

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2019

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The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.(Comm.Div.)No.294 of 2019

D.Sunil Kumar Reddy, Proprietor of
Asian Cement & Mineral Corporation,
88 AC Block, 2nd Street,
Anna Nagar, Chennai 600 040.Plaintiff

Versus

Lodhi Calcium Products P. Ltd.,
Sy.No.316, Ungaranigundla (V)
Dhone (M),
Kurnool District 518 222
Andhra Pradesh.Defendant

This Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code and order IV Rule 1 O.S.Rules r/w Sections 27, 134 and 135 of the Trade Mark Act 1999 r/w Section 2(1)(C) XVII r/w 1st Proviso of Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, to grant.

(a) Permanent injunction restraining the defendant, their men, agents, executors, servants, assigns, distributors, dealers, or any one claiming through or under them from in any way using, advertising, offering for sale, offering service, hosting web site etc thereby passing off or enabling others to pass off or cause or assist others to pass off the defendant's goods / services as and for the plaintiffs' goods / services by use of the trade mark / corporate name "ASIAN CEMENT" or any other mark similar to that of the plaintiff's trade mark / corporate name in any manner whatsoever.

(b) direct the respondent to Surrender and destruction upon oath of all name boards, sign boards, bill books, visiting cards, pamphlets, brochures any advertising materials, products, packaging materials, cartons, labels, blocks, dyes, plates, moulds and other materials bearing the impugned mark / corporate name 'Asian Cement' or any other mark identical or deceptively similar to that of the plaintiff's corporate name 'Asia Cement' which is in possession, power and custody of the defendant;

(C) direct the defendant to render true and faithful accounts of projects earned by the defendant by establishing unauthorised companies under the name ASIAN CEMENT and a final decree be passed in favour of the plaintiffs for the amount of projects, thus found to have been made by

the defendant after the latter have rendered accounts;

(d) The defendant be ordered to pay a sum of Rs.1,00,000/- as liquidated damages for committing acts of passing off;

(e) For costs of the suit.

For Plaintiff : Mrs.Dakshayani Reddy

For Defendant : Set ex parte
vide order dated 12.07.2019

JUDGMENT

The plaintiff is a Proprietor of the Asian Cement Concrete and Mineral Corporation. The plaintiff is engaged in the business of cement for the past 23 years. The plaintiff's Concern is registered with Bureau of Indian Standards under the brand name 'Asian Cement, Apollo Cement and Essar Cement' under I.S No.1489 and I.S.No.269, vide registration dated 12.11.1996.

2. Mrs.Dakshayani Reddy, learned counsel for plaintiff submitted that they are known for manufacture of quality cement and

has developed a good will amongst the trade and public for the past 23 years. The plaintiff states that they have got dealers throughout the State of Tamil Nadu, Karnataka and Andhra Pradesh for execution of large scale infrastructure projects.

2.1 The learned counsel appearing for the plaintiff further submitted the plaintiff also mentioned the turnover details from the year 2011 to 2019, in the plaint, and for the year ending 31st March 2017, the plaintiff achieved Rs.38,45,49,058/- turnover. For the year under 31st March 2018, the plaintiff achieved Rs.38,19,67,440/- turnover and the year under 31st March 2019, the plaintiff achieved Rs.32,51,92,038/-.

2.2 The learned counsel would further submit that the brand name 'Asian Cement' has attained permanent reputation and goodwill amongst the public for the quality of cement manufactured. The brand name 'Asian' is unique, distinct and refers solely to the plaintiff's product. The plaintiff has been using the mark 'Asian Cement' since 1996 exclusively and consistently as an integral part of its trade. The

mark 'Asian' has been put to long, exclusive and continuous use since 1996 and in view of the mark 'Asian' has attained secondary meaning and associated only with the plaintiff and none else.

2.3 The learned counsel submitted that the plaintiff has filed the Trademark application before the Trademark registry on 20.04.2018 and copy of the same has been marked as Ex.P3. She has also marked the copy of the licence issued by Bureau of Indian Standards to the plaintiff dated 12.11.1996 as Ex.P1; the copy of the GST certificate of registration of the plaintiff has been marked as Ex.P2; the copy of the Renewal Licence issued by the Bureau of Indian Standards dated 01.01.2019 to the plaintiff was marked as Ex.P5.

2.4 The learned counsel further contended that under these circumstances, the defendant herein came to know about the reputation enjoyed by the plaintiff under the name 'Asian' and with the malafide intention of exploiting the good will earned by the plaintiff started

manufacturing cement under the very same brand name 'Asian Cement' and started distributing the same within the State of Tamil Nadu, Karnataka and Andhra Pradesh, where, the plaintiff has their distributors and retailers. Further, the learned counsel contended that the defendant not only affected the reputation of the plaintiff by manufacturing and marketing sub standard cement under the very same brand name 'Asian' , but has also given rise to confusion in the minds of the customers whereby, it has affected the market of the plaintiff, which it has established over the past 23 years.

2.5 The plaintiff's counsel submitted that after knowing from the plaintiff's stockists about the cement being manufactured and marketed by the defendant in the brand name 'Asian Cement', the plaintiff issued a legal notice dated 11.03.2019 calling upon the defendant to forthwith cease and desist from using the name 'Asian Cement' and the said notice has been marked as Ex.P5. She further submitted that even after the receipt of the notice dated 11.03.2019, the defendant continued to use the name of the 'Asian Cement' and

continued to use the same packing materials, colour scheme which has been used by the plaintiff. Therefore, the plaintiff, having no other option, has filed the present suit, for the aforesaid relief.

3. Heard the learned counsel for plaintiff and perused the material available on record. As far as defendant is concerned, it is seen from the records that the suit summon was served on the sole defendant on 28.06.2019. However, the defendant had not entered appearance either through counsel or by person. Therefore, the sole defendant was set *ex parte* by this Court vide order dated 12.07.2019, and the matter was directed to be listed before the learned Additional Master – II, for recording *ex parte* evidence. On the side of the plaintiff, the plaintiff, name D.Sunil Kumar Reddy, the Proprietor of the plaintiff-Firm examined himself as P.W.1, and 7 documents were marked viz., Exs.P1 to P7.

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

On a perusal of Ex.P1/Licence issued by the Bureau of Indian Standards, it is seen that the plaintiff started his business and carrying on under the name and style of 'Asian Cement' since 1996. Though they are manufacturing the cement in the trade name 'Asian Cement' they have not made any application. However, on the perusal of the para No.5 of the proof affidavit, it appears that the plaintiff achieved the turnover for the year 2017, about Rs.38,45,84,311/-; For the year end 31st March 2018, the plaintiff achieved Rs.38,19,67,440/- turnover; and for the year end 31st March 2019, the plaintiff achieved Rs.32,51,92,038/-, which *per se* shows they have achieved a turnover and has also attained permanent reputation and goodwill amongst the public and they have also appointed dealers through out Tamil Nadu, Karnataka and Andra Pradesh. Hence, the brand name is popular among the public and attained reputation and goodwill, which plaintiff achieved over the period of 23 years. The defendant with the malafie intention, imitated the trade name and started passing over the goods in the name and style of 'Asian Cement'.

5 In fact, this Court compared the photographs, depicting the plaintiff's cement bag and the defendant's cement bag, marked as Ex.P.6 and P.7 and on the comparison of Exs.P6 and P7, it is clearly seen that the defendant is copying trade name of the plaintiff's. Further, on perusal of Ex.P.1, it is seen that licence was issued by the Bureau of Indian Standards to the plaintiff's the brand name 'Asian Cement, Apollo Cement and Essar Cement' under I.S No.1489 and I.S.No.269, vide registration dated 12.11.1996, and the same has been renewed, as per Ex.P.4, dated 01.01.2019, which is valid upto 31.01.2020.

6. Thus, it is clear that the plaintiff is the registered owner of the trademark "Asian Cement", and they have the exclusive right to use the trade mark in respect of their product. **In view of the exclusive right to use the word, "Asian Cement" by the plaintiff, the adoption of the mark, "Asian Cement", by the defendant is clearly amounts to infringement of trademark of the plaintiff.** Hence, the plaintiff is entitled to the relief as prayed in the suit.

s7. In the result, this suit is decreed. No costs.

08.08.2019

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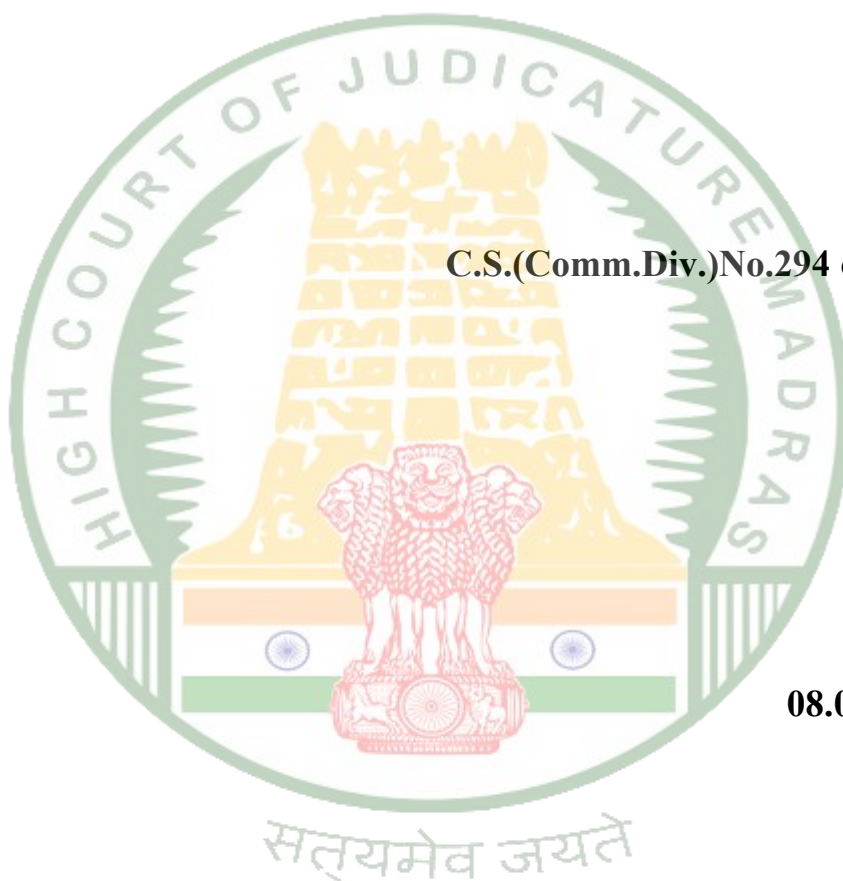
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KRISHNAN RAMASAMY, J.,
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C.S.(Comm.Div.)No.294 of 2019

08.08.2019

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