

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A. Nos.24 to 26 of 2018
AND
CMP Nos.16255 TO 16257 OF 2018

VP Petro6 Engineers and Consultants Pvt Ltd.,
3rd Floor, Module 34,
ELNET Software City,
Rajiv Gandhi Salai (OMR),
Taramani,
Chennai 600 113,
Represented by its Director,
Mr.A.G.Ravindran.

..Appellant
in all appeals

Vs

- 1.A.Duraisamy
Trading as PETRO 6 E&C,
H4, block-III,
Ramaniyam Shivani Apts.,
No.40, East Coast Road,
Thiruvanniyur,
Chennai 600 041.
- 2.A.Duraisamy,
Block 4, C4, Appasamy Springs Apartment,
AIBEA Nagar, 1st Main Road,
Thiruvanniyur,
Chennai 600 041.
- 3.Vijayalakshmi Duraisamy
- 4.Petro6 Engineering & Construction Pvt Ltd.,
TVH Agnitio Park, 2nd Floor,
No.141, Rajiv Gandhi Salai,
Kandanchavady,
Chennai 600 096,
represented by its Director,
Arappan Duraisamy.

5.Petro6 Engineering & Construction (Singapore) Pte Ltd.,
06-31 Unity Centre,
51, Bukit Batok Crescent,
Singapore 658 007.

6.Petro6 Engineering & Construction (Myanmar) Pvt Ltd.,
No-405, Building No.25,
Yazana Business Center, Dhamazedi Road,
Sanchaung Township, Yangon,
Myanmar,
rep. by its Managing Director
Arappan Duraisamy.

..Respondents
in all appeals

COMMON PRAYER: Appeals are filed under Order XXXVI Rule 1 of Original Side Rules to allow the present Original Side Appeals by setting aside the common order and decree dated 04.12.2017 passed in O.A.Nos.557, 558 and 559 of 2017 in C.S.No.410 of 2017.

For Appellant : Mr.M.S.Bharath
in all appeals

For Respondents : Mr.Satish Parasaran
in all appeals Senior Counsel
for Mr.Arun C.Mohan

COMMON JUDGMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

These Original Side Appeals have been filed by VP Petro6 Engineers and Consultation Private Limited, aggrieved by the common order dated 04th December 2017 passed by the learned Single Judge of this Court in original jurisdiction in Civil Suit No.410 of 2017 filed by the Plaintiff/Appellant seeking injunction against the Respondents Mr.A.Duraisamy and others for infringing its trademark Petro6.

2.By the order impugned before us, the learned Single Judge has rejected the application for temporary injunction in the said suit with the following observations:

"33.At the stage of interim protection, the considerations are the existence of a prima facie case, irreparable injury and the balance of convenience. I do not believe that the existence of a statutory registration can be the sole parameter to determine or establish the existence of a prima facie case, particularly in the absence of any material brought in by the applicant to establish dishonest use by the respondent. One has also to take in account the

conduct of the applicant. Both parties have clearly agreed to co-exist as can be seen from the minutes of the meetings noticed and extracted above. The applicant has also obviously permitted the respondent to engage in business under its existing name notwithstanding the similarity and possible confusion being brought to its notice as early as in 2011. The rights of the parties before me are closely inter-linked and are to be determined based on evidence let in by both parties which can only be considered only in the course of trial.

34. Admittedly, the parties are engaged in the rendition of services and consultancy relating to the same sector. There will consequently, be an overlap as regards the data base of clients as well. The resultant confusion, if at all, is something that both the applicant as well as the respondent have been living with since 2011, being fully aware of the situation. I am not inclined to change the status quo at this stage. It was open to the applicant to have explained why the objection raised now was not raised at the earliest point in time, also bringing to the knowledge of the court the early correspondence between the parties that lead one to the prima facie conclusion of knowledge on the part of the applicant. This was however not done and as such I can thus only infer that the applicant, being fully aware of the usage of the similar name and logo by the respondent, not only did not have any serious objection, but permitted the same. The balance of convenience requires that the status quo as of today be maintained and the suit be referred to speedy and expeditious trial to determine the rights of parties at the earliest. The applications are dismissed and the injunction granted vacated. In so far as the determination of rights between the parties is imminent, pending trial, the respondents shall maintain accounts that shall be filed before the Court every quarter.

35. The respondents have also objected to the jurisdiction assumed by this Court vis-a-vis R4, located at Kandanchavadi, R5 located at Singapore and R6 located at Myanmar respectively stating that applications for leave to sue ought to have been filed and leave obtained. R4 is located at Kandanchavadi, falling outside the jurisdiction of this Court. The applicant relies upon the provision of Section 134(2) of the Trade Mark Act and Section 62(2) of the Copyright Act in view of the position that the plaintiff resides within the jurisdiction of this Court. However, while this may apply in the context of

the suit for infringement, it would not apply to the challenge for passing off. No application has been filed for combining the cause of action and as such the applicant ought to have sought and obtained the leave of this Court as regards R4, R5 and R6 in the context of the prayer for passing off.

36. The applications are disposed of in the above terms."

3. Learned counsel for the Plaintiff/Appellant, Mr.M.S.Bharath has submitted that even though the learned Single Judge noticed that the Defendants-Respondents are carrying on the business of similar nature and there is a likelihood of confusion or deception arising by use of the same trademark Petro6, the learned Single Judge, by the order impugned before us, had vacated the earlier exparte interim order and therefore, the Appellant/Plaintiff feeling aggrieved filed these appeals before us. Learned counsel sought to take us through the documents like e-mails and special Resolutions passed by the Company in the year 2010, whereas the present suit was filed by the Appellant only in the year 2017, which was registered as C.S.No.40 of 2017.

4. On the other hand, the learned Senior counsel for the Respondents-Defendants, Mr.Satish Parasaran, urged before us that the Defendants-Respondents were the Board of Directors on the Plaintiff/Appellant Company and some of them like the Respondent No.3, Vijayalakshmi Duraisamy, Wife of the first Respondent A.Duraisamy still continues to be the Board of Director of the Plaintiff Company. He has further submitted that under the Resolution passed on 25th and 26th January 2010 in the third Board Meeting, the Defendants were allowed by Resolution 2.2 to carry on similar business. Such Resolution is quoted below for ready reference:

"2.2 RESOLVED THAT in view of the above resolution 2.1 the members present in the meeting has agreed that the above sale conditions shall not stop or restrict in any manner the present working directors Mr.A.G.Ravindran, and Mr.A.Duraisamy, share holder directors Mrs.Nalini Rivindiran and Mrs.Vijayalakshmi Duraisamy to do same or similar business of their own either separately or jointly with the existing clients or any new clients worldwide."

He therefore submitted that there is no infringement of the trademark in the present case. He further submitted that the trial of the suit is yet to commence, though the issues have been framed by the trial Court.

5. Having heard the learned counsels for the parties, we are satisfied that the reasons assigned by the learned Single Judge for refusing the grant of temporary injunction and vacating the ad interim earlier order is based on sound and cogent reasons and does not call for any interference by this Court in the present Appeals.

6. The evidence of the parties cannot be analysed and weighed at this stage and the prima facie satisfaction of the learned Single Judge, the trial Court, cannot be treated as findings of facts and conclusions drawn by the learned Single Judge and therefore, we find that these premises are sufficient to refuse the temporary injunction in the present case.

7. We are not inclined to interfere with the said order in any manner. The present Appeals filed by the Plaintiff/Appellant are devoid of merit and the same are liable to be dismissed. Accordingly, all the Original Side Appeals filed by the Plaintiff/Appellant are dismissed. No costs. The connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Sub Assistant Registrar
Original Side
High Court, Madras 104.

O.S.A. Nos. 24 to 26 of 2018

VD(CO)
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