

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19th DAY OF AUGUST 2019

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

O.A. No.533 of 2019

and

A. No.4825 of 2019

in

C.S. No.325 of 2019

M/s.Sangeetha Caterers And Consultants LLP,
Represented by its Designated Partners,
1.Mr.P.Rajagopal
2.Mr.P.Suresh
No.7, Gandhi Nagar, 1st Main Road, 4th Floor,
Adyar, Chennai - 600 020. ... Applicant/Plaintiff
(in O.A. No.533 of 2019)

-Versus-

M/s.Hotel Sangeethaa,
Pure Veg., Rep. by its Proprietor,
N.Suriyaprabha,
No.324B/1-A, NH-45,
Near Senkurichi Toll Plaza,
Ulundurpet, Villupuram District,
Pin Code : 606107. ... Respondent/Defendant
(in O.A. No.533 of 2019)

O.A. No.533 of 2019:- सत्यमेव जयते

Original application praying that this Hon'ble Court be pleased to grant interim injunction restraining the Respondent/Defendant or their agents, representatives, assignees, or heirs from infringing the registered trademark SANGEETHA and operating a restaurant in the name and style HOTEL SANGEETHA pending disposal of the suit.

A. No.4825 of 2019:-

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Pure Veg., Rep. by its Proprietor,
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-Versus-

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Represented by its Designated Partners,
1.Mr.P.Rajagopal
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No.7, Gandhi Nagar, 1st Main Road, 4th Floor,
Adyar, Chennai - 600 020. Respondent/Applicant/Plaintiff

Application praying that this Hon'ble Court be pleased to unconditionally vacate the interim order of injunction granted in O.A. No.533 of 2019 in C.S. No.325 of 2019 by order dated 30.04.2019.

This Original Application coming on this day before this court for hearing, the Court made the following order:-

The Original application in O.A.No.533 of 2019 has been filed by the respondent herein/Plaintiff to grant an interim injunction restraining the respondent / defendant or their agents, representatives, assignees or heirs from infringing the registered trademark SANGEETHA and operating a restaurant in the name and style 'HOTEL SANGEETHAA', pending disposal of the suit.

2. After hearing the application, this Court was pleased to grant an order of interim injunction vide order dated 30.04.2019. After receipt of the notice, the applicant/defendant has filed an application No.4825 of 2019 in O.A.No.533 of 2019 in C.S.No.325 of 2019 to vacate the interim injunction granted by this Court.

3. The main thrust of arguments in the application to vacate the interim injunction in O.A.No.533 of 2019 in C.S.No.325 of 2019 are three fold:

(a) The plaintiff is guilty of suppression of material fact attracting the rule of the maxim "'Suppressio veri suggestio falsi'" and has approached this Court with unclean hand.

(i) the plaintiff has not disclosed the notice sent on 19.11.2015 and the receipt of reply by the defendant counsel dated 04.12.2015.

(ii) the plaintiff has suppressed the fact that Mr.P.Rajagopal has also filed application in A.Nos.986478 under Class 32, A.No.986480 under Class 16, A.No.986481 under Class 33, A.No.986482 under Class 30 respectively.

(iii) the present applications before the Trade Mark Registry also no Association is made with the earlier registered trademarks despite the assignment.

(iv) that in the earlier trademarks there was a

disclaimer / condition to the letters ''SVR''.

B) According to the defendant, the suit is liable to be dismissed for guilty of delay and latches.

(i) The plaintiff does not disclose the earlier notice sent by the plaintiff to the defendant dated 19.11.2015 and the receipt of reply dated 04.12.2015. They have failed to take any action over a period of 4 ½ years. The plaintiff has no locus standi to file any suit claiming the rights over the word ''SANGEETHA'' at this stage after 4 1/2 years , since the respondent defendant have invested huge amount and earned goodwill and reputation among the public and also the customer and hence, the suit is liable to be dismissed on the ground of acquittance. In this regard, the learned counsel also referred the case reported in **Kerala Jewellers, Madras vs. Kerala Jewellers, Trichy reported in (1999 SCC online Mad 834)**.

(ii) The counsel appearing for the defendant contended that Section 33 of the Trademark Act will not apply to the present case as claimed by the plaintiff. Section 33 will apply only for the purpose of making opposition to printed registered trademark before the Registry but not before the Court to take infringement action against the defendant.

C) According to the respondent Defendant, this suit is liable to be dismissed for the guilty of misrepresentation:

(i) it is the contention of the respondent / defendant

that the prayer in O.A.No.533 of 2019 seeks to prevent the use of 'Sangeetha' by the infringement claiming 'Sangeetha' to be the registered mark. The marks are all device marks and the marks taken as a whole are SVR SANGEETHA (written in cursive hand), SANGEETHA (with veena), SVR Sangeetha Veg Restaurant, Sangeetha Veg Restaurant the Desi destination (with veena). According to the defendant, the trademark as registered is not 'Sangeetha' as misrepresented in the application and the plaint as if the defendant registered the word 'SANGEETHA' and got the trademark. Further he contended that they have been carrying on the business only at Chennai and they have not averred anything about that they are carrying on business beyond Chennai and started at international level, which means the plaintiff is carrying on business only within the Chennai. Therefore according to the applicant/defendant, the plaintiff is not entitled to claim any monopoly right over the descriptive word ''SANGEETHA''. Further he referred Section 17 and made a submission that the registered proprietor of the Trademark can claim right over the trademarks as taken as whole and not in part unless or otherwise, the part of the registered trademarks got registered by way of separate application under Section 17 (2) (a). Therefore, the defendant contended that the plaintiff cannot claim any monopoly right over the word ''SANGEETHA''.

4. In this regard, the counsel appearing for the defendant has relied on the case reported in **AIR 1955 SC 558 (Registrar of Trademarks Vs. Ashok Chandra Rakhit Ltd)**.

5. Therefore, the learned counsel contended that the plaintiff are not entitled to claim any monopoly right over the word ''SANGEETHA'' and therefore, no case has been made out by the plaintiff and also the balance of convenience is not in favour of the applicant / plaintiff and hence prays to vacate the interim injunction granted, which causing great hardship and irreparable loss to the defendant and their business. On the other hand if it does not vacated, the applicant / defendant will put into irreparable hardship and the inconvenience cannot be compensatory even by monetary values, since they invested huge amount over a period of time.

6. It is not a case that the defendant started a business few months back and recently only the plaintiff came to know about the business and approached this Court. The plaintiff came to know about the business of the defendant carrying on in the name and style of ''HOTEL HSV SANGEETHAA'' in the year 2015 itself. As cited above, the plaintiff issued a legal notice and for the said legal notice, we have replied during the year 2015 itself. After

a period of 4 ½ years, they have approached this Court, that too by suppressing these facts in the plaint as well as in the application filed for interim injunction. Therefore, the learned counsel prayed for vacation of interim injunction as prayed in the A.No.4825 of 2019.

7. On the other hand, the learned counsel appearing for the plaintiff submitted that they are the registered proprietor of the word 'SANGEETHA'. They have registered and obtained the registration certificate with the Trademark Registry for the word 'SANGEETHA' and its device marks are SVR SANGEETHA (written in cursive hand), SANGEETHA (with veena), SVR Sangeetha Veg Restaurant, Sangeetha Veg Restaurant the Desi destination (with veena).

8. The learned counsel appearing for the respondent/plaintiff further argued that the defendant has also obtained legal user certificate under class 42 and further submits that they have registered the word 'SANGEETHA' with the trademark registry and also registered under the Copyrights Act and the certificate was also filed as one of the suit documents.

9. According to the learned counsel, Section 17 of the Trademarks Act has no application, in view of the fact that

Section 29(5) of the Trademarks Act envisages that the registered trademarks is infringed by a person, if he uses the trademark as his trade name or part of his trade name, or name of his business concerned or part of the name of his business concerned, in respect of which the trademark is registered.

10. Further he referred Section 29(1) and submits that the registered trademark is infringed by a person when he uses a mark distinctively deceptively similar to the trademark in relation to the goods or service in respect of which the trademark is registered and in such manner as to render the use of the mark likely to be taken as trademark. In the facts of the case, the defendant is mainly focus on trademark "'SANGEETHA'" and the goods offered by them also in the same business and as such it is a clear case of infringement of registered trademark. Further the learned counsel also referred Section 29(2) of the trademarks Act in support of his contention.

11. The learned counsel further states that regarding the contention that there is delay and latches resulting in acquiescence has no legal basis in view of Section 33 of the Trademarks Act 1999 which provides a limitation of 5 years. Further theory of acquiescence is not applicable

when the action of the infringer is dishonest in nature which is evident from the facts that the defendant has deliberately using the name 'Sangeetha' by adding 'a' as suffix. It is supported by the decision reported in **2006 (8) SCC 726 in the case of Ramdev Food Products (P) Ltd Vs. Arvindbhai Rambhai Patel and others** and the judgment of the Delhi High Court in the **Timken Company Vs. Timken Services Private ltd.** There is no suppression of material facts as alleged since the infringement is a continuous cause of action and the balance of convenience is only in favour of the plaintiff as the injury is caused to the general public also.

12. Hence the contention raised by the defendant is an afterthought as well as well as dishonest in nature for the mark "'Hotel HSV Sangeethaa'" which is first time found in the vacate interim order application and is contrary to his own sign board and the reply notice and therefore prays for dismissal of this application.

13. Heard both sides.

14. According to the plaintiff, the defendant is infringing the trademark and carrying on the business in the name and style of "'Hotel HSV Sangeethaa'". However,

the counsel appearing for the defendant submitted that they are not carrying on the business in the name and style of 'Hotel Sangeetha' but in the name and style of 'Hotel HSV Sangeethaa'. As stated above, the plaintiff registered the trademark as 'SANGEETHA' and its device marks are SVR SANGEETHA (written in cursive hand), SANGEETHA (with veena), SVR Sangeetha Veg Restaurant, Sangeetha Veg Restaurant the Desi destination (with veena).

15. The issue to be decided here is whether the defendant is infringing the trademark of the plaintiff in whole or not. According to the plaintiff, the defendant is carrying on the business in the name and style of 'Hotel Sangeetha' on the other hand, as per the contention of the defendant that they are carrying on the business in the name and style of 'Hotel HSV Sangeethaa'. Even presuming that the defendant is carrying on the business in the name and style of 'Hotel HSV Sangeethaa', comparing the said word with 'SVR Sangeetha', it is a Registered trademark obtained by the plaintiff, it appears that the defendant mark is resembling the registered trademark of the plaintiff i.e., 'SVR sangeetha', instead of 'Sangeetha' in entirety, the defendant has taken the word of Sangeetha by adding one letter 'A' in the suffix and instead of SVR, the defendant removed the word 'R' in the suffix by adding the word 'H' in prefix. Therefore, it *prima facie* appears that the defendant is copying the trademark of the plaintiff and encash the reputation and gained for over a period. Further the intention of the defendant copying the trademark of the plaintiff may be due to the reason to

attract the customer those who are travelling from Chennai to Southern and Western part of Tamil Nadu, since the plaintiff's Hotel is very famous and having number of branches in Chennai. With an intention to attract those customers who are travelling from Chennai to Southern and western part of Tamil Nadu and to create confusion among the customers of plaintiff, it appears that the defendant by way of adding the name 'Hotel' in the beginning and prefix the letter 'H' by removing the letter 'R' in suffix and adding the letter 'A' in the end of the trademark viz., HOTEL HSV SANGEETHAA, infringed the registered trademark of the plaintiff viz., SVR SANGEETHA

16. Therefore, the defendant with a view to create confusion among the public and to encash the goodwill and reputation of the plaintiff and to attract the people travelling from Southern and Western part of the Tamil Nadu, the defendant started the Hotel at the main junction point at Senkuruchi near Ulundurpet.

17. Though the plaintiff's trademark is a registered one and has the statutory protection, this Court, taking into consideration i) the legal notice issued by the plaintiff against the defendant, dated 19.11.2015; reply of the defendant's counsel to the plaintiff's counsel, dated 04.12.2015; and the failure on the part of the plaintiff for not having approached this Court earlier and approached this Court after a lapse of 4 ½ years, and further, in view

of the submission made by the learned counsel for both the parties with regard to the investments made by the plaintiff and the defendant, and the reputation earned by the defendant for all these 4 ½ years, and the reputation lost by the plaintiff due to the alleged usage of the registered trademark of the plaintiff and confusing the public by way of the alleged usage of the registered trademark of the plaintiff, this Court is reluctant to invoke the discretionary power to make the interim injunction absolute, and is of view that, it would be appropriate to direct the parties to let in evidence and establish their case. Hence, the interim injunction granted by this Court on 30.04.2019 stands vacated. Consequently, O.A.No.533 of 2019 is dismissed and A.No.4825 of 2019 stands allowed.

Sd./-K.R.J
19.08.2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 19/08/2019

COURT OFFICER(O.S.)

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