

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.8.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.201 of 2019
and
C.M.P.Nos.18159 & 18164 of 2019

P.Suresh ... Appellant
Versus

M/s.Super Foodis (P) Ltd.
rep. by its Director,
Mr.R.Adhavan,
No.23, Old No.35, 10th Avenue,
Ashok Nagar, Chennai 600 083. ... Respondent

Prayer: Original Side Appeal filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Madras High Court O.S. Rules against the order of this court dated 18.7.2019 in O.A.No.211 of 2019 in C.S.No.166 of 2019.

Prayer in O.A.No.211 of 2019:

Original Application praying that this Honourable Court be pleased to grant interim injunction restraining the Respondent/Defendant or their agents, representatives, assignees or heirs from infringing the registered trademark SANGEETHAS Desi mane pending disposal of the suit.

For appellant : Mr.L.Rajasekar

For Respondent : Mr.V.Raghavachari

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Plaintiff/Appellant P.Suresh son of late Padmanabha Pothi has filed this Appeal aggrieved by the interlocutory order passed by the learned Single Judge (conducting Trial of C.S.No.166 of 2019) in a Trade Marks Infringement Trial.

2. The Plaintiff alleged a breach of Trade Marks against M/s.Super Foodis (P) Limited, the Respondent herein. The learned Single Judge, by the order impugned before us, has directed as under:-

"5.3. However, it is an admitted fact by both the parties that the respondent paid a sum of Rs.10,000/- as royalty from the date of taking over of the Management from March 2018 to June 2018, and thereafter, failed to make any payment towards royalty. When the respondent admitted the fact that they paid sum of Rs.10,000/- towards running royalty from March 2018 to June 2018, it would be appropriate to direct the respondent to pay the said running royalty of Rs.10,000/- from July 2018 until the date of disposal of the Suit on every month.

5.4. No doubt, the technical know-how fee mentioned in the franchise agreement is also mentioned in the balance sheet for the year 2016-17 and 2017-2018. Since the respondent-Company has paid the technical know-how fee, in terms of the franchise agreement, respondent-Company is amortizing their 1/5 right every year and the same got reflected in the notes forming part of the balance sheet for every year.

5.5. Taking into consideration of these facts, this Court is of the view that it would be appropriate to direct the respondent/defendant to pay a sum of Rs.10,000/- every month towards running royalty as admitted by them from the month of July 2018 to till the date of disposal of the suit. Therefore, this Court directs the respondent/defendant to pay the arrears for the month starting from July 2018 to June 2019, a sum of Rs.1,20,000/- on or before 31.07.2019 and thereafter, the respondent/defendant is directed to pay a sum of Rs.10,000/- on or before 10th of every month until the disposal of the suit. In case, if there is any failure on the part of the respondent/defendant to comply with the order of this Court, there shall be an order of interim injunction as prayed for by the applicant/plaintiff from the date of non compliance of this order.

6. With the above observations, the application stands disposed of."

3. The learned counsel for the Appellant, Mr.L.Rajasekar has submitted that the defendant has not only wrongly denied the existence of Franchise Agreement in the suit as against which 5% of turnover was to be paid as royalty for the use of Trade Mark of the Plaintiff but also the fact that the said sum of Rs.10,000/- is much less than the 5% turnover. He further submitted that the Agreement of Franchise between the parties has since expired.

4. The learned counsel for the Respondent/Defendant has supported the impugned order.

5. Having heard the learned counsel for the the parties, we are satisfied that the interim order passed by the learned Single Judge does not require any interference by this court, however, we make it clear that the payment of Rs.10,000/- per month towards alleged Royalty for use of the Trade Mark will not confer any right on the defendant and the said payment will remain subject to the final decree to be passed by the learned Trial Judge.

6. With these observations, the present Appeal is disposed of. No costs. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To:

The Sub Assistant Registrar,
Original Side Section,
High Court, Madras.

+1cc to Mr.L.Rajasekar, Advocate Sr.72954

O.S.A.No.201 of 2019

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srg 05/11/2019