

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.12.2019

Pronounced on: 17.12.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.725 of 2014

APOLLO HOSPITALS ENTERPRISE LTD.

Regd. Office at No.19, Bishop Gardens,
Raja Annamalaipuram, Chennai – 600 028,
Rep by its Authorised Signatory

... Plaintiff

/versus/

JS APOLLO PHARMACY,

No.18-1-419A, Bhavani Nagar,
Tirupati – 517 501,
Rep by its Director.

... Defendant

Prayer:-

Plaint filed under Order VII Rule 1 of C.P.C., Order IV Rule 1 of Original Side Rules read with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999.

a). A permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on Defendant's behalf from in any manner infringing the Plaintiff's registered Trade Mark "Apollo", "Apollo Pharmacy", and "Apolla Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademarks

"Apollo", "Apollo Pharamacy" and "Apollo Hospital";

b). Permanent injunction restraining the Defendant, its men, agents, partners, associate, officer representative, servant and all other persons acting on Defendant's behalf from in any manner passing off goods and services as that of the plaintiff's by either using the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital";

c). Permanent injunction restraining the Defendant, its men, agents, partners, associate, officer representative, servant and all other persons acting on Defendant's behalf from in any manner using the name/mark "Apollo" and "Apollo Pharmacy" by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated or pharmaceutical services, rendered by the Defendant;

d). The Defendant be directed to surrender to the plaintiff all materials, media, etc. whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy" ;

e). The Defendant be directed to render accounts of profits of the Defendant in favour of the plaintiff to examine and ascertain the profits made by the Defendant and thereafter on enquiry final decree be

passed and or an order for rendition of accounts of profits made by the Defendant by using the mark "Apollo" and "Apollo Pharmacy" or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark " Apollo" and "Apollo Pharmacy" towards damages as and when ascertained to be awarded to the plaintiff' and against the defendant on account of use of the offending trade mark;

f). Award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only);

g). An order for costs of the proceedings and

h). Such other order or order as this Hon'ble Court may deem fit and proper in facts and circumstances of the present case.

For Plaintiff : Mr.Vineet Subramani

For Defendant : Exparte

सत्यमेव जयते

J U D G M E N T

The plaintiff is M/s.Apollo Hospitals Enterprise Limited, a company incorporated on 05.12.1979. It has adopted the unique trademark "Apollo" to be used as its trademark with respect to all its Hospitals and other medical undertakings. Prior to the plaintiff no other person had adopted the said "Apollo" trademark in the field of Pharma,

Healthcare and medical services and products. The plaintiff has registered trademark for the "Apollo", "Apollo Pharmacy", "Apollo Hospital" and other associated marks under various classes for goods and services.

2. While so, the defendants calling itself as "JS Apollo Pharmacy" with the words 'Apollo Pharmacy' in dominance and "JS" as a qualifier carrying on its business in Pharma products thereby shamelessly infringing on the plaintiff's registered trademark and is passing off its services and sells goods as the plaintiff, and usurp the business, custom, reputation and goodwill of the plaintiff. Hence the present suit for the following reliefs:-

a). A permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on Defendant's behalf from in any manner infringing the Plaintiff's registered Trade Mark "Apollo", "Apollo Pharmacy", and "Apolla Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademarks "Apollo", "Apollo Pharamacy" and "Apollo Hospital";

b). Permanent injunction restraining the Defendant, its men, agents, partners, associate, officer

representative, servant and all other persons acting on Defendant's behalf from in any manner passing off goods and services as that of the plaintiff's by either using the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy" and "Apollo Hospital";

c). Permanent injunction restraining the Defendant, its men, agents, partners, associate, officer representative, servant and all other persons acting on Defendant's behalf from in any manner using the name/mark "Apollo" and "Apollo Pharmacy" by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated or pharmaceutical services, rendered by the Defendant;

d). The Defendant be directed to surrender to the plaintiff all materials, media, etc. whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy" ;

e). The Defendant be directed to render accounts of profits of the Defendant in favour of the plaintiff to examine and ascertain the profits made by the Defendant and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the Defendant by using the mark "Apollo" and "Apollo

Pharmacy" or any structurally, visually, phonetically or deceptively similar mark to the Plaintiff's trademark "Apollo" and "Apollo Pharmacy" towards damages as and when ascertained to be awarded to the plaintiff' and against the defendant on account of use of the offending trade mark;

f). Award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only);

g). An order for costs of the proceedings and

h). Such other order or order as this Hon'ble Court may deem fit and proper in facts and circumstances of the present case.

3. The suit summon sent to the defendant to be served through the District Court, Chittor returned with endorsement, "No such Pharmacy name in the corresponding address". Therefore, this Court, on 19.11.2019 has passed the following order, "Despite substituted service was effected, none appeared on behalf of the defendant. Hence, the defendant set *ex parte*. Registry is directed to post the matter before the Learned Master on 27.11.2019 for recording evidence".

4. Before the Master, Mr.S.M.Mohan Kumar(P.W.1), the Manager Legal of the Plaintiff's company has filed proof affidavit in lieu of

examination in Chief. 16 documents marked as Ex.P-1 to Ex P-16.

5. The plaint and proof affidavit perused. Exhibits scrutinised. The plaintiff's claim of ownership of the trademark "Apollo", "Apollo Pharmacy" and " Apollo Hospital" under various classes related to health and Pharma are proved through the Ex.P.1 to Ex.P.12. The photo of the defendant signboard marked as Ex.P.13 show that the defendant carrying on business in the trade name "JS Apollo Pharmacy" placing the word "JS" vertically one below another on the left and the words "Apollo Pharmacy" linear and separately. This clearly proves the intention of the defendant to deceive the common public to show as if it is the establishment of the plaintiff.

6. The defendant using the trade name JS Apollo Pharmacy and the infringement of the plaintiff's trademarks and passing off is established through the plaintiff's documents. Therefore, the suit is to be Allowed.

7. As a result, the Suit is decreed with costs as follows:-

(i). Permanent injunction relief sought under prayer (a), (b) and (c) are granted.

(ii). In respect of prayer (d), the defendant is directed to surrender the infringed materials in his possession to the plaintiff.

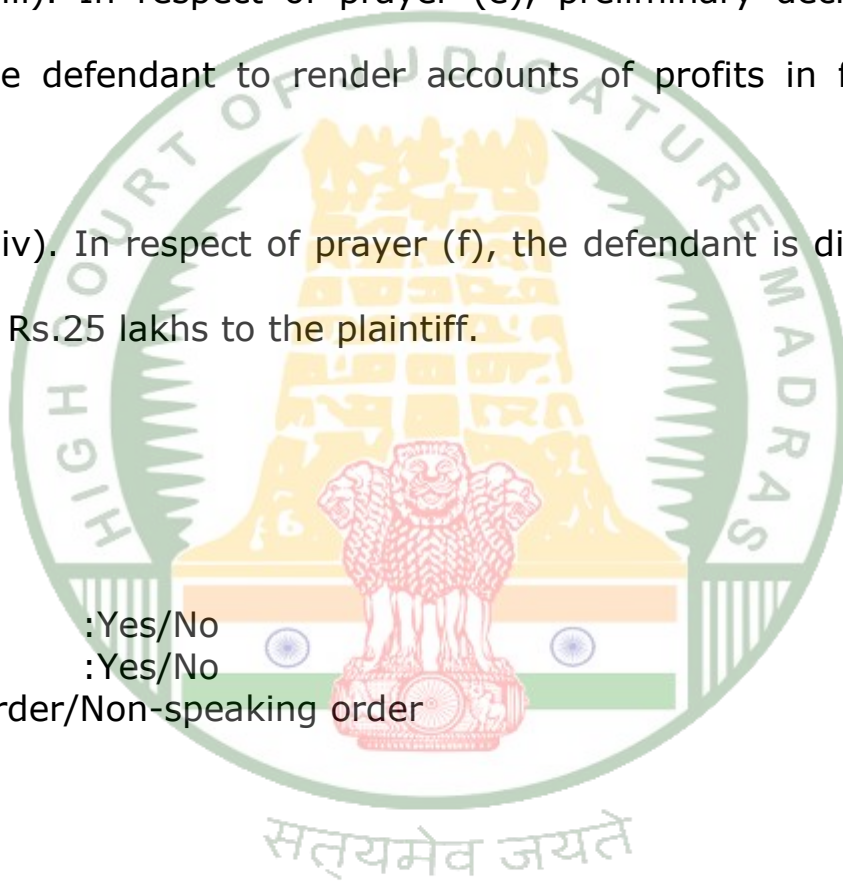
(iii). In respect of prayer (e), preliminary decree is passed directing the defendant to render accounts of profits in favour of the plaintiff.

(iv). In respect of prayer (f), the defendant is directed to pay damages of Rs.25 lakhs to the plaintiff.

17.12.2019

Index :Yes/No
Internet :Yes/No
Speaking Order/Non-speaking order

bsm



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List of Witness examined on the side of the Plaintiff:-

1.S.M.Mohan Kumar – P.W.1

List of Witness examined on the side of the Defendant :-

Nil

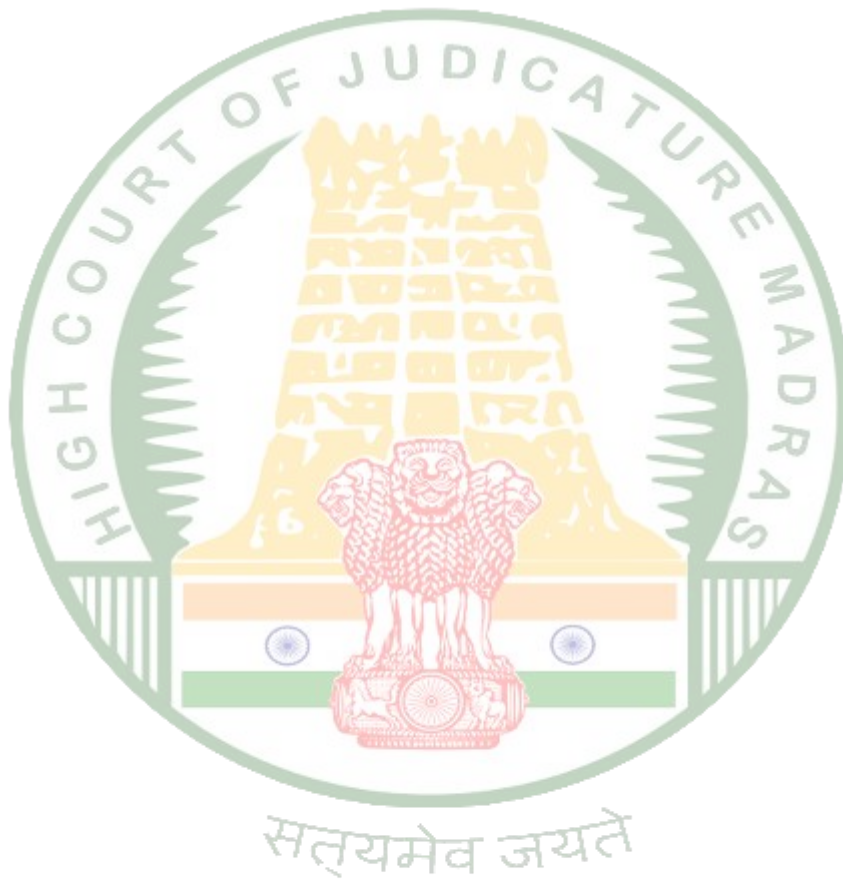
List of the Exhibits marked on the side of the Plaintiff:-

Sl.Nos.	Exhibits	Description of documents
1.	Ex.P.1	Photocopy of T.M.Registration Certificate No.1576799 in Class No.42 for Apollo dated 06.07.2007.
2.	Ex.P.2	Photocopy of T.M.Registration Certificate No.1576796 in Class No.5 for Apollo dated 06.07.2007.
3.	Ex.P.3	Photocopy of T.M.Registration Certificate No.1576797 in Class No.42 for Apollo dated 06.07.2007.
4.	Ex.P.4	Photocopy of T.M.Registration Certificate No.1576795 in Class No.42 for Apollo dated 06.07.2007.
5.	Ex.P.5	Photocopy of T.M.Registration Certificate No.1576790 in Class No.5 for Apollo dated 06.07.2007.
6.	Ex.P.6	Photocopy of T.M.Registration Certificate No.1718084 in Class No.35 for Apollo dated 05.08.2008.
7.	Ex.P.7	Photocopy of T.M.Registration Certificate No.1718078 in Class No.10 for Apollo dated 05.08.2008.
8.	Ex.P.8	Photocopy of T.M.Registration Certificate No.1718086 in Class No.41 for Apollo dated 05.08.2008.
9.	Ex.P.9	Photocopy of T.M.Registration Certificate No.1785330 in Class No.3 for Apollo dated 16.02.2009.
10.	Ex.P.10	Photocopy of T.M.Registration Certificate No.1785333 in Class No.24 for Apollo dated 16.02.2009.
11.	Ex.P.11	Photocopy of T.M.Registration Certificate No.1804010 in Class No.35 for Apollo dated 08.04.2009.
12.	Ex.P.12	Photocopy of T.M.Registration Certificate No.1836922 in Class No.5 for Apollo dated 06.07.2009.
13.	Ex.P.13	Photo's Defendant's signboard
14.	Ex.P.14	Copy of 1 st Commemoratives Stamp issued in the name of the Apollo Hospital.
15.	Ex.P.15	Copy of 2 nd Commemoratives Stamp issued in the name of the Apollo Hospital.

16.	Ex.P.16	Office Copy of Legal Notice dated 18.04.2014. (Ex.P.1 to Ex.P.16 are the Original Compared and verified returned to the plaintiff counsel).
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List of the Exhibits marked on the side of the Defendant:-

Nil



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Dr.G.Jayachandran,J.

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Pre-delivery judgment in
C.S.No.725 of 2014

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17.12.2019