and suit was directed to be listed before learned Additional Master III for recording *ex parte* evidence.

3. Learned Additional Master III recorded the *ex parte* evidence and posted the suit before this Court for Final Disposal.

4. The instant suit has been filed for the following reliefs:

(a) a permanent injunction restraining the defendant, its directors/partners/proprietor as the case may be, successors-in-business, assigns, heirs, servants, agents, representatives and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/ trading style A3R AMARAVATI in respect of hotel and hospitality service or other allied and cognate service/goods

amounting to infringement of the plaintiff's registered trademark AMARAVATHI or as being in some way connected with the plaintiff and/or in any manner whatsoever; (b) a permanent injunction restraining the defendant, its directors/partners/proprietor as the case may be, successors-in-business, assigns, heirs, servants, agents, representatives and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/ trading style A3R AMARAVATI in respect of hotel and hospitality service or other allied and cognate service/goods amounting to passing off their services/goods as and for the goods and services of the plaintiff or as being in some way connected with the plaintiff and/or in any manner whatsoever;

(c) The defendant be ordered to pay to the plaintiff, a sum of Rs.10,00,000/- as damages for committing infringement of trademarks and passing off its products as and for the plaintiff's products or services;

(d) The defendant be ordered to surrender to the plaintiff all name boards, invoices/bills, prints, sign board, display cards, visiting cards, menu cards, hoardings, letter

head, stationery products, bags, leaflet, brochures, blocks, moulds, plates, screen prints, packing and advertising material and any other material in the defendant's possession, which bears the trademark/trade name AMARAVATHI;

(e) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the identical trademark/trade name AMARAVATHI amounting to infringement of the plaintiff's registered trademarks and/or passing off and to pass a final decree 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 costs of the suit; and

(g) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

5. Heard the learned counsel for plaintiff.

6. It is the case of the plaintiff that they are in the hospitality industry, running hotels and other catering industries by adopting the trademark "AMARAVATHI" since 1980 and the said trademark is

registered in their name. Ever since their establishment, they gained goodwill and reputation among in respect of its every business under the mark "AMARAVATHI" in the city.

7. In the plaint, the plaintiff has given financial year wise break up of annual turnover and promotional expenses for financial years preceding the suit/plaint. It is also stated by the plaintiff that by virtue of long, extensive and continuous use, the trademark "AMARAVATHI" has acquired reputation and goodwill amongst its customers.

8. While so, in the month of February, 2016, the plaintiff came to know that the defendant is using identical trademark/tradename for identical business i.e., running a restaurant with trademark "A3R AMARAVATI" at Bangalore amounting to infringement of exclusive rights vested with the plaintiff by virtue of its registration. The plaintiff states that the use of identical trademark/tradename AMARAVATI would confuse and deceive the clientèle of the plaintiff. The plaintiff also states that the interior and the overall atmosphere of the defendant's restaurant were comparatively of lower standard than that of the plaintiff.

9. The plaintiff issued a legal notice to the defendant, but no reply has been received. Hence the suit.

10. One Sambasiva Rao, whom this Court is informed is Chief Financial Advisor of the plaintiff company, deposed as PW1 and eight documents, namely Exs.P1 to P8 were marked on behalf of the plaintiff and the suit is now before this Court for final disposal.

11. PW1 spoken about the registration of the Trademark in the name of plaintiff and reputation of the hotel they gained all these years. It is also stated by PW1 that though the defendant is prefixing word "A3R", the mark "AMARAVATI" has been written more prominently thereby infringing the trademark of the plaintiff. To show that the plaintiff is the registered Trademark owner and the prior user of the mark "AMARAVATHI", Exs.P2 and P3 were marked. Ex.P8 is the photocopy of the advertisement given by the defendant, which clearly indicates that the defendant uses the mark of the plaintiff and Ex.P6 is the bill issued by the defendant's restaurant. The same shows that the defendant is also involved in the similar business.

12. The evidence of PW1 remains unchallenged and documents have not been refuted.

13. When the defendant is using the mark of the plaintiff for identical business, certainly it would amount to deception and would cause confusion among the customers of the plaintiff, which in turn will have serious impact on the plaintiff's business.

14. The plaintiff, being a prior user and has registration in its name, certainly entitled to preventive relief of injunction restraining and refraining the defendant from using the mark "AMARAVATI" besides injunct them from business of selling the goods. In view of the documentary evidence and the oral evidence adduced by the plaintiff, which remains unchallenged, the plaintiff is certainly entitled to permanent injunction as prayed for.

15. Learned counsel for plaintiff fairly submitted that the plaintiff would be satisfied if the suit is decreed in respect of prayers (a) and (b) alone.

16. Accordingly, the suit is decreed in respect of prayers (a) and (b) with costs. In respect of other prayers, the suit is dismissed.

16.09.2019

Speaking order: Yes/No
Index : Yes/No

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N.SATHISH KUMAR.J.,

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