

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12~09~2019	19~09~2019

CORAM:
THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**
O.A.No.784 and 785 of 2019
in C.S.No.503 of 2019

New Pattukottai Kamatchiu Mess - Nunpahal Unavagam LLP
Represented by its Designated Partner Mr.K.Selvakumar
No.119, 3rd Avenue,
Bharathi Puram
Anna Nagar, Chennai 600102. .. Applicant/Plaintiff

.Vs.

New Pattukottai Kamatchi Mess,
Represented by its Proprietor, G. Suthakar
No.22, Govindan Street,
T.Nagar, Chennai 600017 .. Respondent/Defendant

O.A.No.784 of 2019 has been filed to pass an order of ad interim injunction restraining the Respondent/Defendant from passing off their food products as that of the Plaintiff pending disposal of the suit and **O.A.No.785 of 2019** has been filed to pass an order of ad interim injunction restraining the Respondent/Defendant from in any manner using the mark/words NEW PATTUKKOTTAI KAMATCHI MESS or any other mark which is identical or deceptively similar to the registered trade mark of the Plaintiff NEW PATTUKKOTTAI KAMATCHI MESS NUNPAGAL UNAVAGAM LLP.

For Applicant : Mr. Manishankar
Senior Counsel for
M/s. Kavitha Rameshwar

For Respondent : M/s. T.S. Baskaran

COMMON ORDER

This Original Applications have been filed to grant an ad interim injunction restraining the Respondent/Defendant from passing off their food products as that of the Plaintiff using the mark/words New Pattukkottai Kamatchi Mess or any other mark which is identical or deceptively similar to the registered trademark of the plaintiff New Pattukkottai Kamatchi Mess Nunpahal Unavagam LLP pending disposal of the suit.

2. The Applicant is a Limited Liability Partnership under the provisions of the Limited Liability Partnership Act, 2008 in the name of "New Pattukottai Kamatchi Mess" - Nunpahal Unavagam LLP"(hereinafter referred to as "LLP"). The LLP came into being by the initial agreement dated 28.09.2018 and by the supplemental agreement dated 12.10.2018. It was decided to carry on business of the LLP in the name of "New Pattukottai Kamatchi Mess - Nunpahal Unavagam LLP". It has been incorporated in the supplemental agreement that pursuant to the LLP agreements, business would

commence by opening two restaurants - one in Anna Nagar and the other in Velacherry, both at Chennai. Initial partners were the Plaintiff and the proprietor of the Respondent/Defendant one G. Suthakar. Subsequently three other partners, viz., 1. Mr.Devaraj 2.K.Janani and 3. Saraswathy were also included in the LLP.

3. After incorporation of the LLP, registration of trademark was obtained on 09.05.2019 in the name of LLP. Meanwhile, certain differences of opinion arose between the other partners of the LLP and the proprietor of the respondent/defendant, Mr.G.Suthakmar on account of his indifferent attitude. He issued notice dated 24.04.2009 which was replied by the Applicant/Plaintiff on 30.04.2019. It is the contention of the Plaintiff that the Respondent/Defendant Mr.G. Suthakar has not invested any capital whatsoever as evident from LLP Agreement and he become a partner only on account of his proclaimed skills in cooking and culinary knowledge. Out of Rs.30 lakhs Mr.G. Suthakar has invested only Rs.1000/- and remaining amount was invested by the other partners. However, it was agreed to give him 30% share in the 'Profit and Loss' of the entity. When the matter

stood thus, Mr.G. Suthakar had sent a notice dated 06.05.2019 seeking to "dissolve the LLP with immediate effect". Thereafter, other partners unanimously decided to expel Mr.G. Suthakar from the LLP and show cause notice was issued on 6.5.2019 and the extraordinary meeting held on 09.05.2019 it was decided to expel the proprietor of the Defendant viz., Mr.G. Suthakar from the LLP and other partners continue the LLP since they have invested huge amount. Now, the First defendant tried to indulge the smooth running of the Restaurant.

4. When the matter stood thus, other, other partners of LLP filed application in O.A.Nos.552 of 2019 seeking order of injunction restraining the defendant from interfering with the business and day to day operation of "New Pattukottai Kamatchi Mess - Nunpahal Unavagam LLP." Similarly the First Defendant also filed rival application seeking injunction in O.A.No.592 of 2019. When the matter was reserved the First Respondent has now opened a restaurant in the name and style of "New Pattukottai Kamatchi Mess" at No.22, Govindan Street, T. Nagar, Chennai 600017, wantonly adopted the identical name i.e., "New Pattukottai Kamatchi Mess".

The defendant was aware of the trade mark registered in favour of LLP as he himself was part of the LLP, now started a new hotel in the same trade mark of LLP. Hence this application filed.

5. Resisting the above application, it is the contention of the defendant/respondent that while the partnership agreement dated 14.10.2017 was in existence he and Mr.K.Selva kumar entered into a Limited Liability Partnership Agreement dated 20.8.2018. As per the terms of the LLP agreement, they commenced a Restaurant business in the name and style of "New Pattukottai Kamatchi Mess – Nunpahal Unavagam LLP". Other partners were included by supplement agreement dated 12.10.2018. It is his contention that as per the Partnership Agreement dated 14.10.2017 the defendant and Mr.K. Selva kumar continued to carry on the Restaurant business at T.Nagar in the name and style of "New Pattukottai Kamatchi Mess" even after the commencement of the Limited Liability Partnership on 28.09.2018. Even after the registration of Trade Mark he and Mr.K.Selvakumar continued to carry on the partnership business at T.Nagar in the name and style of "New Pattukottai Kamatchi Mess" without reference to the

LLP Agreement. In view of the dispute started in the LLP firm, the partner Mr.K.Selva Kumar along with the other Partners tried to expel him from the Partnership. Hence it is his contention that the suit has been filed suppressing the Partnership Agreement dated 14.10.2017 wherein the plaintiff himself running a business in the name and style of "New Pattukottia Kamatchi Mess" at T.Nagar. It is the contention that the entire business was developed due to the expertise of the defendant. The entire goodwill and reputation developed only by the skill of the Respondent. It is his contention that as per Clause 33 of the LLP Agreement dated 28.09.2018, the dispute which arose between the parties shall be settled by conciliation or by Arbitration as provided by the Arbitration and Conciliation Act 1996. Hence, prayed for dismissal of the suit.

6. Learned Senior Counsel appearing for the Applicant submitted that the partnership agreement was entered into between the Plaintiff and the Defendant to carry on the business under the name of "New Pattukkottai Kamatchi Mess". The above agreement came into existence on 14.10.2017. The Plaintiff has invested Rs.20 lakhs. The

defendant was designated as working partner for his culinary expertise. Thereafter Limited Liability Partnership agreement has also entered between the parties on 28.09.2018. The capital contribution is Rs.30 lakhs. The defendant has invested only Rs.1000/-. Profit and Loss to be divided in the ratio of 70% and 30% and all the withdrawals were to be made by cheques signed by both partners jointly. It is his contention that Limited Liability Partnership agreement also contained the clause "Expulsion of Partner". The trade mark "New pattukkottai Kamatchi Mess - Nunpagal Unavagam LLP" has registered in the name of "LLP" on 09.05.2019. The application filed by one Mr.Selva Kumar and the defendant jointly seeking trademark in favour of "LLP". Hence, it is the contention that any dispute arose between the parties suit can be filed. Therefor O.A.NO.551, 552, 591 and 592 of 2019 were filed by the parties in respect of dispute and orders were passed in the above O.As. on 28.08.2019.

7. It is his contention that the above O.As. are disposed of with a direction that the plaintiff has to maintain proper accounts for the business and also held that notice regarding the dissolution of LLP not

in compliance with clause 32 of the agreement. Despite the undertaking given none of the partners would open any other branch or any branch till the disposal of the Arbitration proceedings. It is his contention that when the matters was reserved, the defendant has opened a new hotel infringing the trade name of LLP viz., New Pattukottai Kamatchi Mess. The conduct of the defendant clearly indicate that he has opened the restaurant in the trade mark of LLP nothing but clear infringement of trade mark. Hence it is his contention that the respondent use the trade mark registered in the name of the LLP and he is entitled to injunction.

8. In support of his contention he relied upon the following judgments:-

1. *J.Zeenath Bivi and Ors. vs. M.Khader Ibrahim and Ors.* **[2004 (1) MLJ 406]**

2. *Thalappakatti Naidu Ananda Vilas Biriyan Hotel vs. Thalapakattu Biriyan and Fast Food* **[2011 (4) CTC 541]**

3. *Midas Hygiene Industries (P) Ltd.,and*

another vs. Sudhir Bhatia and others **[2004 (3) SCC 90]**

4. *Ramdev Food Products (P) Ltd., vs. Arvinbhai Rambhai Patel and others* **[(2006) 8 SCC 726]**

5. *S.V.S.Oil Mills vs. S.V.N.Agro-refineries and Ors.* **[(2004) 3 MLJ 543]**

6. *A. Ayyasamy Vs. A. Paramasivam and others* **[(2016) 10 SCC 386]**

9. Learned counsel appearing for the Respondent would contend that the Respondent is already running a hotel. The orders passed in O.A.No.551, 552 of 2019 and 591 and 592 of 2019 clearly indicate that the alleged dissolution of firm is not established and further expulsion of the defendant from the LLP is also held not valid and the matter is referred to Arbitration. When the defendant is already partner, merely because he has opened restaurant under the name New Pattukkottai Kamatchi Mess which was registered much prior to the agreement, it cannot be said that there was infringement. He

continues to be partner in the LLP. Hence it is his contention that the defendant is already using the trade mark and running a business. The dispute is not relates to the infringement alone with regard to the partnership business. Since, this court has already held that the entire dispute is referable to the arbitration, there cannot be any injunction as far as the defendant is concerned. The same also dealt in the Arbitration Proceedings. Hence, it is his submission that injunction is not maintainable.

10. On perusal of entire materials it is not in dispute that on 14.10.2017 a partnership deed was entered into between one Mr.K. Selva kumar (one of the partners of the LLP) and the Defendant Mr.G.Suthakar, to run a partnership business under the name "New Pattukottai Kamatchi Mess" and the major capital was invested by the Plaintiff. The Defendant was designated as working partner for his culinary expertise. Thereafter a Limited Liability Partnership Agreement (LLP) was entered on 28.09.2018 in which Rs.29 lakhs was contributed by Mr.G.Selva Kumar, the palintiff and Rs.1000/- was contributed by the defendant. However, profits and losses agreed as 70% to the

Plaintiff and 30% to the defendant. These facts are not in dispute. As some disputes arose between the parties, a suit has been filed before this Court and Applications in O.A.Nos.551 and 552 of 2019 have taken out by the plaintiff. In the above applications the applicant sought an order of injunction restraining the respondent from in any manner interfering with the conduct of the business by the applicant, as the respondent herein has issued notice to the Applicant and other partners to dissolve the LLP with immediate effect.

11. This Court in its order dated 28.8.2019 has held that the entire dispute is subject to the result of arbitration proceedings between the parties and also held that since the plaintiff and other partners have already running hotel business in the name and style of "New Pattukkottai Kamatchi Mess", they are directed to maintain proper accounts in respect of two restaurants and the rights of the parties could be determined through the Arbitral Proceedings. This Court has also held that the expulsion of the defendant from the LLP would be illegal and unauthorised and held that the respondent is continuous to be partner of in the LLP and finally disposed of the

application Nos.552 and 592 of 2019 restrained the Plaintiff and others who are the partners in the plaintiff's company from starting any other branch or similar business using the name, logo, trade mark of the restaurant, pending disposal of the Arbitration proceedings. Such order has been passed on the specific undertaking given by the learned Senior Counsel appearing for the Plaintiff in this case that none of the partners or the LLP would open any branch or any new branch till the disposal of the Arbitration Proceedings.

12. Now, as held by this Court in the order referred above, the Defendant is also continued to be the partner in the LLP and the Plaintiffs are directed to maintain accounts in respect of the business run by the plaintiff.

13. In para 35 of the above order, this Court has recorded as follows:

"35. In view of the said statement made by the learned Senior Counsel across the bar, it is unnecessary for me to go into the question, as to whether, the other partners could do business using the Name, Logo,

Trademark of the restaurant, combination of the recipe or whether the LLP would be entitled to start a new branch with the same name. The statement of the learned Senior Counsel to the effect that neither the partners nor the LLP would start any new branch or any new business with the Name, Logo, Trade Mark of the Restaurant, combination of the recipe till the disposal of the Arbitration Proceedings is recorded."

14. The above observation of this Court clearly indicates that neither the partners, nor the LLP would start new branch with the trade mark of the restaurant, combination of the receipt till the disposal of the Arbitration Proceedings is recorded. Similarly this Court has also held that the Respondent will continue to be the parter in the LLP. The above observation is clearly applicable to the defendant who continuous to be a parter as per the order of this Court. Admittedly, the trade mark "New Pattukkottai Kamatchi Mess - Nunpagal Unavagam LLP" was registered in the name of LLP on 16.11.2018. Application also filed by the defendant along with Mr.K. Selva Kumar for registration of the Trade Mark at the relevant point of time, General Power of Attorney also given by them jointly on 08.11.2018 as could

be seen from the typed set of Papers. Thereafter, it appears on 20.2.2019, the defendant has applied for trade mark in the name of "New Pattukkottai Kamatchi Mess" which was objected by the Plaintiff. From the Trade Mark application form and the Trade Mark examination report it could be seen that the defendant also applied for Trade Mark to be registered in the name of LLP and the Trade Mark also registered in the name of LLP.

15. When the orders of this Court in O.A.Nos.551, 552,591 and 592 of 2019 clearly indicate that till the entire dispute resolved in the Arbitration Proceedings none of the partners of LLP, start new branch except the branch covered under the order. It is not in dispute that only after the orders were reserved in the above Original Applications, the restaurant in the name of "New Pattukkottai Kamatchi - Nunpagal Unavagam LLP" was inaugurated on 14.08.2019. Now, the above restaurant in the trade mark of LLP, opened by defendant in his individual capacity, not by partner or by LLP. Section 28 of the Trade Mark Act makes it clear that if the Trade Marks is registered, it gives exclusive right to the registered owner of the trade mark subject to certain limitations.

The order of this Court clearly indicates that none of the partners in LLP is entitled to open new restaurant in the same Trade Mark. Such being the position, opening of new restaurant in the name of Trade Mark i.e., in the name of LLP is nothing but clear case of infringement. The defendant should not open the restaurant as partnership business, he has opened it in his individual capacity.

16. In ***Thalappakatti Naidu Ananda Vilas Biriyani Hotel's case*** (supra) this Court has held that registration of trade mark gives to registered proprietor, exclusive right to use of trade mark and obtain relief in respect of infringement. Hence, fresh suit filed by Plaintiff for infringement and Applications filed in previous suit are maintainable.

17. In ***Ramdev Food Products (P) Ltd., case*** (supra) the Honorable Apex Court has held that the respondents cannot be permitted to use the trade name so as to defeat the other portion of the order of injunction already passed against them. It is also held that injunction can also granted against the defendants for using the

corporate name.

18. In **J.Zeenath Bivi and others case** (supra), a Division Bench of this Court held that joint proprietors not entitled to exploit trade marks when one of the joint owners objects to the same.

19. Having regard to the above judgments, the fact that the respondent has opened the restaurant when the earlier applications were reserved and before passing the order he opened the restaurant as long as he continued as partner of LLP as per earlier orders, he cannot use the trade mark in the name of firm for his individual business.

20. Considering the above, this court is of the view that there is a prima facie made out by the plaintiff and the balance of convenience is also in his favour. If the respondent/defendant is not restrained by order of injunction it will lead to irreparable injury. Therefore, this Court is of the view that the respondent is not certainly entitled to use the trade mark of LLP. Since the entire dispute has been referred to

the arbitral proceedings, the entitlement of parties to use the trade mark would be decided only in the arbitral proceedings. Till such time, the respondent is not entitled to use the trade mark of the LLP for his individual business. Accordingly, there will be an order of injunction restraining the respondent/defendant from in any way using the trade mark/words 'New Pattukkottai Kamatchi Mess - Nunpahal Unavagam LLP' or any other mark which is identical or deceptively similar to the registered trade mark of the Plaintiff, till the disposal of the Arbitral Proceedings.

21. In the result, the Original Applications are ordered.

19.09.2019

Index : Yes / No

Internet: Yes

Speaking/Non-speaking order
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N. SATHISH KUMAR, J.
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Pre-delivery order in:
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