

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.461 of 2017

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.AD 13
Anna Nagar, Opp.IOB Towers Branch
Chennai - 600 040.

..Plaintiff

Vs.

Arun Traders
No.39/1, Raja Nagar
N.G.G.O Colony
Erode - 638 009.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Original Side Rules and Order VII, Rule 1 of the CPC read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 praying to grant

a) For permanent injunction, restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the Plaintiff's Registered Trademark ARUN as described in the Schedule hereunder by using the offending Trade Mark ARUN or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademark ARUN;

b) For permanent injunction, restraining the defendant by itself, its servants or agents or any one claiming through it from in any manner

passing off its products as that of the plaintiff's by using the offending trademark ARUN or any other trademark which is similar or deceptively similar to that of the plaintiff's trademark ARUN either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;

c) For permanent injunction restraining the defendants herein their men, agents or servants or anyone claiming under them or through them from in any manner using ARUN or any other name, word or mark which is identical or similar or deceptively similar to the plaintiff's trademark ARUN as part of the name of the Defendant Entity.

d) Directing the Defendant to surrender to the plaintiff entire goods with the labels, packaging materials, stock of unused labels together with the blocks and dyes, name boards, sign-boards, stationery materials etc., containing the impugned mark ARUN for destruction;

e) Directing the defendant to render true and faithful account of the profits earned by it using the offending trademark ARUN and pay such profits to the plaintiff as damages;

f) Directing the defendant to pay to the plaintiff the cost of the suit; and

g) grant such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Plaintiff : Mr. Prasanna Venkat
for M/s. APR Associates

For Defendant : Mr. R. Sathish Kumar

JUDGMENT

There is a sole plaintiff and a lone defendant in this suit.

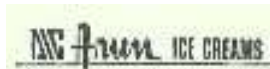
2. Mr.Prasanna Venkat of M/s.APR Associates [Law Firm] on behalf of plaintiff and Mr.R.Sathish Kumar, learned counsel on record for sole defendant are before this Commercial Division.

3. In the light of the trajectory, which this suit has taken, the main suit itself is being disposed of.

4. It is necessary to set out short facts under the caption 'Factual Matrix in a Nutshell' infra, which are imperative for appreciating this judgment.

5.FACTUAL MATRIX IN A NUTSHELL:

5(a). The central theme of this lis is constituted by 14 trademark registrations and the 14 trademark registration certificates have been filed as plaint document Nos.2 to 15, the details of which are as follows:

<i>S.No.</i>	<i>Trade Mark No.</i>	<i>Class</i>	<i>Mark</i>
1	391526	30	

<i>S.No.</i>	<i>Trade Mark No.</i>	<i>Class</i>	<i>Mark</i>
2	756404	30	
3	1167736	30	
4	1417525	30	
5	1417526	30	
6	1417527	32	
7	1417528	30	
8	1417529	29	
9	1459477	30	
10	1740571	43	

<i>S.No.</i>	<i>Trade Mark No.</i>	<i>Class</i>	<i>Mark</i>
11	1740572	35	
12	2467722	29	
13	2467723	30	
14	2467725	32	

The aforesaid 14 registered trademarks shall hereinafter be collectively referred to as 'suit TMs' for the sake of convenience and clarity.

5(b). This suit has been filed complaining of infringement of suit TMs, passing off qua suit TMs and infringing use of suit TMs as trade name. Injunctive reliefs in this regard have been sought for. Usual prayers for delivery of offending material for destruction, accounts, costs and a residuary limb also form part of the prayer in this suit.

5(c). The principal face of label of the plaintiff qua suit TMs and the principal face of alleged offending labels of defendant as in defendant's pouches/sachets, around which the complaint in the lis is centered, have

been filed as plaint document Nos.35 and 36 respectively. The same are as follows:

Plaintiff's label (principal face)



Defendant's offending labels (principal face) as in it's pouches/sachets



6. Having set out the factual matrix in a nutshell, it is necessary to capture the trajectory of this suit and the same is done under the caption 'Trajectory of the Suit' infra.

7. TRAJECTORY OF THE SUIT:

7(a). As mentioned supra, the plaint was presented on 16.06.2017.

7(b). Thereafter, Commercial Division was constituted in this Court in November 2017 (started functioning from 04.12.2017), this suit was transferred to this Commercial Division, on transfer to this Commercial Division jurisdiction qua this suit was determined, defendant was given 30 days time to file written statement and complete pleadings in the main suit in exercise of powers of this Commercial Division under proviso to Section 15(4) of 'The Commercial Courts Act, 2015' ('said Act' for brevity). Proceedings of this Commercial Division in this regard dated 30.01.2018 reads as follows:

'Mr.Prasana of M/s.APR Associates, Law Firm, for the sole plaintiff is before this Court. Mr.R.Sathish Kumar, learned counsel on record is before this Court on behalf of the sole defendant.

2. With regard to jurisdiction of this Commercial Division, both the learned counsel make a common submission in unison that this Commercial Division will have jurisdiction to entertain this suit as this is a suit for alleged infringement of trademark. There is also a prayer qua passing off. Both the

learned counsel submit that in the light of the subject matter of the suit and in the light of the prayers in the plaint, Section 134(1) of Trademarks Act, 1999 (hereinafter 'TM Act' for brevity) operates. As Section 134(1) of Trademarks Act, 1999 operates, this Commercial Division will have jurisdiction under first proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) (hereinafter referred to as 'Act 4 of 2016' for brevity). As this is a suit for alleged infringement of trademark, in the light of Section 134(1) of TM Act, 'specified value' aspect (as in Section 2(1)(i) read with Section 12 of Act 4 of 2016) is of no relevance. After perusal of plaint, I am satisfied that the common submission made by both sides deserves to be accepted and therefore, this Commercial Division expresses its intention to exercise jurisdiction over this suit. To be noted, jurisdiction is inherent and this is an expression of intention to exercise jurisdiction over this suit.

3. Now I turn to the stage of the suit. Sole defendant has been duly served and has entered appearance through counsel, but is yet to file written statement. By exercising the powers of this Commercial Division under first proviso to Section 15 (4) of Act 4 of 2016, 30 days time is granted to the defendant to file written statement. Written statement of defendant shall be filed on or before 01.03.2018 with advance copies along with all supporting documents to the learned counsel for the plaintiff.

List the suit on 05.03.2018. O.A.Nos.613 to 615 of 2017 shall be listed for hearing on 01.02.2018.'

Pursuant to aforesaid proceedings, sole defendant filed a written statement dated 07.01.2018 on 09.02.2018 along with 15 documents.

7(c). In the interregnum, to be noted, sole defendant was duly served with suit summons on 30.07.2017.

7(d). After completion of pleadings, next procedural steps under amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by said Act are 'inspection of documents' followed by 'admission and denial' under Rules 3 and 4 respectively of Order XI of amended CPC. The same is underway and the matter is listed before this Commercial Division. Under such circumstances, defendant has filed an affidavit dated 04.01.2019. This affidavit has been filed on 08.01.2019 in the Registry vide D.No.1279/2019 and the same is before me as part of suit file.

8.DISCUSSION:

8(a). Defendant has been described as Arun Traders with address at No.39/1, Raja Nagar, N.G.G.O.Colony, Erode - 638 009 in the short and long cause titles of the plaint. This Commercial Division is informed that one Mr.P.S.Elango, son of Mr.T.K.Subramaniam, is carrying on business in the name and style 'Arun Traders' as sole proprietor. To be noted, the aforesaid

affidavit dated 04.01.2019 has been sworn to by Mr.P.S.Elango, Proprietor of Arun Traders and the same reads as follows:

'1.P.S.Elango, S/o.T.K.Subramaniam, aged about 42 years, carried on business at 39/1, Raja Nagar, N.G.G.O.Colony, Erode - 638 009, do hereby solemnly affirm and sincerely state as follows:

1.I am the proprietor of the defendant herein and as such I am well acquainted with the facts of the case. I competent to swear this affidavit.

2. I state that the plaintiff, M/s.Hatsun Agro Products Limited have filed the instant suit against me alleging that I am infringing their trademark ARUN by using the same on products viz., Dates.

3.I state that due to unforeseen financial issues in my business activities, I have closed down by business permanently and I am no longer using the name 'ARUN' to market or manufacture Dates products. I have closed down by business permanently and I am no longer using the name 'ARUN' to market or manufacture Dates products. I have closed down by business in the month of November 2018. I would like to state that considering my present financial position I have no intention to use the disputed name in the future and I have will withdraw my trademark application No.1337555.

4. I hereby request this Hon'ble Court to consider dispensing my personal appearance and accept this affidavit as part of the above mentioned suit and pass necessary orders.'

8(b). It is not in dispute before me that this Commercial Division has

powers to pass summary judgment before recording of oral evidence under Order XIII-A of amended CPC as amended by said Act. Grounds on which summary judgment can be passed are adumbrated in Rule 3 of Order XIII-A of amended CPC. A perusal of Rule 3 of Order XIII-A of amended CPC reveals that a summary Judgment can be passed when the parties to the lis have no real prospect of either succeeding on the claim or defending the claim and when there is no other compelling reason as to why, the suit should not be disposed of before recording of oral evidence.

8(c). In the light of the aforesaid factual matrix and the trajectory which this suit has taken, this Commercial Division is of the considered view that this is a fit case for passing summary judgment. The reason is in the light of the aforesaid affidavit dated 04.01.2019, defendant has no real prospect of defending the claim and there is no other compelling reason as to why this suit should not be disposed of before recording of oral evidence.

8(d). In the aforesaid affidavit, the defendant has not only said that he has closed down business, but has also gone on to say that he is no longer using the name 'ARUN' to market or manufacture Dates products, besides going on to say that defendant will even withdraw it's trademark application being trade mark application No.337555 which is one seeking registration of label mark 'ARUN GOLD' in Class 29 for Dates.

8(e). To be noted, copy of E-Status report from the Trademark Registry pertaining to this application has been filed as defendant's document No.12 along with written statement.

8(f). In the light of the contents of aforesaid affidavit dated 04.01.2019, this Commercial Division is convinced that defendant has no real chance of defending the claim with regard to the plaint prayer.

8(g). Prayer paragraph in the plaint is paragraph 33 and the same reads as follows:

33. The plaintiff therefore prays for judgment and decree:

a) For permanent injunction, restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the Plaintiff's Registered Trademark ARUN as described in the Schedule hereunder by using the offending Trade Mark ARUN or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademark ARUN;

b) For permanent injunction, restraining the defendant by itself, its servants or agents or any one claiming through it from in any manner passing off its products as that of the plaintiff's by using the offending trademark ARUN or any other trademark which is similar or deceptively similar to that of the plaintiff's trademark ARUN either by

manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;

c) For permanent injunction restraining the defendants herein their men, agents or servants or anyone claiming under them or through them from in any manner using ARUN or any other name, word or mark which is identical or similar or deceptively similar to the plaintiff's trademark ARUN as part of the name of the Defendant Entity.

d) Directing the Defendant to surrender to the plaintiff entire goods with the labels, packaging materials, stock of unused labels together with the blocks and dyes, name boards, sign-boards, stationery materials etc., containing the impugned mark ARUN for destruction;

e) Directing the defendant to render true and faithful account of the profits earned by it using the offending trademark ARUN and pay such profits to the plaintiff as damages;

f) Directing the defendant to pay to the plaintiff the cost of the suit; and

g) grant such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

8(h). A perusal of prayer paragraph reveals that it consists of 7 limbs and the 7 limbs have been set out as sub-paragraphs (a) to (g) of prayer paragraph 33.

8(i). In the light of the narrative supra, there will be a summary judgment and decree in the suit in terms of sub-paragraphs (a), (b) and (c)

of plaint prayer paragraph. In the light of the contents of the affidavit, this Commercial Division is of the considered view that prayers in sub-paragraphs (d), (e), (f) and (g) do not deserve to be acceded to.

8(j). This Commercial Division takes the aforesaid view in the light of the fair stand that has been taken by the defendant in filing the aforesaid affidavit dated 04.01.2019 and going as far as saying it will withdraw its trademark registration application. To be noted, this affidavit has been filed after the defendant has filed written statement along with 15 documents and completed pleadings. The process of 'inspection of documents' followed by 'admission and denial' is underway and it was well open to defendant to drag delay the proceedings notwithstanding the obtaining position. That the defendant has not chosen to do so and has chosen to very fairly come before this Court and state the obtaining position, this Commercial Division is of the considered view that defendant should be given the benefit of not suffering a decree in terms of sub-paragraphs (d), (e) and (f). In any event, sub-paragraph (g) is only the usual residuary prayer in any prayer paragraph.

9. CONCLUSION

9(a). Summary judgment is passed and suit is decreed in terms of injunctive reliefs contained in sub-paragraphs (a), (b) and (c) of prayer

paragraph 33 and prayers in sub-paragraphs (d), (e), (f) and (g) of prayer paragraph 33 are not acceded to/negatived. Though obvious, it is made clear that parties are left to bear their respective costs.

09.01.2019

Speaking order/Non Speaking order

Index : Yes /No

Internet : Yes/No

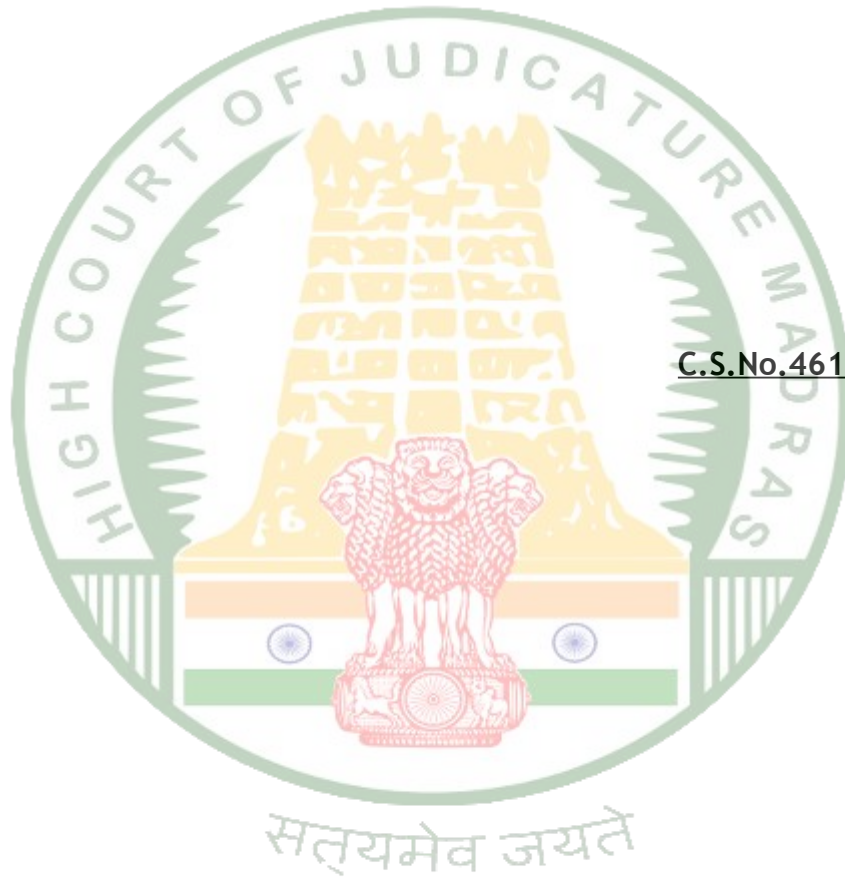
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M.SUNDAR, J.

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