

HIGH COURT OF JUDICATURE AT MADRAS**DATED : 11.06.2019****CORAM :****THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY****C.S.(Comm)No.269 of 2019
and
OA.Nos.403 to 405 of 2019**

Hindustan Colas Private Limited,
HINCOL House, B-601,
6th Floor, Marathon Futurex,
N M Joshi Marg, Lower Parel,
Mumbai 400 013

Rep by its Chief Operating Officer
Mr.Raju N Nair

... Plaintiff

..Vs..

Bharath Bituchem Industries,
No.242/12, Rohini Flats,
7th Avenue, Anna Nagar,
Chennai- 600 101

... Defendant

Suit filed under order IV RULE 1 of the O.S.Rules AND ORDER VII Rule 1 of C.P.C.Rules R/W Sections 27, 134 & 135 of TRADE MARKS ACT, 1999, SECTIONS 51, 54, 55 AND 62 of the COPYRIGHT ACT, 1957 & Proviso 1 to Section 7 of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 praying for a judgment and decree (a) Permanent injunction

restraining the defendant, themselves, their partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising bitumen emulsion using the BHARATH trademark which is almost identical/deceptively similar to the plaintiff's HINCOL trademark amounting to infringement of the plaintiff's registered trademark HINCOL, in any manner whatsoever;

(b) a permanent injunction restraining the defendant, themselves, their partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising bitumen emulsion using the BHARATH label which is almost identical/deceptively similar to the plaintiff's HINCOL label amounting to infringement of the plaintiff's copyright in the HINCOL label, in any manner whatsoever;

(c) a permanent injunction restraining the defendants by themselves, their directors, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in other manner dealing in bitumen emulsion or any other product bearing the deceptively similar mark/label BHARATH which is confusingly similar label, get-up, or packaging, which in any manner whatsoever would be considered to be similar to the plaintiff's label, get up or packaging;

(d) the defendant be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark and copyright and passing-off;

(e) the defendant be ordered to surrender to the plaintiff for destruction all goods advertisement materials, packing materials, cartons, wrappers, labels in respect of bitumen emulsion and other allied/cognate goods containing the offending BHARATH mark/label or any other mark/label similar to plaintiff's trademark/label HINCOL;

(f) A Preliminary decree be passed in favour of the plaintiff directing the defendant to render true and faithful account or profits earned by them by use of offending BHARATH label/trademark for bitumen emulsion or other allied and cognate goods 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 latter have rendered accounts;

(g) the entire costs of the suit

For Plaintiff	:	Mrs.Durga V. Bhatt
For Defendant	:	Mr.M.B.Elakkumaran

JUDGMENT

When the matter is taken up for hearing, the learned counsel appearing for the Defendant filed an affidavit dated 10.06.2019, stating that to settle the matter with the Plaintiff, for which the learned counsel appearing for the Plaintiff has stated no objection. She has

also made the following endorsement:

"The Plaintiff has no objection and the suit may be decreed in terms of the said affidavit."

The terms of the Affidavit reads as under:

"1.The defendants acknowledges the plaintiff to be the registered proprietor of trademark of HINCOL registered in class 19 under Registration Nos. 944421 and 3595445.

2. The defendant also acknowledges the plaintiff to the owner of copyright in the label title HINCOL as described in the plaint. The defendant undertakes not to infringe the said copyright in future.

3.The defendant undertakes not to use the trademark HINCOL or any other mark deceptively similar to the plaintiff's trademark HINCOL in relation to any goods falling in the class 19. However, the Defendant is entitled to make use of the trademark BHARATH.

4. The defendant shall stop using the yellow quadrilateral with black lettering used within in. The defendant has now started to use the logo (yellow stadium shape with black lettering used with in) which is annexed herein as Annexure A.

5. In terms of the aforesaid undertakings given by the defendant, the plaintiff forgoes its claim for rendition of accounts of profit and costs.

6. The above undertaking have been given by Mr.R.Vijayaraghavan, Sales Manager of the defendant, authorized by power of attorney dated 06.10.2018, given by Mr.S.Pazhani, Partner of the defendant firm and shall be binding on all his partners, legal heirs and assigns."

2. The learned counsel appearing on either side has submitted that the suit may be decreed in terms of the aforesaid affidavit.

3. Recording the said Affidavit dated 10.06.2019, this suit is decreed in terms of the Affidavit. The said Affidavit shall form part of the decree. No costs. Consequently, connected Applications stands closed.

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13.06.2016

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Index:Yes/No

Internet:Yes/No

KRISHNAN RAMASAMY, J

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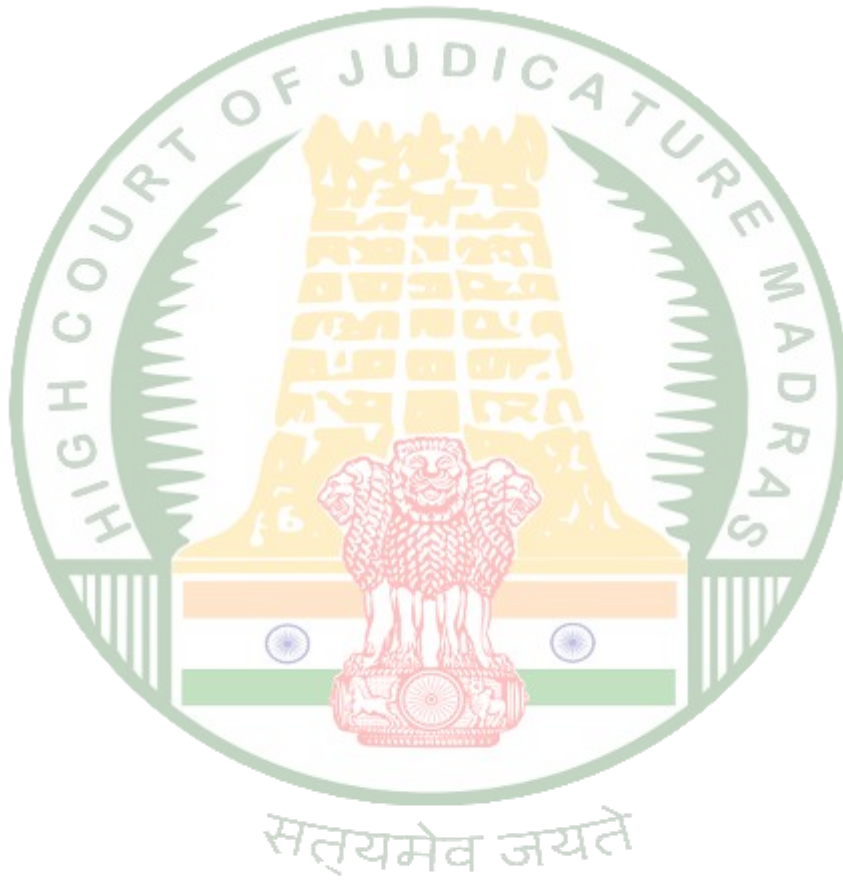
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