IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.572 of 2019
& A.Nos.7250 & 7568 to 7570 of 2019
& OA.Nos.881 to 883 of 2019

Shree Vari Multiplast India(P) Ltd.,
rep. by its Managing Director V. Senthil Murugan,
No.101/3, Kanjikovi Road,
Mathampalayam Pirivu,
Perundurai Taluk,
Erode -638 052,
Tamil Nadu, India ...Plaintiff

Versus

1.Mrs.V.Kumudha,
Trading as M/s.Sri C.V.Plastics,
No.12/A, Kandampalayam,
Perundurai-638 052, Erode District,
Tamil Nadu, India.

2.Pura,
No.271, Mint Street, Park Town,
Chennai-600 003 ...Defendants

WEB COPY

This Civil Suit is filed under Order VII Rule I of CPC r/w. Order IV Rule 1 of the Original Side Rules r/w Sections 51, 55 &

http://www.judis.nic.in

62 of Copyright Act, 1957, r/w Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 praying

(a) to grant a permanent injunction restraining the Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the trademark by using the identical/similar mark to Plaintiff's trademarks "**VV NATIONAL**", "

, &

", or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said registered Trademark of the Plaintiff in class 20 and 35 in respect of all type of moulded furniture variety of chairs and all other related products, and thereby restraining the Defendants from claiming any right through or under the Defendants from in any manner infringing the registered trademark of the Plaintiff and thus render justice.

(b) to grant a permanent injunction restraining the Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off her/their goods by using any mark which is identically and deceptively similar to the plaintiff's mark "**VV National**" or logo marks

WEB COPY
http://www.judis.nic.in

" , " , artistic work**,** or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said marks of the Plaintiff in respect of all type of moulded furniture variety of chairs and all other related products and thereby restraining the Defendants in any manner from passing off and thus render justice.

(c) to grant a permanent injunction restraining the Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the copyright of the Plaintiff on the artistic work

" , "by using the identical artistic work

or, any other logo/artistic work/design/device that are identical or deceptively similar to the said copyright of the Plaintiff, and thereby restraining the Defendants from in any manner infringing the copyright of the Plaintiff and thus render justice.

(d) That the Defendants be ordered and directed to pay to

WEB COPY

http://www.judis.nic.in

Plaintiff a sum of Rs.5,00,000 (Rupees Five Lakhs only) by way of damages.

(e)A Preliminary Decree be passed in favor of the Plaintiff directing the Defendants to render a true and faithful accounts of all profit made by him, using the Plaintiff's Said Trademark & Copyrighted work and a final decree be passed in favour of the Plaintiff for the amount of profit thus found to have been made by the Defendants, together with interest, after the Defendants have rendered accounts,

(f) That the Defendants be directed to deliver-up to the Plaintiff for destruction, all labels, all other print materials, stickers, signage, visiting cards, letter heads, catalogues, pamphlets, broachers, all other advertising and promotional material, all stationary, and such other material used for infringing and passing off, and

(g) for the costs of the suit;

For Plaintiff : M/s.Mission Legal for Mr.Ramesh Ganapathy

For Defendants : Mr.L.Joseph for M/s.Chennai Law Associates

JUDGMENT

WEB COPY

The suit has been filed for the following reliefs:

(a) to grant a permanent injunction restraining the

http://www.judis.nic.in

Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the trademark by using the identical/similar mark to Plaintiff's trademarks "**VV NATIONAL**", "

, &

" , or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said registered Trademark of the Plaintiff in class 20 and 35 in respect of all type of moulded furniture variety of chairs and all other related products, and thereby restraining the Defendants from claiming any right through or under the Defendants from in any manner infringing the registered trademark of the Plaintiff and thus render justice.

(b) to grant a permanent injunction restraining the Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off her/their goods by using any mark which is identically and deceptively similar to the plaintiff's mark "**VV National**" or logo marks

"

,

" , artistic work**,** or any other word/words/logo/artistic work/design/device that are

WEB COPY

http://www.judis.nic.in

identical or deceptively similar to the said marks of the Plaintiff in respect of all type of moulded furniture variety of chairs and all other related products and thereby restraining the Defendants in any manner from passing off and thus render justice.

(c) to grant a permanent injunction restraining the Defendants, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the copyright of the Plaintiff on the artistic work

" "by using the identical artistic work

or, any other logo/artistic work/design/device that are identical or deceptively similar to the said copyright of the Plaintiff, and thereby restraining the Defendants from in any manner infringing the copyright of the Plaintiff and thus render justice.

(d) That the Defendants be ordered and directed to pay to Plaintiff a sum of Rs.5,00,000 (Rupees Five Lakhs only) by way of damages.

(e)A Preliminary Decree be passed in favor of the Plaintiff directing the Defendants to render a true and faithful

WEB COPY

http://www.judis.nic.in

accounts of all profit made by him, using the Plaintiff's Said Trademark & Copyrighted work and a final decree be passed in favour of the Plaintiff for the amount of profit thus found to have been made by the Defendants, together with interest, after the Defendants have rendered accounts,

(f) That the Defendants be directed to deliver-up to the Plaintiff for destruction, all labels, all other print materials, stickers, signage, visiting cards, letter heads, catalogues, pamphlets, broachers, all other advertising and promotional material, all stationary, and such other material used for infringing and passing off, and

(g) for the costs of the suit;

2. Initially, this Court had granted interim injunction in favour of the plaintiff and thereafter two vacate injunction petitions have been filed, taking note of the fact that the parties are non other than own brothers and sister-in-law, this Court directed both of them to mediate the matter before Mr.M.K.Kabir, Senior Advocate as Mediator. In view of certain differences, the dispute between the parties could not be sorted out in the mediation and the matter has been referred again before this Court. Before this Court, both the parties have agreed and settled the matter and

WEB COPY
http://www.judis.nic.in

also filed a memo dated 25.10.2019, which was duly signed by them and their respective counsels. On perusal of the said memo, it is seen that both the plaintiff and the first defendant have designed the different label mark for the usage in their business. Based on such memo, this Court has recorded their label marks as agreed by the parties by its order dated 24.10.2019. Since the dispute among the family members that both have agreed to have different marks viz., the logo, along with the registered trademark ''VV National, which the plaintiff has adopted to use in respect of their product and the logo along with the trademark, ''CV National'', which the first defendant purported to use in respect of their product. Both the marks have been appended in the order dated 24.10.2019 clearly setting out their respective logos and trade marks to use in respect of their products, they have not filed any such memo today. Therefore, this Court is of the view that in view of mutual terms of the parties before this Court agreeing and using separate trade marks for their respective businesses, which have been already incorporated by this Court in its order dated 24.10.2019, the suit itself can be disposed of in terms of Order XII

WEB COPY

http://www.judis.nic.in

Rule 6. Therefore, nothing survives for adjudication in this suit.

3. This Court has passed the following order by its order dated 24.10.2019, which is extracted hereunder:

> '' The plaintiff is the brother in law of the 1st defendant and the 1st defendant's husband is the elder brother of the plaintiff. Primary dispute arose with regard to the adoption of the logo " VV National" in their family business.
>
> 2. Since the dispute is between the brothers, this Court felt that the same could be resolved through mediation and in case of no possibility for settlement, directed the Mediation Centre to refer the matter back to this Court. This is how the matter is placed before this Court. Today, when the matter is taken up, both the parties agreed to settle the matter and they also file a memo, dated 25.10.2019, which has been duly signed by them and their respective counsel. On perusal of the said memo, it is seen that both the plaintiff and the first defendant have designed the label mark for the usage in their business. The logo, along with the registered trademark "VV National, which the plaintiff has adopted to use in respect of their product is mentioned under the caption 'A' and the logo along with the trademark, "CV National'' which the first defendant purported to use in respect of their product is mentioned under the caption 'B', which are as follows:-
>
> **'A'**

WEB COPY
http://www.judis.nic.in

(a) Plaintiff's Logo

'B'

(b) First Defendant's Logo

3. In fact, the logo along with its label mark, viz., "CV National" designed by the defendants were shown to the plaintiff, to which, the plaintiff has no objection. However, both the learned counsel appearing for the parties sought for a short time adjournment so as to enable them to file a detailed Memorandum of Compromise, setting out the terms and conditions.

4. In view of the above, post the matter on 15.11.2019, on which, both the parties shall a file the memo, clearly setting out defendants shall hereby use the mark along with its logo as mentioned above under the caption 'B' in respect of their business.

5. Call on 15.11.2019."

4. The plaintiff shall use ''VV National'' as stated in the above order dated 24.10.2019 and the defendants shall use ''CV National'' designed by them were shown to the plaintiff, to which, the plaintiff has reported no objection. Both the parties are hereby

WEB COPY

http://www.judis.nic.in

restrained to infringe each other trademarks as agreed between them before this Court and both of them are also restrained to infringe their respective trademarks in respect of their businesses.

5. It is also agreed that the defendants have to withdraw the rectification application filed before the Trade Mark Registry and both are permitted to file the respective applications before the trademark Registry for registration of their respective trademarks and logos as agreed before this Court. The logos accepted by the plaintiff and the first defendant, shall form part of the judgment.

Accordingly, the suit is disposed of, on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2019

Index : Yes/No

dn

WEB COPY

N.SATHISH KUMAR, J.,

http://www.judis.nic.in

C.S.No.572 of 2019

15.11.2019

WEB COPY

http://www.judis.nic.in