

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

**O.S.A Nos.264, 284 and 285 of 2019
and CMP No.21918 of 2019 in OSA No.264 of 2019**

O.S.A No.264 of 2019

1. M/s Patanjali Biscuits Pvt Ltd.,
Continental Chambers, 5th Floor,
15A, Hemantha Basu Sarani,
Kolkatta – 700 001

2. M/s Patanjali Ayurved Limited,
Plot No.209, Bhalawa Village,
Opposite Jaiangirpuri,
G.T. Karnal Road
Delhi – 33

... Appellants

सत्यमेव जयते
-vs-

Hatsun Agro Product Ltd.,
having registered Office at
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam,
Chennai – 600 097

and also carrying on its business at
Old No.AD-83,/New No.AD13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai-600 040
represented by its Authorised Signatory

.... Respondent

O.S.A Nos.284 & 285 of 2019

Hatsun Agro Product Ltd.,
having registered Office at
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam,
Chennai – 600 097
and also carrying on its business at
Old No.AD-83,/New No.AD13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai-600 040
represented by its Authorised Signatory

.... Appellant/Plaintiff

vs

1. M/s Patanjali Biscuits Pvt Ltd.,
Continental Chambers, 5th Floor,
15A, Hemantha Basu Sarani,
Kolkatta – 700 001

2. M/s Patanjali Ayurved Limited,
Plot No.209, Bhalawa Village,
Opposite Jaiangirpuri,
G.T. Karnal Road
Delhi – 33

... Respondents/Defendants

O.S.A.No.264 of 2019: Appeal filed under Order XXXVI Rule 9 of the O.S. Rules r/w clause 15 of the amended Letters Patent 1865 and read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 against the order dated 05.07.2019 in Application No.2920 of 2019 in C.S.No.33 of 2019.

O.S.A Nos.284 & 285 of 2019: Appeals filed under Order XXXVI Rule 9 of the O.S. Rules r/w clause 15 of the amended Letters Patent 1865 against the order dated 05.07.2019 in Application No.2230 of 2019 in O.A.No.34 of 2019 in C.S.No.33 of 2019.

For Appellant in O.S.A No.
264/2019 & Respondents : Mr.P. Giridharan
in OSA Nos.284 & 285 of
2019

For Respondents in OSA No. : Mr.Aashishjazz Lunza
264/2019 & Appellants in for M/s Surana & Surana
OSA Nos.284 & 285 of 2019

COMMON JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Acting Chief Justice)

These Cross Appeals are disposed of by a Common Judgment.

2. The learned Single Judge by Order dated 05.07.2019 vacated the interim injunction granted in favour of the applicant/plaintiff viz., Hatsun Agro Product Ltd, who filed a suit against the respondents viz., M/s Patanjali Biscuits Pvt Ltd and M/s Patanjali Ayurved Limited for the alleged infringement and passing off its products as that of the Plaintiff by using the offending trademark "AAROGYA" which are similar, deceptively similar and identical to the plaintiff's trademark " AROKYA" or by using any other trademark which is similar, deceptively similar or identical to that of the plaintiff's trademark "AROKYA".

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3. Initially, interim injunction was granted by the learned Single Judge in O.A.Nos.33 and 34 of 2019 dated 28.02.2019. However, by the impugned Order dated 05.07.2019, the learned Single Judge has vacated the interim injunction with the following observations:

"16. Legal obligation of one party to a victim as a result of a civil wrong or injury requires some form of remedy from a court system. A tort liability arises because of a combination of directly violating a person's rights and the transgression of a public obligation causing damage or a private wrong doing. Evidence must be evaluated in a court hearing to identify who the tortfeasor / liable party is in the case."

17. It is relevant to point out that there is no interconnectivity between the products sold by the Plaintiff and

the Defendants and the classes of registration are also different, as the Plaintiff's trademark was registered under Class 29, whereas the products of the Applicants/Defendants was under Class 30. The Plaintiff's **Trademark "Arokya"** was familiar amongst general public in connection with milk and milk products only, whereas the Applicants/Defendants involve in preparation of biscuit related items. In this regard, I find much force in the contention raised by the learned counsel for the Applicants/Defendants that the **mark has to be viewed as a whole and together** and cannot be looked into in a divided form and in an isolated manner.

18. It is seen that the Applicants/Defendants are carrying on its business under the Trademark **"Patanjali Aarogya"** for nearly three

years and the Plaintiff, having kept quiet all these years, cannot attempt to stall the business of the Applicants/Defendants on one fine morning, unless there is a specific finding in the suit after full fledged trial. Hence, this Court finds that there is no need for an interim order to be in operation and therefore, the interim injunction granted by this Court on 28.02.2019, which was later on ordered to be kept in abeyance for shorter period, is liable to be vacated.

4. While vacating the interim injunction, the learned Single Judge also dismissed the Application No.2920 of 2019, filed by the defendants to pass a Summary Judgment under Order XIII A of the Code of Civil Procedure (as amended) with the following observations:

" 21. A.No.2920 of 2019 filed to pass a summary judgments is

dismissed, in view of the fact that the interim order granted by this Court is vacated and the entire issues, such as damages, jurisdiction, passing off, etc need to be decided after full-fledged trial by letting the respective parties to adduce both oral and documentary evidence.

22. It is made clear that the observations made herein above are only for the purpose of disposal of these Applications and it will have no bearing on the main suit to be decided.”

5. The learned counsel for the appellants/defendants drew the attention of this Court the amended Order XIII-A of the Civil Procedure Code as applicable to commercial disputes under the provisions of **Commercial Courts Act, 2015**, inserted in the Code of Civil Procedure Code with effect from **23.10.2015**. The said provision

is extracted here for ready reference:

"ORDER XIII-A

SUMMARY JUDGEMENT

1. Scope of and classes of suits to which this Order applies:-

(1) This Order sets out the procedure by which Court may decide a claim pertaining to any **Commercial Dispute without recording oral evidence.**

(2) For the purposes of this Order, the word "claim" shall include-

- (a) part of a claim;
- (b) any particular question on which the claim (whether in whole or in part) depends; or
- © a counter-claim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary

judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment:- An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment:- The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers

that-

(a) **the plaintiff has no real prospect of succeeding** on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there **is no other compelling reason why the claim should not be disposed of** before recording of oral evidence.

4. Procedure:- (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in clauses (a) to (f) mentioned hereunder:-

(a) the application must contain a statement that it is an application for

*summary judgment made under this
Order;*

*(b) the application must precisely
disclose all material facts and identify
the point of law, if any;*

*© in the event the applicant seeks to
rely upon any documentary evidence,
the applicant must,-*

- (i) include such documentary
evidence in its application, and*
- (ii) identify the relevant content of
such documentary evidence on which
the applicant relies;*

*(d) the application must state the
reason why there are no real
prospects of succeeding on the claim
or defending the claim, as the case
may be;*

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:-

- (a) the date fixed for the hearing;*
- and*
- (b) the claim that is proposed to be decided by the Court at such hearing.*

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to

any other matters that the
respondent may deem relevant:-

(a) the reply must precisely -

(i) disclose all material facts;

(ii) identify the point of law, if any;
and

(iii) state the reasons why the relief
sought by the applicant should not be
granted;

(b) in the event the respondent seeks
to rely upon any documentary
evidence in its reply, the respondent
must -

(i) include such documentary
evidence in its reply; and

(ii) identify the relevant content of
such documentary evidence on which
the respondent relies;

© the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence will be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment:-

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, **the respondent must:-**

(a) **file such documentary evidence; and**

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:-

(a) file such documentary evidence in

reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:-

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6. Orders that may be made by Court:-

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:

(a) judgment on the claim;

*(b) conditional order in accordance
with rule 7 mentioned hereunder;*

© dismissing the application;

*(d) dismissing part of the claim and a
judgment on part of the claim that is
not dismissed;*

*(e) striking out the pleadings
(whether in whole or in part); or*

*(f) further directions to proceed for
case management under Order XV-A.*

7. Conditional Order:-

*(1) Where it appears to the Court
that it is possible that a claim or
defence may succeed but it is
improbable that it will do so, the*

*Court may make a conditional order
as set forth in rule 6(1)(b) above.*

*(2) Where the Court makes a
conditional order, it may:-*

*(a) make it subject to all or any of
the following conditions:-*

*(i) require a party to deposit a sum
of money in the Court;*

*(ii) require a party to take a specified
step in relation to the claim or
defence, as the case may be;*

*(iii) require, a party, as the case may
be, to give such security or provide
such surety for restitution of costs as
the Court deems fit and proper;*

*(iv) impose such other conditions,
including providing security for*

restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs:- The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.”

6. The learned counsel for the defendants Mr.P. Giridharan, submits that the learned Single Judge has summarily rejected the application in Application No.2920/2019, filed by the defendants, to pass a Summary Judgment under Order XIII A of the Code of Civil

Procedure without any reason and since the said application filed by the defendants was filed before framing of issues and the full fledged trial of the said suit would defeat the very purpose of XIII-A of Commercial Courts Act, 2015 (4 of 2016) as inserted in the Code of Civil Procedure Code.

7. On the other hand, the learned counsel for the plaintiff/respondent Mr.Aashishjazz Lunza submits that the issues raised in the plaint deserves full fledged trial and rejection of the Application No.2920 of 2019, filed by the defendants, was justified. He further submits that even vacating of the injunction granted earlier in favour of the plaintiff was not justified and therefore, he has also filed Cross Appeals viz., O.S.A. Nos.284 and 285 of 2019 before this Court.

8. Having regard to the above submissions and perusing the materials available on record, **the learned Single Judge has given cogent reason for vacating the injunction and hence, we are**

not inclined to interfere with the order passed by the learned Single Judge in Application Nos.2230 and 2231 of 2019. Therefore, O.S.A.Nos.284 and 285 of 2019 are dismissed.

9. But, we note that the rejection of the Application No.2920 of 2019, filed by the defendants, to pass a summary judgment, has been summarily rejected by the learned Single Judge without giving any conjoint reasons.

10. Certainly, a full fledged trial of a suit will consume a lot of time of the Court and therefore, unless there are cogent and strong reasons as envisaged under Order XIII-A of the Civil Procedure Code as applicable to commercial disputes under the provisions of the Commercial Courts Act, 2015 (4 of 2016), inserted in the Code of Civil Procedure, the dismissal of the Application by the learned Single Judge in Application No.2920 of 2019, for summary judgment, is not sustainable.

11. Since the learned Single Judge has not dealt with these aspects, we are inclined to allow the present appeal, filed by the defendants. **Accordingly, O.S.A.No.264 of 2019 is allowed** and we set aside the order passed by the learned Single Judge in **Application No.2920 of 2019** and the matter is remitted back to the learned Single Judge to decide the Application No.2920 of 2019, filed by the defendants to pass a Summary Judgment once again as expeditiously as possible.

12. With the above directions, all the appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

(V.K., ACJ.) (C.S.N., J.)
05.11.2019

Speaking Order
Index : Yes
sr

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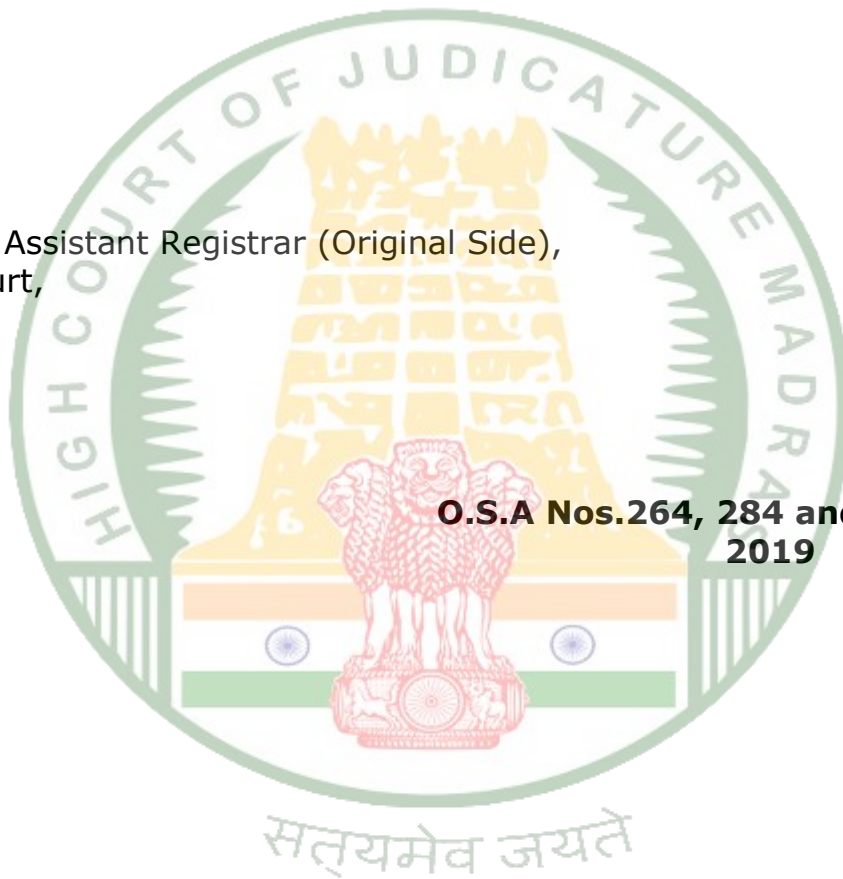
Common Judgment dt. 05.11.2019 in O.S.A.Nos.264, 284 and 285 of 2019
M/s Patanjali Biscuits Pvt Ltd and another vs Hatsun Agro Product Ltd

The Hon'ble Acting Chief Justice
and
C.Saravanan, J.

sr

To

The Sub Assistant Registrar (Original Side),
High Court,
Madras



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