

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.6 of 2016
and
O.A.Nos.20 & 21 of 2016

M/s.Srushti Hospital Pvt.Ltd.,
Represented herein by its Director,
M.S.Preshanthan.

... Plaintiff

Vs.

1.Srushti Test Tube Baby Centre,
Rd Number 4, KPHB Phase I,
KPHB Colony, Kukatpally,
Hyderabad, Telangana – 500 072.

2.Srushti Test Tube Baby Centre,
Opp. Keys Girls High School,
Door No.10-3-182, St. Johns Road,
Secunderabad, Hyderabad,
Telangana – 500 003.

3.Srushti Test Tube Baby Centre,
14-37-13, Bhawani Gardens,
Gokule Road, Maharanipecta,
Visakhapatnam,
Andhra Pradesh – 530 002.

4.Srushti Test Tube Baby Centre,
Venkataratnam Street,
Suryaraopet, Vijayawada,
Andhar Pradesh – 520 002.

5.Srushti Test Tube Baby Centre,
39, HIG, Jaydev Vihar,
Near Pearl Heights,
Bhubaneshwar – 751 013.

6. Dr.Namrata, M.D
Chief Fertility Consultant,
Srushti Test Tube Baby Centre,
Rd Number 4, KPHB Phase I,
KPHB Colony, Kukatpally,
Hyderabad, Telangana – 500 072.

7.Dr.Phaneendhra Nath Reddy, M.S
Director and Operational Head,
Srushti Test Tube Baby Centre,
Rd Number 4, KPHB Phase I,
KPHB Colony, Kukatpally,
Hyderabad, Telangana – 500 072.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) To grant permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "SRUSHTI TEST TUBE BABY CENTRE" or any other name/mark deceptively similar to plaintiff's mark "SRUSHTI HOSPITAL PVT. LTD., MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY" in any manner whatsoever, including in relation to its medical services or any other business, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URS's, e-mail addresses,

screen names, user names, website contents (whether or not visible), staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "SRUSHTI HOSPITAL PVT. LTD., MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY" or anything similar to plaintiff's mark amounting to infringement of plaintiff's trademark "SRUSHTI HOSPITAL PVT. LTD., MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY", under Certificate No.1115355 in class 44 dated 02.09.2013.

(b) To grant permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "SRUSHTI TEST TUBE BABY CENTRE" or any other name/mark deceptively similar to plaintiff's mark "SRUSHTI HOSPITAL PVT. LTD MATERIAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY" in any manner whatsoever, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URL's, e-mail addresses, screen names, user names, website contents (whether or not visible), staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "SRUSHTI HOSPITAL PVT. LTD MATERNAL

AND CHILD HEALTH, FERTILITY & MULTISPECIALITY" or anything similar to plaintiff's mark, "SRUSHTI HOSPITAL PVT. LTD MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY", that amounts to passing off the defendant's business or services as those of plaintiff.

(c) To grant damages for a sum of Rs.10,00,000/- in favour of the plaintiff and against the defendants and such other damages as may be quantified by appropriate evaluation of the defendants books of accounts during the course present proceedings;

(d) To grant order of delivery up of any brochures/printed material and/or any material which contributes ultimately to the infringement of plaintiff's trademark;

(e) To direct the defendants for rendition of accounts;

(f) Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

For Plaintiff : Mr.K.V.Karthik Subramanian
For Defendants : Set ex-parte
vide order dated 17.07.2019

J U D G M E N T

The suit has been filed by the plaintiff for the relief of permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. Learned counsel for the plaintiff has submitted that the plaintiff is a Company incorporated on 19.07.1976, under the name and style of M/s.Srushti Hospital Pvt. Ltd. The plaintiff is one of the leading Multi Speciality Hospitals in India, whose primary specialization is in the area of fertility therapy, maternity and child care. The said Company was founded by Dr.S.Samundi Sankari having nearly 35 years of professional experience and reputation as one of the most reputed medical experts in the field of gynecology and fertility. Dr.S.Samundi Sankari has been in the field of IVF for over 20 years and has headed infertility and ultrasonography clinic in the Government KG Hospital and had also been the Professor of Microsurgery & Ob-Gyn. Dr.S.Samundi Sankari and was inducted as Director in the year 2003 along with Dr.Priya, Dr.Divya and Preshanthan as its Director.

3. The plaintiff had been invited by several federations, societies and Government for their promotion and excellence in the field of fertility and reproductive medicine. The plaintiff is part of several Government projects and camps wherein free medical checkup have been provided to general public. The plaintiff is a ISO 9001:2008 company in providing health care services. The plaintiff services to the field of fertility and reproductive medicine is recognised by the American Society for Reproductive medicine, Florida Chapter Association of Tamilnadu Medical Graduates USA and she was conferred with Mayan Award 2014. The plaintiff had recently been featured as the best IVF & fertility hospital in India by IVF India Magazine (a magazine for fertility medicine in India.)

4. The plaintiff Company since its inception in the year 1976 has been continuously and consistently using the Trademark "SRUSHTI HOSPITAL PVT. LTD", and with its tag line "MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY" hereinafter referred to as "SRUSTHI HOSPITAL PVT. LTD". The mark "SRUSHTI HOSPITAL PVT. LTD", have been used by the plaintiff on their business cards, letter heads, invoices, advertisements, promotional material, inter alia, including catalogues. Hence, the public

associate the said trademark and the service under it to be emanating from the business of the plaintiff alone.

5. Subsequently, after the admission of the suit, the suit summons was served on the defendants. In spite of the service of the suit summons, the defendants failed to appear before this Court. Therefore, the defendants were set ex-parte vide order dated 17.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one Mr.M.Karthik, was examined as P.W.1 and Exs.P1 to P35 were marked.

6. It has already been set out supra that as many as 35 exhibits, namely Exs.P1 to P35 have been marked and the details of the 35 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The original Board Resolution dated 3 rd August 2019.
2	P2	The photocopy of certificate of Incorporation issued by Registrar of Companies, Tamilnadu dated 28.07.1996.
3	P3	The photocopy of Medical Registration certificate issued by the Tamilnadu Medical Council, Madras dated 17.06.1972. (compared with original, verified and

S.No.	Exhibits	Description of Documents
		returned)
4	P4	The photocopy of Additional qualification registration certificate issued by the Tamilnadu Medical counsel, Madras dated 17.06.1972. (compared with original, verified and returned)
5	P5	The photocopy of Experience certificate issued by department of obstetrics and Gynaecology national university of Singapore dated 14.04.1985.
6	P6	The photocopy of merit certificate under post partum programme issued by Government Kasturba Gandhi Hospital for women and children, Madras - 600 005, dated 10.09.1986.
7	P7	The photocopy of certificate for paper presentation in 6 th National congress of perinatology, Hyderabad dated 20.02.1987.
8	P8	The photocopy of clinical course certificate issued by department of obstetrics and gynecology and MICHAELIS - Midwifery School, University of Kiel, West Germany, dated 03.01.1989.
9	P9	The photocopy of experience certificate issued by Baylor College of Medicine dated 12.07.1989.
10	P10	The photocopy of certificate of Diploma issued in kiel, dated 02.07.1990.
11	P11	The photocopy of the Distinguished physician award issued by Florida chapter association of Tamilnadu Medical Graduates USA dated 04.08.2001.
12	P12	The photocopy of certificate issued by American society of reproductive medicine dated 07.05.2011.
13	P13	The photocopy of Membership certificate issued by the American Society for Reproductive Medicine dated 07.01.2012.
14	P14	The photocopy of certificate issued by Indian college of obstetricians and gynecologists dated 19.01.2013.
15	P15	The photocopy of certificate of appointment issued to the plaintiff for honorary professor

S.No.	Exhibits	Description of Documents
		of BGI for consultation, exchange of academic activities and clinical visits dated 12.04.2013.
16	P16	The photocopy of certificate of appreciation issued by corporation of Chennai, dated 05.12.2013.
17	P17	The photocopy of "Magavai Nokki Oru Maruthuva Payanam" book written by Dr.Samundi Sankari in the year 1997.
18	P18	The photocopy of plaintiff's Environmental Protection Plan published in newspaper dated 17.09.2005.
19	P19	The photocopy of certificate of registration issued by orion Registrar Ind..USA dated 28.10.2009.
20	P20	The plaintiff's Article published in Tamil Magazine "Ungal Vanigam" dated July, 2011.
21	P21	The photocopy of Top rated IVF Centre's 2015 Special issues 2015.
22	P22	The photocopy of Dr.Samundi Sankari's Article published in Tamil Magaine "Valasi Times".
23	P23	The photocopy of Dr.Samundi Sankari's Article published in Tamil Magazine "Malai Malar".
24	P24	The photocopy of certificate of registration of Trademark under Section 23(2), Rule 62(1) dated 02.09.2013.
25	P25	The photocopy of notice sent by the plaintiff to defendant dated 19.12.2013.
26	P26	The photocopy of notice sent by the plaintiff to defendant dated 12.03.2014.
27	P27	The photocopy of Article regarding "Test Tube Baby Centre aborts Femal Foetus" published in the times of India, dated 01.05.2013.
28	P28	The printed copy of Article regarding "Police on the Lookout for IVF Specialist" published in "The Hindu" dated 02.05.2013.
29	P29	The printout copy of Srushti Baby Centre case published in "The Hindi" dated 07.05.2013.

S.No.	Exhibits	Description of Documents
30	P30	The printout copy of Article regarding "Raid on Test Tube Baby Centre in Odisha Capital" published in Odisha Sun Times Bureau dated 20.03.2015.
31	P31	The printout copy of Article regarding "Srushti Test Tube Baby Centre Sealed" published in Odisha News dated 20.03.2015.
32	P32	The printout copy of Article regarding "IVF centre's patient dies in Hyderabad" published in Decan Chronicle dated 29.08.2015.
33	P33	The photocopy of Form TM-1 the Trademark Act, 1999 filed by the 1 st defendant represented by M/s.P.Namrata, dated 18.01.2010.
34	P34	The printout copy of application No.1932796 for registration of a Trademark in Clause 44 in the Name (s) of M/s.P.Namrata dated 04.11.2013.
35	P35	The printout of Srushti Test Tube Baby Centre's Trademark Status dated 18.11.2015. (For the documents Exs.P28, 29, 30, 31, 32, 34 and 35 certificate under Section 65 (B) of Indian Evidence Act produced.)

7. Heard the learned counsel for the plaintiff, gone through the averments in the plaint, the proof affidavit and also perused the Exs.P.1 to P.35.

8. On perusal of Exs.P35 and P24, this Court finds that the plaintiff registered its trademark "SRUSHTI HOSPITAL PVT. LTD., MATERNAL AND CHILD HEALTH, FERTILITY & MULTISPECIALITY", and comparison of the plaintiff's trademark with the defendants'

trademark "Srushti Test Tube Baby Centre's", appears that the defendant is trying to provide service as if, the defendants' hospital is one and the same of the plaintiff. The plaintiff's trademark "SRUSHTI HOSPITAL PVT. LTD.," is similar to the defendants' mark. So in view of the above, this Court is of the view that the defendants have been infringing the registered trademark of the plaintiff "SRUSHTI HOSPITAL PVT. LTD.," which clearly amounts to infringement of the trademark, as stated in Section 29 of the Trademarks Act. Therefore, the plaintiff is entitled to the decree as prayed for.

9. Learned counsel for plaintiff requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendants in the light of conduct of the defendants which has been referred to supra. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the considered view of this Commercial Division will qualify as a vexatious defence (within the meaning of

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Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendants' approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.3,00,000/- (Rupees Three lakhs only) on the defendants.

10. Plaintiff will obviously be entitled to costs as the plaintiff has incurred substantial expenditure in carrying this suit to its logical end.

11. Suit is decreed as prayed with costs and compensatory costs as set out supra. Consequently, connected original applications are closed.

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09.08.2019

AT

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