

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

Civil Suit No.446 of 2019

APOLLO HOSPITALS ENTERPRISE LTD.,
Represented by its Directors,
Having its registered office at
No.19, Bishop Gardens
Raja Annamalaipuram,
Chennai – 600 028.

Plaintiff

Vs

BSR Superspeciality Hospitals Limited,
Represented by its Directors,
Having its registered office at
15, Commercial Complex,
Nehru Nagar (E), Bhilai,
Chattisgarh – 490 020.

...

Defendant

This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules
r/w Sections 2(1)(c) (xvii) and Section 7 of the Commercial Courts Act, 2015
r/w Sections 27 to 31, 134 & 135 of the Trade Marks Act, 1999 for the
following reliefs:-

"(a) permanent injunction restraining the defendant, its directors, shareholders, 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' and 'Apollo Hospital' and logo (device) marks either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks;

(b) permanent injunction restraining the defendant, its directors, shareholders, men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off their services as that of the plaintiff's by either using the plaintiff's trademark 'Apollo' and Apollo Hospital' and logo (device) marks or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks;

(c) permanent injunction restraining the defendant, its directors, shareholders, men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner

using the name / mark 'Apollo' and Apollo Hospital' and logo (device) marks by themselves or in combination with other characters or words in connection with any medical establishment operated, or medical services rendered, or in any website or uniform resource locator or domain name by the defendant;

(d) mandatory injunction directing the defendant, its directors, shareholders, men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf or for its benefit in any manner to transfer the registration of website www.apollobsr.com to plaintiff;

(e) 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 Hospital' and logo (device) marks;

(f) 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 Hospital' and logo (device) marks or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks and 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;

(g)Award damages of Rs.1,00,00,000/- (Rupees one crore only);

(h)Declaration that the plaintiff's registered trademarks 'Apollo' and 'Apollo Hospital' and logo (device) marks are 'well known trade marks' under Section 2(1)(zg) of the Trademarks Act, 1999;

(i)An order for costs of the proceedings

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

For Plaintiff :Mr.Vineet Subramani

For Defendant :Exparte

JUDGMENT**Plaint averments in nutshell:**

The plaintiff company was incorporated as a Public Limited Company on 5th December 1979 under the provisions of the Companies Act. The plaintiff's flagship 'Apollo Hospital' was inaugurated in the year 1983 with 150 beds. Presently, the plaintiff owns and operates medical facilities throughout India and Abroad. The plaintiff is recognised as the forerunner of integrated healthcare in Asia and is globally recognised as a top integrated healthcare service provider which manages hospitals, diagnostic clinics, dispensing pharmacies and consultancy services, through its Apollo Hospitals, Apollo Clinics, Apollo Pharmacy, etc across the world. The plaintiff's establishment includes approximately 10,164 beds across 70 hospitals, 3272 pharmacies, 648 Primary Care and Diagnostic Clinics, 150 telemedicine centres, 166 electronic urban primary healthcare centers, 60,000 rural teleclinics providing health care to more than 35 lakhs people.

2.The plaintiff has adopted the unique trademark "Apollo" and "Apollo Hospital" 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" and "Apollo Hospital" trademark in the field of

pharma, healthcare and medical services and products. The plaintiff has registered "Apollo", "Apollo Hosptial", "Apollo Pharmacy" and other associated marks. Till date, there has been no objection nor any limitation placed on the plaintiff's registered trademarks. The trademarks are valid and subsisting in favour of the plaintiff as on date. The plaintiff has further registered its logo 'Apollo' under various classes related to health care.

3.The names "Apollo" and "Apollo Hospital" are synonymous with high quality healthcare products and services and are uniquely associated by the public at large with the plaintiff and its business. The trademarks 'Apollo' and 'Apollo Hospital' are assets of enormous value as symbolic of the plaintiff and its quality services, goods, facilities and goodwill. Under these circumstances, the plaintiff initially entered into a Licensing cum Operations Management Agreement (in short 'LOM Agreement') with the defendant on 14/06/2007 to the defendant's 150 bed hospital in Bhilai, Chhattisgarh as a Multi-speciality hospital. Under the LOM agreement, the plaintiff managed the operations of the defendant's hospital and hence, it was called as "Apollo BSR Hospital, Bhilai". It was specifically provided that the name would include Plaintiff's registered trademarks ' Apollo' /'Apollo Hospital' and log(device) only till the duration of the LOM agreement.

4.The LOM agreement got terminated on 30/06/2010. The plaintiff withdrew its management services from the defendant's facility because, the defendant failed to pay the payment as agreed under the contract. Subsequently, the defendant agreed to pay a sum Rs.83,87,000/- in full and final settlement of Plaintiff's dues, subject to defendant being permitted to continue the use of the plaintiff's registered trademark "Apollo". Accordingly, the plaintiff and the defendant have entered into an franchise Agreement on 10/11/2010 whereby the plaintiff permitted the defendant to use the plaintiff's registered trademark "Apollo" as part of defendant's hospital name. Under the franchise agreement, the defendant agreed to pay the plaintiff a sum of Rs.40,00,000/- per annum in two equal semi-annual installments in advance. Further, the agreement also provided for 18% interest in case of delay in payment. The said franchise agreement was periodically renewed till it was finally terminated on 17/01/2018.

5.Even after the termination, the defendant continued to use the plaintiff's trademark and logo (device). In the defendant website, 'www.apollobsr.com' plaintiff's registered trademark "Apollo" and its logo is found. Thus, the registered trademark and logo(device) of the plaintiff is misused and infringed by the defendant. The defendant, a chronic defaulter in payment was asked to clear the dues but failed to clear the dues.

Therefore, the franchise agreement was not renewed after 17/01/2018 and got terminated. In view of the arbitration clause in the agreement, the plaintiff has initiated proceedings against the defendant under the Arbitration and Conciliation Act, 1996 to recover the outstanding franchise fee due to the plaintiff.

6.The word "Apollo" and " Apollo Hosptial" are indelibly associated with the plaintiff which are seeing strong repeat/regular business from the public with strong economic value attributable to the trademarks. Person like the defendant, who does not adopt similar high standard of care puts the patients at risk. The defendant by falsely using the plaintiff name and registered trademark is passing off its services as that of the plaintiff, thereby causing loss and injury to the plaintiff's reputation, business and registered trademark and also substantial danger to the public at large.

7.After termination of the franchise agreement, the plaintiff thrice issued notice through its counsel to the defendant to cease and desist from using the words and marks deceptively similar or identical to its registered trademark. The defendant though came forward to settle the dispute, that did not fructify. However, till date, the defendant is unlawfully using the trademark and logo of the plaintiff. Hence, the plaintiff has suffered

substantial financial loss and damages to its reputation and goodwill.

Therefore pray for the following reliefs:-

"(a) permanent injunction restraining the defendant, its directors, shareholders, 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' and 'Apollo Hospital' and logo (device) marks either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks;

(b) permanent injunction restraining the defendant, its directors, shareholders, men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off their services as that of the plaintiff's by either using the plaintiff's trademark 'Apollo' and Apollo Hospital' and logo (device) marks or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks;

(c) permanent injunction restraining the defendant, its directors, shareholders, men, agents, partner,

associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name / mark 'Apollo' and Apollo Hospital' and logo (device) marks by themselves or in combination with other characters or words in connection with any medical establishment operated, or medical services rendered, or in any website or uniform resource locator or domain name by the defendant;

(d) mandatory injunction directing the defendant, its directors, shareholders, men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf or for its benefit in any manner to transfer the registration of website www.apollobsr.com to plaintiff;

(e) 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 Hospital' and logo (device) marks;

(f) 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 Hospital' and logo (device) marks or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark 'Apollo' and 'Apollo Hospital' and logo (device) marks and 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;

(g)Award damages of Rs.1,00,00,000/- (Rupees one crore only);

(h)Declaration that the plaintiff's registered trademarks 'Apollo' and 'Apollo Hospital' and logo (device) marks are 'well known trade marks' under Section 2(1)(zg) of the Trademarks Act, 1999;

(i)An order for costs of the proceedings;

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

8.The plaintiff was permitted to serve summons privately. Accordingly, the plaintiff has taken steps thrice. The defendant has refused to receive the posts twice and returned to the sender. The affidavit of service to that effect

was filed on 31/07/2019 and 26/08/2019. The third notice delivered to the defendant on 31/10/2019. The internet tracking of the postal Department annexed along with the affidavit of service filed on 04/11/2019. Taking note of these facts, the defendant was set ex-parte on 19/11/2019. Exparte evidence was recorded by the Master.

9.PW-1 - S.M.Mohankumar, Manager Legal of the plaintiff company examined on behalf of the plaintiff has filed proof affidavit along with 42 documents in support of the plaintiff case. Exs.P-1 to P-42 proves the plaintiff averments as stated above. Since, the defendant has remained exparte, no contra evidence is available.

10.In the result, the suit is decreed with costs as follows:-

(i)The relief seeking permanent injunction in respect of prayers (a), (b), (c) are granted;

(ii)In respect of prayer (d), the defendant is directed to *transfer the registration of website 'www.apollobsr.com'* to the plaintiff;

(iii)In respect of prayer (e), the defendant is directed to surrender all the infringed materials to the plaintiff;

(iv)In respect of prayer (f), preliminary decree is passed directing the defendant to render accounts of profits to the plaintiff;

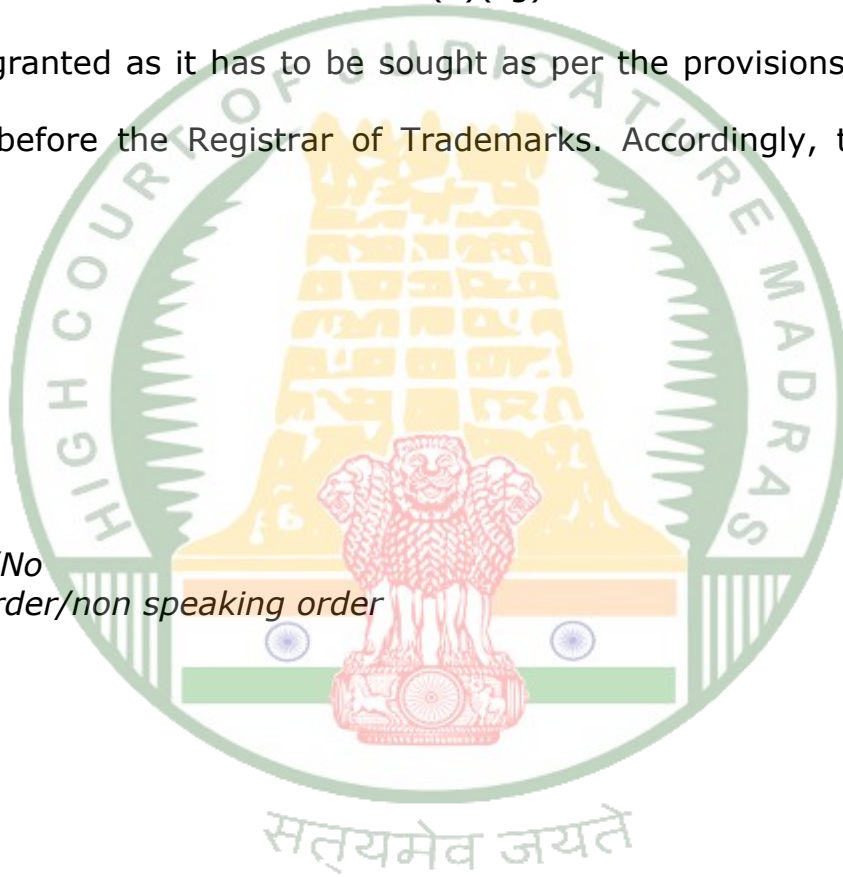
(v)In respect of prayer (g), for want of material evidence, the relief of damages is rejected;

(vi)In respect of prayer (h), to declare that the plaintiff's registered trademarks 'Apollo' and 'Apollo Hospital' and logo (device) marks are 'well known trade marks' under Section 2(1)(zg) of the Trademarks Act, 1999, cannot be granted as it has to be sought as per the provisions of the Trade Marks Act before the Registrar of Trademarks. Accordingly, this prayer is rejected.

jbm

*Index: Yes/No
Speaking order/non speaking order*

17.12.2019



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

1.Mr.S.M.Mohan Kumar – P.W.1

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

Nil

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

EX.P1 is the Attested photocopy of the Defendant's Master Data dated 28.03.2019 from MCA website.

EX.P2 is the Attested photocopy of the Plaintiff's Annual Report dated 31.03.2018

EX.P3 is the Attested photocopy of the Plaintiff's Earnings Update dated 31.12.2018

EX.P4 is the Attested photocopy of the T.M Registration Certificate No.1576799 dated 06.07.2007 in Class No.42 for Apollo.

EX.P5 is the Attested photocopy of the T.M Registration Certificate No.1576796 dated 06.07.2007 in Class No.5 for Apollo Hospitals.

EX.P6 is the Attested photocopy of the T.M Registration Certificate No.1576797 dated 06.07.2007 in Class No.42 for Apollo Hospitals.

EX.P7 is the Attested photocopy of the T.M Registration Certificate No.1804010 dated 08.04.2009 in Class No.35 for Apollo Hospitals.

EX.P8 is the Attested photocopy of the TM Registration Certificate No.1060286 dated 16.11.2001 in Class No.5 for logo / device.

EX.P9 is the Attested photocopy of the TM Registration Certificate No.1576792 dated 06.07.2007 in Class No.36 for logo / device.

EX.P10 is the Attested photocopy of the TM Registration Certificate No.1576793 dated 06.07.2007 in Class No.42 for logo / device.

EX.P11 is the Attested photocopy of the TM Registration Certificate No.1950333 dated 15.04.2010 in Class No.3 for logo / device.

EX.P12 is the Attested photocopy of the TM Registration Certificate No.1950334 dated 15.04.2010 in Class No.5 for logo / device.

EX.P13 is the Attested photocopy of the TM Registration Certificate No.1950335 dated 15.04.2010 in Class No.9 for logo / device.

EX.P14 is the Attested photocopy of the TM Registration Certificate No.1950336 dated 15.04.2010 in Class No.16 for logo / device.

EX.P15 is the Attested photocopy of the TM Registration Certificate No.1950339 dated 15.04.2010 in Class No.35 for logo / device.

EX.P16 is the Attested photocopy of the TM Registration Certificate No.1950341 dated 15.04.2010 in Class No.41 for logo / device.

EX.P17 is the Attested photocopy of the List of Plaintiff's relevant Registered Trademarks.

EX.P18 is the Attested photocopy of the Copy of 1st Commemorative Stamp dated 02.11.2009.

EX.P19 is the Attested photocopy of the Copy of 2nd Commemorative Stamp dated 04.11.2014.

EX.P20 is the Attested photocopy of the Copy of 3rd Commemorative Stamp dated 19.02.2019.

EX.P21 is the Attested photocopy of the List of Awards / Honours of Doctors, Plaintiff Company, and Management

EX.P22 is the Attested photocopy of the Licensing cum Operations Agreement dated 14.06.2007 between Plaintiff and Defendant.

EX.P23 is the Attested photocopy of the Letter dated 03.11.2010 from Defendant to Plaintiff.

EX.P24 is the Attested photocopy of the Settlement Letter 10.11.2010 Franchise Agreement dated 10.11.2010 between Plaintiff and Defendant.

EX.P25 is the Attested photocopy of the Letter dated 26.07.2011 from Plaintiff renewing the Franchise Agreement from 01.07.2011 to 30.07.2012.

EX.P26 is the Attested photocopy of the Letter dated 13.02.2014 from the Plaintiff to Defendant.

EX.P27 is the Attested photocopy of the Letter dated 09.06.2015 intimating expiry of Franchise Agreement on 30.06.2015.

EX.P28 is the Attested photocopy of the Letter dated 27.12.2016.

EX.P29 is the Attested photocopy of the Terminating the Franchise Agreement with effect from 31.01.2017.

EX.P30 is the Attested photocopy of the Defendant's Letter dated 23.03.2017 requesting renewal of Franchise Agreement admitting default in payment of Franchise Fee.

EX.P31 is the Attested photocopy of the Renewal of Franchise Agreement Letter dated 06.05.2017 Demand for Payment from Plaintiff to Defendant.

EX.P32 is the Attested photocopy of the Legal Notice dated 17.01.2018 to the Defendant.

EX.P33 is the Attested photocopy of the Legal Notice dated 06.02.2018 to the Defendant.

EX.P34 is the Attested photocopy of the Legal Notice dated 26.10.2018 to the Defendant.

EX.P35 is the Attested photocopy of the Photos of Plaintiff's signboard.

EX.P36 is the Attested photocopy of the Plaintiff's internet website 'www.apollohospitals.com'

EX.P37 is the Attested photocopy of the Extract of Whols Register showing Plaintiff's ownership of website 'www.apollohospitals.com'

EX.P38 is the Attested photocopy of the Photos of Defendant's signboard.

EX.P39 is the Attested photocopy of the Copy of Defendant's internet website 'www.apollobsr.com'

EX.P40 is the Attested photocopy of the Extract of Whols Register showing Defendant's ownership of website 'www.apollobsr.com'.

EX.P41 is the Attested photocopy of the Affidavit dated 10.06.2019 under S.65-B of the Indian Evidence Act, 1872.

Ex.P42 is the Attested photocopy of the Extract of Board Resolution dated 10.05.2019.

(Originals of Ex.P4 to Ex.P.16 are produced for comparison verified and returned)

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

Nil

WEB COPY

G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgment made in
C.S.No.446 of 2019

WEB COPY

17.12.2019