

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2018

DELIVERED ON : 07.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. No.846 of 2018 and
CMP.No.6995 of 2018

Sabu Trade Private Limited,
No.114, Narasimman Road,
Shevapet,
Salem-636 002,
Tamil Nadu,
rep. by its Director Gopal Sabu ... Appellant/Plaintiff

vs

1.Sh.Rajkumar Sabu

2.AVMH Corporation,
111/36. Krishnanpudur,
Ammamet,
Salem - 636 003,
Tamil Nadu

.. Respondents/Defendants

Civil Miscellaneous Appeal filed under Order 43, Rule 1 of the Code of Civil Procedure, 1909 against the order dated 02.02.2018 passed in I.A.No.156 of 2016 in O.S.No.148 of 2016 on the file of the Principal District Judge, Salem.

For Appellant : M/s.K.Rajasekaran
S.Balachandran

For Respondents : Mr.Ramesh Ganapathy
: for M/s.Mission Legal
for 1st respondent

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant against the order dated 02.02.2018 passed in I.A.No.156 of 2016 in O.S.No.148 of 2016 on the file of the learned Principal District Court, Salem.

2. The appellant is the plaintiff and the respondents are defendants in the suit. The appellant and the first respondent are brothers. The second respondent is said to be the manufacturer of goods under the trademark SACHA MOTI at Salem for sale of the same to the first respondent.

3. The appellant filed the suit being O.S.No.148 of 2016 for declaration to declare that the appellant is the proprietor of the trademark/label SACHA MOTI and is entitled to use and sale the goods Sabudana and other food products for human consumption under the said trademark and for permanent injunction restraining the respondents, their servants, agents, dealers and distributors from manufacturing, packing, marketing, advertising and selling the goods Sabudana and other food products for human consumption and other allied and cognate goods under the impugned trademark/label SACHA MOTI. Along with the suit, the appellant had filed I.A.No.156 of 2016 for temporary injunction.

4. Brief averments set out in the affidavit filed in support of I.A.No.156 of 2016 are as follows:

Gopal Sabu is the Managing Director of the appellant company. Originally, the company was incorporated as Sabu Export Salem Private Limited and subsequently, its name was changed as Sabu Trade Private Limited. The Managing Director of the appellant company viz., Gopal Sabu, his wife Kaushalyadebi Sabu, the 1st respondent and one Shivnarayan Sabu are the Directors of the appellant company. However, on 14.8.2015, the 1st respondent resigned from the Board of Directors of the appellant's company.

4.1. The appellant company is engaged in the business of manufacturing, processing, marketing and trading of Sabudana and other edible produce for human consumption and claimed to have conceived and adopted one of the trademarks "SACHA MOTI" in the year 1984 through its parent/family concern, namely, M/s.Sabu Traders, in which Kaushalya Debi Sabu was the sole proprietor and using the same in respect of the said goods without any objection or interference from any corner and the appellant claimed to be the originator, first owner and proprietor of trademark "SACHA MOTI" by virtue of adoption of the same earlier by Kaushalya Debi Sabu and subsequently by the appellant.

4.2. Due to high quality of goods/products manufactured and marketed by the appellant under the trademark/label/device SACHA MOTI, the said trademark has become distinctive with the goods and business of the appellant. The consumers and the members of the trade associate and connect the goods/products under the trademark/ label SACHA MOTI exclusively with the appellant and none else. Thus, the trademark SACHA MOTI has become

intellectual property of the appellant and as such the appellant was having the exclusive proprietary rights in the above said trademark to use the same either as trademark or otherwise to the exclusion of all others, including the respondents.

4.3. The first respondent was appointed as dealer in Madhya Pradesh to take care of the business of the appellant. After some time, when the appellant intended to register the trademark, he applied for the trademark on 23.2.2010. The Government sent a communication from which the appellant came to know that the first respondent obtained a trademark SACHA MOTI stealthily in the year 1997. The first respondent obtained the registration of the trademark concealing the prior facts during the time when he was the Director of the appellant company and first respondent acted against the interest of the company in violation of provisions of the Companies Act. As a prior long user of the trademark, the appellant claims right over the trademark SACHA MOTI and to prevent the first respondent from passing off his goods as the goods of the appellant.

5. Denying the averments set out in the affidavit, the first respondent filed counter as under:

The trademark SACHA MOTI was originally used by the mother of the first respondent Chandrakanta Sabu from the year 1982 and she had also run the business having the trademark SACHA MOTI and CHAKRA. When the business was developed, they came to understand that Sabus were available in Salem District and therefore, their elder brother Gopal Sabu was directed to visit Salem to procure the quality Sabu and sent to Madhya Pradesh for business purpose. As a family member, they were allowed to sell the product under the name of SACHA MOTI. Later his mother conveyed the trademark SACHA MOTI to the first respondent and CHAKRA trademark to the eldest son Gopal Sabu.

5.1. It is stated that in the year 1993, Gopal Sabu was allowed to pack Sago in plastic bags from Salem and it was agreed between the 1st respondent and Gopal Sabu that he could apply for Agmark for Sago sold under the mark SACHA MOTI and CHAKRA in the name of M/s.Sabu Traders. In the month of May, 2015, the first respondent resigned from the post of Director from Sabu Trade Private Limited.

5.2. The case of the first respondent is that both the trademarks CHAKRA and SACHA MOTI were originally adopted by Chandrakanta Sabu, the mother of the 1st respondent and Gopal Sabu in the year 1982 and the right and title of the trademark SACHA MOTI was transferred to the first respondent in the year 1997 and thereafter, the first respondent applied to the Registrar of Trademark and obtained registration for the trademark SACHA MOTI. Likewise, his elder brother Gopal Sabu

applied for trademark in respect of the trade CHAKRA, but due to some technical problem it was not registered. According to the respondent, without locus standi, the appellant has filed the suit and the petition seeking temporary injunction and therefore, prayed for dismissal of the petition.

6. Before the trial Court, no oral evidence was adduced on either side. On the side of the appellant, Exs.P1 to P123 were marked and on the side of the first respondent, Exs.R1 to R9 were marked.

7. Upon consideration of the rival submissions, the trial Court held that the first respondent has already obtained an order of interim injunction before the Delhi High Court restraining the appellant from using the registered trademark of SACHA MOTI and the existence of interim order of the Delhi High Court stands as a hurdle to pass interim order in favour of the appellant herein. Holding that the appellant has not shown prima facie case, the trial Court dismissed I.A.No.156 of 2016. Challenging the same, the appellant has preferred the present Civil Miscellaneous Appeal.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

9. The learned counsel for the appellant submitted that the trial Court ought to have appreciated the reason that the first respondent was an erstwhile Director of the appellant company and he was a distributor of the appellant's product for the State of Madhya Pradesh and this fact was evident from Exs.P12, 13, 25, 26, 112 and 119. Further, the distributor cannot be the owner himself. He would submit that the trial Court ought to have considered that the Food Inspector, Inspector of Weight and Measures had recognised that the mark SACHA MOTI belongs to the appellant and all correspondence on the trademark SACHA MOTI was only addressed to the appellant which would show that the appellant is the prior user.

10. The learned counsel further submitted that the trial Court ought to have appreciated that the first respondent had not even filed an iota of documentary evidence to prove their user as against their pleadings that they have been using the mark since 1982. The learned counsel next submitted that the trial Court failed to consider that the first respondent, who is none other than the former Director of the appellant company, after his resignation from the appellant company has started using the appellant's mark that too after 24.5.2016.

11. The learned counsel then submitted that the finding of

the trial Court the appellant is not the prior user is only based on the pleadings and not on the documents filed by the first respondent. However, by filing number of documents, the appellant had established that they are the prior user of the mark SACHA MOTI and thus, prayed for setting aside the order of the trial Court made in I.A.No.156 of 2016.

12. On the other hand, the learned counsel for the first respondent contended that the trademark SACHA MOTI was originally used by the first respondent's mother from the year 1982 and his mother was running the business with the trademarks SACHA MOTI and CHAKRA. When the business was developed, they came to understand that Sabus were available in Salem District in Tamil Nadu and hence, their elder brother Gopal Sabu was directed to go to Salem to procure the quality Sabu and sent to Madhya Pradesh for the business purpose. As a family member, they were also allowed to sell the product under the name of SACHA MOTI. Later his mother conveyed the trademark SACHA MOTI to the first respondent and CHAKRA to Gopal Sabu.

13. The learned counsel further submitted that after obtaining the right from his mother in the year 1997, the first respondent applied to the Registrar of Trademarks and got the registration for the trademark SACHA MOTI. Likewise, Gopal Sabu also applied for the trademark in respect of trade CHAKRA, but due to some technical problem it was not registered. Again the appellant applied for registration of the trademark CHAKRA and the same is pending before the Registrar of Trademarks. The learned counsel further submitted that after analysing the documentary evidence, the trial Court declined to grant injunction and prayed for dismissal of the Civil Miscellaneous Appeal.

14. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

15. The point that arises for consideration is whether the trial Court was right in dismissing I.A.No.156 of 2016 in O.S.No.148 of 2016.

16. The appellant claims right over the trademark SACHA MOTI from the year 1984 as if Kausalya Sabu first used the trademark as proprietrix concern. Per contra, the first respondent claimed right over the trademark SACHA MOTI stating that his mother was the first user of the trademark SACHA MOTI from the year 1982 and subsequently, she conveyed the same to the first respondent.

17. In order to show and prove that the appellant is the prior user of the mark SACHA MOTI, the appellant had filed 123

documents and contended that the mark SACHA MOTI was originally used by Sabu Traders, a sole Proprietrix firm of Kaushalya Sabu, who is the wife of the Managing Director of the appellant company. Later, it was decided to incorporate as private company and accordingly, the proprietrix concern was incorporated as private company under the name and style Sabu Exports Private Limited. Subsequently, it was changed as Sabu Trade Private Limited. The Founder, Directors of the appellant company were the present Managing Director Gopal Sabu, his wife Kaushalya Sabu and the first respondent and another one person by name Siva Narayanan.

18. The first respondent was appointed as dealer for Madhya Pradesh to take care of the business of the appellant company. On 23.2.2010, the appellant intended to register the trade mark and applied for the same. However, through a communication dated 8.11.2010 (Ex.P16), the appellant came to know that the first respondent had obtained a trademark SACHA MOTI in the year 1997. After that the appellant has not prosecuted the application and later, filed another application for registration of the mark on 31.10.2011.

19. According to the appellant, the first respondent obtained the registration of the trade mark concealing the prior real facts and that during the time when he was working as Director in the appellant company, he had acted against the interest of the company. As prior long user of the trademark SACHA MOTI, the appellant claims right over the said mark.

20. The first respondent contended that the trademark SACHA MOTI was originally used by his mother and his mother had conveyed the mark SACHA MOTI in favour of him and he had also obtained registration of the mark from the competent authority.

21. Admittedly, the documents produced by the appellant clearly show that they are the long prior user of the trademark SACHA MOTI. Even though the first respondent obtained registration certificate in respect of the mark SACHA MOTI, as per Section 134(1) of the Registration Act, irrespective of the registration, the person who is the pre-user of the trademark can enforce his right.

22. The question to be considered is whether the use of the word SACHA MOTI by the appellant as a matter of fact acquired a secondary meaning so as to entitle the appellant for an injunction in its favour on the facts pleaded and secondly, whether the use of the word SACHA MOTI in its name by the first respondent is bona fide.

23. The appellant has pleaded that they are the prior long user from 1984 and has been carrying on business. Admittedly,

the first respondent started his business thereafter. The materials available would reveal that the first respondent after resigning from the Board of Directors from the appellant company, started his business by obtaining registration of the mark SACHA MOTI. Thus, it is clear that the appellant was using the mark SACHA MOTI even while the first respondent was serving as Board of Director in the appellant's company.

24. Prima facie, the appellant is the originator and proprietor of the trademark SACHA MOTI by virtue of adoption of the same earlier by Mrs.Kaushalya Devi Sabu and subsequently, by the appellant after its incorporation on 05.5.1993, wherein the first respondent was one of the Director at the time of incorporation and remained as Director till his resignation on 14.08.2015.

25. According to the first respondent, the marks SACHA MOTI and CHAKRA were adopted by Chandrakanta Sabu mother of the appellant and the first respondent with respect to her food/grocery and sabudana products business being carried out under the name M/s.Shiv Trading Company. Thereafter, Chandrakanta Sabu transferred the right in trademark SACHA MOTI to the first respondent; mark CHAKRA to Gopal Sabu in 1984 and the mark SHIVJYOTI to Shivnarayan Sabu in 1988. It is also pleaded that pursuant to the transfer of title in the trademark SACHA MOTI, the first respondent had obtained registration for the SACHA MOTI trademark.

26. It is seen from the records that the appellant had filed application in Class 30 on 23.02.2010, however, the said application was abandoned after the hearing held on 30.12.2012 due to non-prosecution. It is also seen that much before the abandonment of the application being No.1926631, the appellant had filed another application being No.2226836 in Class 30 on 31.10.2011 claiming user since 19.7.1993 and the same was pending adjudication before the Registrar of Trademarks, Chennai.

27. On a perusal of the documents marked viz., Ex.P80 to P111, it is seen that the consumer connect the trademark SACHA MOTI only to the appellant company. Further, in the notice (Ex.P53) dated 31.12.1994 issued by the Food Inspector, it has been stated that the mark SACHA MOTI belongs to the appellant.

28. The appellant has also relied upon the following exhibits to show that they are the prior user of the mark SACHA MOTI:

Exhibit No.	Description of document
Ex.P7	Copy of Invoice Sabu Traders showing Central Sales Tax Registration No.421529
Ex.P8	Certificate of Agmark
Ex.P10	Assessment proceeding issued by the Commercial Tax Department dated 27.3.2000 to Sabu Traders wherein it is stated that Sabu Traders sold sago under SACHA MOTI Brand Agmark
Ex.P31	Cash bill issued by ICIS Jag Decorators in the name of Sabu Traders
Ex.P32	News item appeared in the newspaper Navbharat, Indore, dated 05.2.1994
Ex.P53	Form VI issued by the Food Inspector in the name of Sabu Traders
Ex.P60	Letter sent by Sabu Traders to the Inspector, Weight and Measures (Leagal Meteorology), Shajapur.
Ex.P117	Deed of Dissolution executed between Chandrakanta, Rajkumar and Jyotibala stating that Chandrakanta and Jyotbala Sabu Sabu retiring from M/s.Shiv Trading Company
Ex.P119	Invoice raised by Sabu Traders in the name of Shiv Trading Company
Ex.P120	C.D. containing speech of first respondent

29. The learned counsel for the appellant contended that the trial Court failed to see that the first respondent was a distributor of the appellant product for the State of Madhya Pradesh, which was evident from Exs.P12, P13, P25, P26, P112 and P119. The learned counsel also contended that a distributor cannot be the owner himself. This Courts finds much force in the submission of the learned counsel for the appellant.

30. It is trite law that the registration of trademark is prima facie evidence in favour of the holder of such mark. Of course, Section 34 of the Trademarks Act is an exception to the said Section, for the reason that prior user is not bound by such registration. The said provision protects the rights of a prior user. Section 34 of the Act reads thus:

"Section 34. Saving for vested rights.- Nothing in this Act shall entitle the proprietor or a

registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior-

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his; whichever is the earlier, and the Registrar shall not refuse (on such use being proved), to register the second mentioned trade mark by reason only of the registration of the first mentioned trade mark."

(emphasis supplied)

31. When a party is using prior user as a shield in an action for infringement, it is necessary to prove that they have been continuously using the trade mark in respect of the goods manufactured and/or marketed by them.

32. In the present case, the appellant relies upon Exs.P7, P8, P10, P31, P32, P53, P60, P117, P119 and P120 in support of their claim that they are the prior user of the mark SACHA MOTI. When the contention of the appellant is taken, the burden lies on them to prove the continuous usage of the said trade name. Here the volume of sales also assumes significance. Similarly, the advertisement and other modes adopted by the appellant for promotional sales also assumes significance.

33. The documents produced by the appellant even if we take it on its face value will satisfy the test to determine the continuous user. The appellant has marked Ex.P120 video clipping. According to the learned counsel for the appellant, the clipping contains speech of the first respondent in the following words:

"..... Before 20 years when our elder brother Shri Gopal Sabu, who is at Salem went to Salem, where there is primary sabudana production mandi. After going there he saw about the quality and saw about scope of experimenting and he devoted himself to that work. For the past 20 years he is in this business. Before 11 years to cater to the needs of the consumers of sabudana in small packing he was the first to start in Chakra brand. Slowly and

slowly he continued his experiments and was accredited by Indian Standard Institute with Agmark for the first time which was granted to him under SACHA MOTI brand."

The aforesaid speech of the first respondent would show that the brand SACHA MOTI and CHAKRA was admitted by the first respondent to be the creation and business of the appellant.

34. In the present case, there is prima facie evidence of advertisement and/or sales promotional activities undertaken by the appellant. There is also prima facie evidence to show the volume of business of the appellant company. Admittedly, the trial Court failed to appreciate the documents produced by the appellant. In this regard, the finding of the trial Court reads thus:

"14. But here in this interlocutory stage, it cannot be concluded that the petitioner is long user of trade mark. At present no clinching evidence produced in this regard, instead Ex.P-15 and Ex.P-122 are stands contra to the case of the petitioner. In the circumstances, it is answered that on the petitioner side has not proved that the petitioner is long user of trademark and 1st respondent committed an act of passing off. ..."

The aforesaid finding of the trial Court is, admittedly, contrary to the documents produced by the appellant, as there was no evidence to show that the first respondent obtained the registration of the mark by following the statutory procedures. In fact, the first respondent obtained registration of the mark while he was serving as Director in the appellant's company.

35. Where the trial Court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate Court will interfere. Exercise of discretion by granting a temporary injunction where there is "no material", or refusing to grant a temporary injunction by ignoring the relevant documents produced are instances of action which are termed as arbitrary, capricious or perverse. In this case, there was material to make out a prima facie case by the appellant and the trial Court omitted to consider the vital and relevant documents produced by the appellant and also failed to exercise discretion when the appellant has proved the prima facie case for getting temporary injunction.

36. As stated supra, there is prima facie evidence to show that the appellant is using the trademark SACHA MOTI continuously since 1993. Though the first respondent was the registered owner of the trademark SACHA MOTI, the same would be subsequent to the appellant's usage and in fact, the appellant had initiated proceedings before the Intellectual Property Appellate Board for cancellation of the registration obtained by

the first respondent.

37. According to the first respondent, he had filed suit before the High Court of Delhi for infringement and passing off of the mark SACHA MOTI against the appellant and others. The Delhi High Court has also granted interim injunction in favour of the first respondent. It is true that the Delhi High Court granted interim injunction for infringement and passing off the mark SACHA MOTI against the appellant and others on 10.06.2016 and the operative portion of the order dated 10.06.2016 reads thus:

"In view of the averments made in the plaint and the documents placed on the record, I am of the view that the plaintiff has been able to make out a prima facie case for grant of an ex parte ad-interim injunction in his favour. Hence, till the next date of hearing, the defendants are restrained from using the trademark "SACHA MOTI" or any other trademark which is deceptively similar to the plaintiff's trademark "SACHA MOTI", amounting to infringement of the plaintiff's registered trademark and passing off."

Though the interim order of the Delhi High Court is dated 10.6.2016, nothing has been produced by the first respondent to show that the said order has been extended thereafter. However, the trial Court, in its order stated that the interim order granted by the Delhi High Court restraining the appellant herein from using trademark "SACHA MOTI" was still in force. It is stated by the appellant that they have filed petition to vacate the interim order granted by the Delhi High Court and the same is also pending for consideration.

38. In the impugned order, the trial Court further held as under:

"17. The effect of the interim order already granted by the Delhi High Court in favour of the first respondent is that the petitioner herein is restrained from using the registered trademark of "Sachamoti". If this Court accepted the plea of the petitioner and granted an interim injunction restraining the respondent from passing off, it will leads to restrain the first respondent herein to sell the property with the trade mark of "Sachamoti", it will amounts to restrain him from using the trade mark "Sachamoti". Then, it leads to existence of two inconsistent interim orders. It leads to chaos and confusion. In view of maintaining judicial discipline when one of the competent court granted relief, an another competent court on the same subject cannot grant relief to nullity the order already passed by the

competent court. In this circumstances, it is concluded that the existence of interim order of the Delhi High Court stand as a hurdle to pass interim order in favour of the petitioner by this court."

From the above, it is clear that because of the interim order granted by the Delhi High Court in the suit filed by the first respondent, the trial Court declined to grant the interim order in the present case.

39. At this juncture, it is apposite to refer to the decision of the Hon'ble Supreme Court In S.Syed Mohideen v. P Sulochana Bai, (2016) 2 SCC 683, wherein it has been emphatically held as under:

"30.4. Section 34 of the Trade Marks Act, 1999 provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint reading of Sections 34, 27 and 28 would show that the rights of registration are subject to Section 34 which can be seen from the opening words of Section 28 of the Act which states "Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor..." and also the opening words of Section 34 which states "Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere..." Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user."

(emphasis supplied)

40. Section 34 of the Act makes it clear that the proprietor or a registered user of registered trade mark cannot interfere or restrain the use of an identical trade mark by any person with or resembling it in relation to goods for which that person or predecessor in title has continuously used the trade mark from a date prior to the use of the first mentioned made mark in relation to those goods by the proprietor or a predecessor in title. Taking note of the prior user of the mark SACHA MOTI by the appellant, the interim order of Delhi High Court would not in any way prevent this Court in deciding the present appeal on merits and nothing has been produced by the first respondent to show that only after hearing the respective parties, the Delhi High Court has granted the interim order. In reality the applications before the Delhi High Court and this Court were for their own reliefs and independent of each other, the trial Court took it upon itself to falsely treat the Delhi High Court order

as a hurdle. When the appellant was able to prove the long prior user of the mark SACHA MOTI with the knowledge of the first respondent and also when the appellant has proved prima facie case, it would be appropriate to grant injunction in favour of the appellant as prayed for in I.A.No.156 of 2016. The trial Court failed in coming to a conclusion that the appellant is not the prior user. The aforesaid finding of the trial Court is only based on the pleadings of the first respondent and not on the documentary evidence produced by the parties especially the appellant.

41. It is to be mentioned that before the trial Court, the first respondent filed I.A.No.173 of 2017 under Order 7, Rule 10 of C.P.C. seeking to return the plaint in O.S.No.148 of 2016 to the appellant. The trial Court has taken both I.A.No.173 of 2017 and 156 of 2016 together and disposed of the same by a common order. While dealing with I.A.No.173 of 2017, the trial Court observed that the suit filed by the appellant before the trial Court is prior to the suit filed by the first respondent before the Delhi High Court and in the absence of any provision available, the plea of the first respondent to return the plaint enabling the appellant to be presented before the Delhi High Court is unsustainable and the same was without sanction of any law. From the above also, it is clear that after coming to know the filing of the suit by the appellant in respect of the mark SACHA MOTI against the first respondent, the first respondent had filed the suit before the Delhi High Court and obtained an order of ex parte interim injunction behind the appellant. This only shows the conduct of the first respondent in suppressing the true facts and approaching the Delhi High Court with unclean hands.

42. Since the appellant is the first and prior user of the trademark SACHA MOTI, its registration merits protection. The trial Court failed to appreciate that rights of the first adopter are superior to even the right of the registered proprietor, as has been held by the Hon'ble Supreme Court in the decision cited supra. Further, the trial Court has not in proper perspective evaluated the principles of granting injunction viz., prima facie case, balance of convenience and irreparable loss. The rights of prior user, which has been established, tilt the balance of convenience in favour of the appellant.

43. For the foregoing discussion, this Court is of the view that the appellant has made out a prima facie case to show that they are the long prior user of the mark SACHA MOTI and thus, the appellant is entitled to the relief sought for in I.A.No.156 of 2016 and the trial Court erred in dismissing I.A.No.156 of 2016.

44.In the result:

(a) The Civil Miscellaneous Appeal is allowed and the order dated 02.02.2018 passed in I.A.No.156 of 2016 in O.S.No.148 of 2016 on the file of the Principal District Court, Salem is set aside;

(b) Taking into consideration the fact that the dispute between the appellant and the first respondent, who are brothers, is in respect of the trademark SACHA MOTI, it is just and proper to direct the trial Court to decide the suit as expeditiously as possible, within an outer limit of six months from the date of receipt of a copy of this judgment, subject to cooperation by both the parties. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Principal District Judge,
Salem

+1 CC to Mr. Ramesh Ganapathy, Advocate sr 1378.

+1 CC to Mr.K. Rajasekaran, Advocate sr 2048.

C.M.A. No.846 of 2018 and
CMP.No.6995 of 2018

EV(CO)
SP(11/01/2019)