

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

C.S.No.493 of 2018

1.Aqua Pump Industries,
rep by its Managing Partner,
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore-641 034
having their branch office at
New No.10, old No.26
Errabalu Chetty Street,
Parrys Corner, Chennai-600 001.

2.Aqua Sub Engineering
rep by its Managing Partner,
Mr.Ramaswamy Kumaravelu,
Thudiyalur Post,
Coimbatore-641 034
having their branch office at
New No.10, old No.26
Errabalu Chetty Street,
Parrys Corner, Chennai-600 001.

.. Plaintiffs

Vs.

1.Amazon Technologies INC.,
410, Terry Avenue North, Seattle,
Washington 98109,
USA.

2.Amazon Seller Services (P) Limited,
Ground Floor, Eros Plaza,
Eros Corporate Tower,
Nehru Place,
New Delhi 110 019
And also at
No.26/1, 8th Floor,
Brigade Gateway,
Dr.Raj Kumar Road, Malleshwaram (W),
Bangalore-560 055.

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of C.P.C. read with sections 27, 134 and 135 of the Trade Marks Act, 1999 seeking judgment and decree for :

(a) granting a permanent injunction, restraining the 1st and 2nd Defendants, by itself, their servants, agents, distributors, or anyone claiming through them from listing

1. Deluxe Engineers
2. Mahavir Enterprises
3. Raman Machinery Stores
4. Akash Traders Stores
5. Ronak Enterprises
6. Sri R Enterprises
7. Brothers Technical Group
8. Sri Lakshmi Agencies
9. Sree Sadguru Sai Enterprises
10. Sharp House
11. Samson Aqua Solutions

or any other unknown sellers who are selling, advertising and offering for sale the counterfeit products using the Plaintiffs' registered Trade Mark TEXMO in the 1st and 2nd Defendants' website www.amazon.in or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the 1st and 2nd Defendants, by itself, their servants, agents, distributors, or anyone claiming through them from listing

1. Deluxe Engineers
2. Mahavir Enterprises
3. Raman Machinery Stores
4. Akash Traders Stores
5. Ronak Enterprises
6. Sri R Enterprises
7. Brothers Technical Group
8. Sri Lakshmi Agencies
9. Sree Sadguru Sai Enterprises
10. Sharp House
11. Samson Aqua Solutions

or any other unknown sellers who are selling, advertising and offering for sale the counterfeit products using the Plaintiff's registered Trade Mark TEXMO in the Defendants' website www.amazon.in or in any manner passing off the Plaintiffs Trade Mark TEXMO;

(c) directing the 1st and 2nd Defendants to take down or block or remove or delist all the products of the

- 1.Deluxe Engineers
- 2.Mahavir Enterprises
- 3.Raman Machinery Stores
- 4.Akash Traders Stores
- 5.Ronak Enterprises
- 6.Sri R Enterprises
- 7.Brothers Technical Group
- 8.Sri Lakshmi Agencies
- 9.Sree Sadguru Sai Enterprises
- 10.Sharp House
- 11.Samson Aqua Solutions

or any other unknown persons that infringe the Plaintiffs' registered Trade Mark TEXMO;

(d)directing the 1st and 2nd Defendants to furnish the details including the name and address of

- 1.Deluxe Engineers
- 2.Mahavir Enterprises
- 3.Raman Machinery Stores
- 4.Akash Traders Stores
- 5.Ronak Enterprises
- 6.Sri R Enterprises
- 7.Brothers Technical Group
- 8.Sri Lakshmi Agencies
- 9.Sree Sadguru Sai Enterprises
- 10.Sharp House
- 11.Samson Aqua Solutions

The other sellers who are infringing the Plaintiffs' registered Trade Mark TEXMO;

(e)directing the Defendants to render an account of profits made by them by the use of the Plaintiffs Trade Mark TEXMO in the course of their business and decree the suit for the profits found to have been made by the Defendants, after the Defendants has rendered accounts;

(f)directing the Defendants to pay to the Plaintiffs the costs of the suit, and

(g)pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.Gladys Daniel

For Defendants : Mr.K.Premchandrar for D-2
D-1 – given up

JUDGMENT

There are two plaintiffs and two defendants in this suit. To be noted, today vide a memo dated 29.01.2019, plaintiffs have given up all suit reliefs claimed against first defendant. In this memo, plaintiffs have also said, they are giving up first defendant. This leaves this suit with original defendant No.2, namely, Amazon Seller Services (P) Limited, as sole defendant.

2 This Commercial Division is informed that Amazon Seller Services (P) Limited is a company incorporated in India and in the light of narrative supra, same shall be referred to as sole defendant.

3 The entire suit primarily pertains to take down mechanism. Today, Ms.Gladys Daniel, learned counsel on record for the two plaintiffs and Mr.Premchander of M/s.Anand & Anand (Law Firm) on behalf of sole defendant are before this Commercial Division.

4 Both learned counsel submit that common order was passed by this Court in A.No.5656 and 5657 of 2018 and that the said common order dated 03.09.2018 can be usefully extracted to get a birds eye view of the factual matrix in this case. Paragraphs 3 to 8 of the said common order reads as follows :

“3. Both learned counsel pointed out that instant application pertains to take down mechanism qua the second defendant's site and injunctive relief qua listing some sellers.

4. Both learned counsel draw my attention to an order dated 17.05.2017, made by a learned single Judge of the Delhi High Court in I.A.No. 15702 of 2016 and 4418 of 2017 in C.S (Comm) 1462 of 2016.

5.The Order reads as follows:

' I.A.Nos.15702/2016 & 4418/2017

Learned counsel for defendant no.8 reiterates and reaffirms the undertaking given to this court on 30th January, 2017. She states that in the event the plaintiff informs the defendants of any alleged illegal listing on the following e-mail IDs, requisite legal action shall be taken within 48 working hours:-

(i) sunrahul@amazon.com

(ii) prithwis@amazon.com

She further states that the defendant no.8 shall disclose the details of the sellers of the infringing products in response to the plaintiff's request within 48 working hours.

Learned counsel for the plaintiff prays for some time to obtain instructions.

List on 06th July, 2017.'

6.Learned counsel for defendants submits that the aforesaid two e-mails IDs referred to in the aforesaid order continue to operate and they will function as take-down mechanism qua the site, which is subject matter of the suit i.e.,site of the second defendant.

7. There is no dispute or disagreement between the parties that complaints, if any, will not be restricted to the plaint averments and if any future complaints regarding some other sellers are brought to the notice of the mail IDs, the same will also be taken out and attended to as per standard operating procedures and this aspect has also been articulated in the aforesaid order.

8. Learned counsel for plaintiffs submits that the aforesaid stand of the defendants douses the anxiety of the plaintiffs and therefore the same shall be treated as prayer in the instant application being answered in the affirmative for the present.

Recording the aforesaid submission, both this application are disposed of as closed. “

5 This takes us to prayer paragraph in the instant suit. Prayer in the instant suit is paragraph 25 and the same reads as follows :

“25.The Plaintiffs, therefore, prays for Judgment and Decree for:-

(a)granting a permanent injunction, restraining the 1st and 2nd Defendants,by itself, their servants, agents, distributors, or anyone claiming through them from listing

- 1.Deluxe Engineers
- 2.Mahavir Enterprises
- 3.Raman Machinery Stores
- 4.Akash Traders Stores
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- 6.Sri R Enterprises
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or any other unknown sellers who are selling, advertising and offering for sale the counterfeit products using the Plaintiffs' registered Trade Mark TEXMO in the 1st and 2nd Defendants' website www.amazon.in or in any manner infringing the Plaintiffs Registered Trade Mark Nos.315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively;

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or any other unknown sellers who are selling, advertising and offering for sale the counterfeit products using the Plaintiff's registered Trade Mark TEXMO in the Defendants' website www.amazon.in or in any manner passing off the Plaintiffs Trade Mark TEXMO;

(c)directing the 1st and 2nd Defendants to take down or block or remove or delist all the products of the

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- 2.Mahavir Enterprises
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or any other unknown persons that infringe the Plaintiffs' registered Trade Mark TEXMO;

(d)directing the 1st and 2nd Defendants to furnish the details including the name and address of

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The other sellers who are infringing the Plaintiffs' registered Trade Mark TEXMO;

(e)directing the Defendants to render an account of profits made by them by the use of the Plaintiffs Trade Mark TEXMO in the course of their business and decree the suit for the profits found to have been made by the Defendants, after the Defendants has rendered accounts;

(f)directing the Defendants to pay to the Plaintiffs the costs of the suit, and

(g)pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

6 A perusal of prayer paragraph reveals that there are as many as seven limbs of prayers, which have been adumbrated as sub paragraphs (a) to (g) in prayer paragraph.

7 Aforesaid memo dated 29.01.2019 filed by learned counsel for two plaintiffs today reads as follows :

"That the Plaintiffs are in receipt of email dt.28.01.2019 from the Counsel for Defendant No.2 stating as under:-

Our client Amazon Seller Services Pvt Ltd (ASSPL) hereby confirms that Amazon Technologies Inc is a separate entity based in the United States of America and the said entity does not have any bearing or role in the affairs of ASSPL, including that of takedowns and providing seller information. For added emphasis it is stated that ASSPL operated and manages the website www.amazon.in and as such is liable for the acts

and omissions arising thereof.

In view of the above, the Plaintiffs are giving up the suit reliefs against Defendant No.1.

It is therefore prayed that this Hon'ble Court may be pleased to pass a decree against Defendant No.2 in terms of prayers (c) & (d) of para 25 as set out below:-

(c)directing the 1st and 2nd Defendants to take down or block or remove or delist all the products of the

- 1.Deluxe Engineers
- 2.Mahavir Enterprises
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The other sellers who are infringing the Plaintiffs' registered Trade Mark TEXMO;

The Plaintiffs submit that the Defendant No.1 and other suit reliefs may be given up subject to the decree against Defendant No.2 in terms of prayers (c) & (d) of para 25 of the Plaint as set out above.”

8 Aforesaid memo and the contents of the same are self explanatory.

9 Be that as it may, learned counsel for sole defendant Mr.Premchander, on instructions, submits that electronic mail dated 28.01.2019 extracted in the aforesaid memo is correct and sole defendant reiterates the contents of the same.

10 As would be evident from the memo, plaintiffs are making a prayer for decree in terms of sub paragraphs (c) and (d) alone. In other words, learned counsel for plaintiffs, on instructions, submits that plaintiffs are giving up prayers in sub paragraphs (a), (b), (e), (f) and (g). In the light of the aforesaid electronic mail dated 28.01.2019 and the contents of the same, learned counsel for sole defendant submitted that they cannot have any objection for the suit being decreed in terms of sub paragraphs (c) and (d) alone. This is more so as other sub paragraphs, namely (a), (b), (e), (f) and (g) have been given up by plaintiffs.

11 This takes us to the power of this Commercial Division to pass summary judgments, i.e., summary judgments without recording oral evidence. This power of this Commercial Division to pass summary judgment is adumbrated in Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' (said Act' for brevity).

12 A perusal of Order XIII-A of amended CPC as amended by said

Act reveals that grounds to pass summary judgment by Commercial Division have been adumbrated in Rule 3 therein. Rule 3 reads as follows :

“3.Grounds for summary judgment. -The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that --

(a)the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b)there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”

13 A perusal of Rule 3 reveals that summary judgment can be passed by this Commercial Division, when the plaintiff has no real prospect of succeeding on the claim or when the defendant has no real prospect of successfully defending the claim and that there is no other compelling reason as to why suit should not be disposed of before recording oral evidence.

14 In the light of the aforesaid memo and stated position of the parties that has been reiterated in the hearing before me by learned counsel on instructions, plaintiffs obviously have no real prospect of succeeding with regard to prayers contained in sub paragraphs (a), (b), (e), (f) and (g). With regard to sub paragraphs (c) and (d) of prayer paragraph, again in the light of the earlier proceedings, memo filed by plaintiffs and stated positions of parties, the sole defendant now has no real prospect of successfully defending the same.

15 There is no other impediment in this Commercial Division passing a summary judgment in terms of sub paragraphs (c) and (d) of paragraph 25 which is the prayer paragraph in the plaint.

16 To be noted, this decree is passed against the erstwhile second

defendant in the suit, i.e., Amazon Seller Services (P) Limited, which is now the sole defendant in the light of first defendant and all the prayers against first defendant being given up. As prayers in sub paragraphs (e), (f) and (g) have been given up against sole defendant also, the question of costs does not fall for consideration.

17 There shall be a summary judgment and decree in terms of sub paragraphs (c) and (d) against erstwhile second defendant / sole defendant now. Suit is decreed on above terms.

29.01.2019

Index : Yes/No

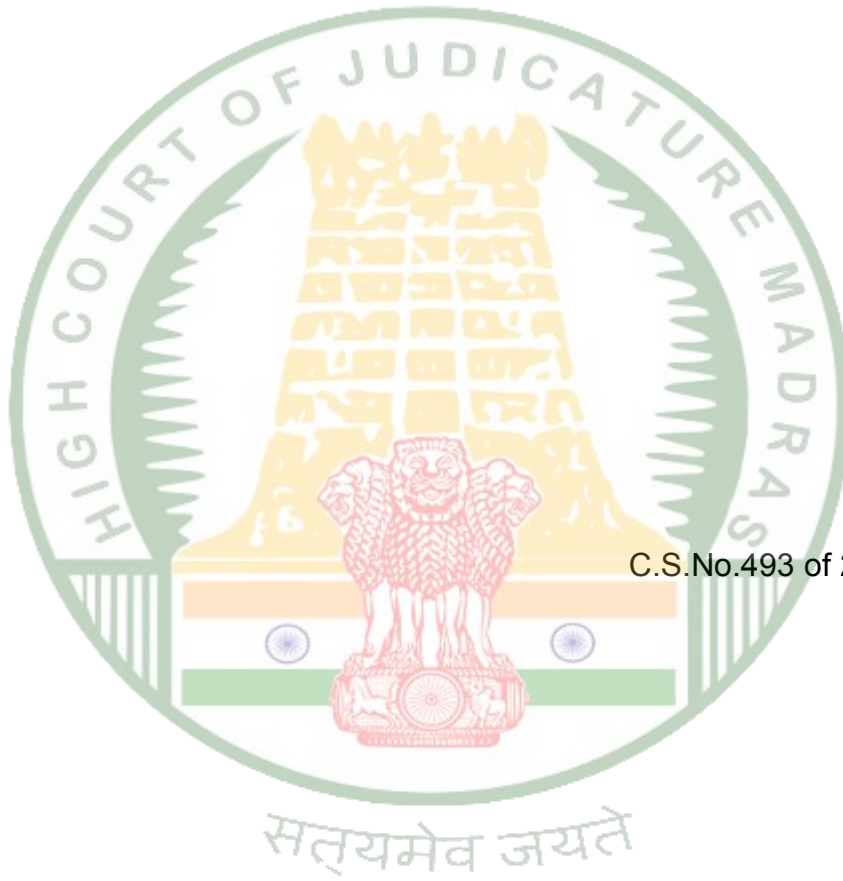
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M.SUNDAR, J.

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