

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.514 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.

Plaintiff

Vs

Hotel Sangeetha,
Pure Vegetarian,
Represented by its Proprietrix,
R.Vasanthi
No.599-A, Sri Athanur Amman Towers,
Palani Road,
Oddanchatram,
Pin Code – 624 619.
Dindigul District.

सत्यमेव जयते

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Defendant

This Civil Suit is filed under Order IV Rule 1 of High Court Original Side Rules and Order VII Rule 1 of C.P.C., read with Sections 27, 134 and 135 of the Trade Marks Act, 1999 & Proviso 1 of Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 for the following reliefs:-

"(a) a permanent injunction restraining the defendants, their legal representatives, their successors in business, assigns, franchisees, servants or agents operating the restaurant business by infringing the plaintiffs trade mark "Sangeetha (with a VEENA MARK)", "SVR Sangeetha", "SVR Sangeetha Veg. Restaurant", and "Sangeetha Veg. Restaurant (with a VEENA MARK)" or by use of confusingly similar or any other mark deceptively and identically similar to the plaintiff's registered trade mark SANGEETHA or in any other manner whatsoever;

(b) a permanent injunction restraining the defendants, their legal representatives, their successors in business, assigns, franchisees, servants or agents operating the restaurant business by the name "HOTEL SANGEETHA PURE VEGETARIAN" or HOTEL SANGEETHA GRAND from committing the act of passing off and enabling others in passing off the restaurant business in the deceptively similar mark which is identical to the plaintiffs trademark in any manner whatsoever;

(c) the defendant be ordered to surrender to the plaintiffs for destruction of all the packing containers, card board boxes, packing materials, covers and carry bags, screen prints, bills, sign boards, billing software, menu

cards, and any other material in their possession bearing the mark "HOTEL SANGEETHA PURE VEGETARIAN" or HOTEL SANGEETHA GRAND which is identical to the plaintiffs mark Sangeetha;

(d)the defendant be ordered to pay to the plaintiffs a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) as damages for their wrongful and illegal act by use of the trade mark Sangeetha;

(c)for cost of the suit and for other relief."

For Plaintiffs :Mr.L.Rajasekar

For Defendant :Exparte

JUDGMENT

Gist of the plaint:

In the year 1985 the partnership firm M/s.Sangeetha Caterers & Consultants established Hotel Sangeetha at 53, Armenian Street, Parrys Corner, Chennai. Later, it was converted into Limited Liability Partnership (LLP) and the same was registered under the Companies Act. They are operating number of restaurants having branches all over the city and are

having international presence in several countries including the Middle East. The trade marks namely "SVR Sangeetha" and Sangeetha (with device veena) , " SVR Sangeetha Veg. Restaurant ", " Sangeetha Veg. Restaurant – veena" were predominantly managed by the partnership firm. Later, those trademarks were sought to be registered in the name of the subsequent owner viz M/s.Sangeetha Caterers and Consultants, by submitting Form 24 before the Registrar of Trademarks.

2.The Registrar of Trade marks has issued certificate dated 23/10/2018 to the plaintiffs for the following symbols:-

Sl. No	Trade mark certificate	class	symbol
1	1441854	42	Sangeetha with Veena Mark
2	1441849	42	SVR Sangeetha
3	1464536	42	SVR Sangeetha Veg. Restaurant
4	1464537	42	Sangeetha Veg. Restaurant with Veena Mark

3.The plaintiffs are engaged in the business under the above trade name and trade mark for several decades in India and Abroad. It has acquired an impeccable reputation amongst their customers. The plaintiffs are using the said trademarks without any interruption from any quarters for a long and continuous period. The mark "Sangeetha" has become a household name among the general public who visit the restaurant for vegetarian food and the customers identify the trademark with that of the plaintiffs. The plaintiffs have also acquired copyright for the artistic work and unique colour combination for the trademark Sangeetha.

4.The plaintiffs have come to know that the defendant is using their trade mark "Sangeetha" with prefix Hotel and suffix "Pure Vegetarian" naming its restaurant as "HOTEL SANGEETHA PURE VEGETARIAN". The said conduct of the defendant infringing the plaintiffs' trademark is in violation of plaintiffs' statutory and common legal rights. The defendant beside infringing the trade mark of the plaintiffs also successfully passing off its goods as if it is that of the plaintiffs. The use of identical and deceptively similar trademark by the defendant is blatantly in violation of the plaintiffs well known, well established and registered trademark "Sangeetha". By using the same font and colour, it also amounts to violation of the copyright.

5.The defendant use of the plaintiffs trademark is likely to create confusion in the minds of the consuming public who would be deceived into believing that the defendant's restaurant under the identical and deceptively similar "HOTEL SANGEETHA PURE VEGETARIAN" is that of the plaintiffs. The defendant's signboard similar to that of the plaintiffs is to deceive the public. When legal notice dated 30/04/2019 was caused to the defendant, it came to know that the defendant is making attempt to get trade mark registration for "Hotel SANGEETHA GRAND". The plaintiffs have objected and the Registrar of trade mark has taken note of it. The said attempt of the defendant to get a deceptively similar trade mark under class 43 exposes the malafide intention of the defendant.

6.The defendant's trademark "Hotel SANGEETHA GRAND" is *prima facie* visually, phonetically, structurally and absolutely identical to the plaintiffs' registered trademark "Sangeetha". Therefore, use of the identical trademark by the defendant has to be restrained.

7.With the above averments, the plaintiffs have sought for the following reliefs:

"(a) a permanent injunction restraining the defendants, their legal representatives, their successors

in business, assigns, franchisees, servants or agents operating the restaurant business by infringing the plaintiffs trade mark "Sangeetha (with a VEENA MARK)", "SVR Sangeetha", "SVR Sangeetha Veg. Restaurant", and "Sangeetha Veg. Restaurant (with a VEENA MARK)" or by use of confusingly similar or any other mark deceptively and identically similar to the plaintiff's registered trade mark SANGEETHA or in any other manner whatsoever;

(b)a permanent injunction restraining the defendants, their legal representatives, their successors in business, assigns, franchisees, servants or agents operating the restaurant business by the name "HOTEL SANGEETHA PURE VEGETARIAN" or HOTEL SANGEETHA GRAND from committing the act of passing off and enabling others in passing off the restaurant business in the deceptively similar mark which is identical to the plaintiffs trademark in any manner whatsoever;

(c)the defendant be ordered to surrender to the plaintiffs for destruction of all the packing containers, card board boxes, packing materials, covers and carry bags, screen prints, bills, sign boards, billing software, menu cards, and any other material in their possession bearing the mark "HOTEL SANGEETHA PURE VEGETARIAN" or HOTEL SANGEETHA GRAND which is identical to the plaintiffs mark Sangeetha;

(d)the defendant be ordered to pay to the plaintiffs a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) as damages for their wrongful and illegal act by use of the trade mark Sangeetha;

(c)for cost of the suit and for other relief”

8.On 25/11/2019, the defendant was called absent, set exparte. Evidence was recorded by the Master. Proof affidavit of P.Suresh (P.W.1), Designated Partner of the plaintiffs firm was taken as record in lieu of chief examination. 16 exhibits were marked through PW-1.

9.From the perusal of the affidavit and the documents relied by the plaintiffs, this Court finds that Ex.P-5 is the trademark certificate for the words "SVR SANGEETHA"; Ex.P-6 is the trademark certificate for the word Sangeetha (device of Veena); Ex.P-7 is the trademark certificate for the word "Sangeetha Veg. Restuarant – SVR" and Ex.P-8 is the trademark certificate for the word "Sangeetha Veg. Restuarant (device of veena)". These registration of trademark as given in respect of goods and services falling under class 42.

10.Ex.P-9 is the copyright certificate for the artistic work "SVR Sangeetha" and Ex.P-10 is the copyright certificate for the artistic work of the title "Sangeetha". These exhibits viz., Exs.P-5 to P-10 proves the ownership of the trademarks and copyright of the subject word and design is vested with the plaintiffs. Whereas, the photo of the defendant sign board marked as Ex.P-12 clearly indicates that it is deceptively similar to that of the plaintiffs.

11.Further, Ex.P-16 which is the letter of the Registrar of Trademarks dated 02/07/2018 addressed to the defendant reveals that the defendant has applied for trademark registration in the name of "HOTEL SANGEETHA GRAND" under class 43 and the same has been refused in view of the objections received. There is no material to show that the defendant replied to this letter, meeting out the objections.

12.In the light of the above evidence, this Court holds that the plaintiffs have proved their claim through documentary evidence that their registered trademark and copyright has been infringed by the defendant and the goods of the defendant has been passed off as if it is that of the plaintiffs. Accordingly, the suit is deserves to be decreed as prayed for.

13.In the result, the suit is decreed as prayed for with costs.

12.12.2019

jbm

Index: Yes/No

Speaking order/non speaking order



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

1.Mr.P.Suresh – P.W.1

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

Nil

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

- 1.Ex.P.1 – Limited Liability partnership Agreement of plaintiff firm (photostat) dated 01.04.2015.
- 2.Ex.P.2 – Certificate of Conversion of plaintiff firm (photostat) dated 01.04.2015.
- 3.Ex.P.3 – Reconstituted Limited liability partnership agreement of plaintiff firm (photostat) dated 01.04.2017.
- 4.Ex.P.4 – The communication confirming order passed in Form 24 of plaintiff firm (photostat) dated 17.03.2018
- 5.Ex.P.5 – Legal Use Certificate for TMNo.1441849 (photostat) dated 23.10.2018.
- 6.Ex.P.6– Legal Use Certificate for TMNo.1441854 (photostat) dated 23.10.2018
- 7.Ex.P.7 – Legal Use Certificate for TMNo.1464536 (photostat) dated 23.10.2018
- 8.Ex.P.8 – Legal Use Certificate for TMNo.1464537 (photostat) dated 23.10.2018
- 9.Ex.P.9 – Copyright Certificate of SVR Sangeetha of the plaintiff firm (photostat) dated 04.09.2002.
- 10.Ex.P.10 – Copyright Certificate of Sangeetha with Veena device (photostat) dated 16.01.2004.
- 11.Ex.P.11 – Print out of the photo of the defendant's restaurant

12.Ex.P.12 – Print out of the photo of the defendant's restaurant

13.Ex.P.13 – Office copy of the Legal Notice dated 30.04.2019.

14.Ex.P.14 – Acknowledgement Card from the defendant dated 02.05.2019

15.Ex.P.15 – Print out of the trade mark application dated 29.05.2018 of this defendant.

16.Ex.P.16 – print out of the Examination report dated 02.07.2018.

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

Nil



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G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgment made in
C.S.No.514 of 2019

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