

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.S.No.666 of 2018
and O.A.Nos.909 & 910 of 2018
and A.No.1278 of 2019**

1.Capt. (Retd) Shibu Issac,
No.6/11, 5th Cross Street,
Indira Nagar, Adyar,
Chennai – 600 020.

2.Force 1 Guarding Services Pvt. Ltd.,
Rep. by its CEO:
Mr.Bobby Thomas,
having registered Office at:
No.6, 5th Cross Street,
Indira Nagar, Adyar,
Chennai – 600 020.

...Plaintiffs

Versus

Force 1 Security Services
Rep. by its Proprietor,
Mr.Harjit Singh Gill
301, Safee Complex
Opp. B.R.C Mandir,
Udhna Navsari Road,
Surat (Gujarat) – 394220.

...Defendant

This suit is filed under Order VII Rule 1 of C.P.C r/w. Order IV Rule 1 of the Original Side Rules of the Madras High Court, Section 2(1)(c)(xvii) r/w. Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and Sections 11, 27, 29, 134, 135 Trademarks Act, 1999 for the following reliefs:

(a) A permanent injunction restraining the defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives and anyone acting for or on their behalf from in any manner directly or indirectly using the trademark and/or trade name and/or domain 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', www.force1securityservices.com and/or any mark/name similar to the plaintiffs' trademark/name 'FORCE 1', amounting to infringement of plaintiff No.1's registered trademark as referred to in paragraph 17 of the plaint;

(b) A permanent injunction restraining the defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives and anyone acting for or on their behalf from in any manner directly or indirectly using the trademark and/or trade name and/or domain 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', www.force1securityservices.com and/or any mark/name similar to the plaintiffs' trade mark/name 'FORCE 1', amounting to passing off of the defendant's business/services as those of the plaintiffs';

(c) An order directing the defendant to surrender the ownership of the domain www.force1securityservices.com and/or any other domain directly or indirectly in their ownership or control bearing the mark 'FORCE 1' in favour of the plaintiffs;

(d) An order directing the defendant to furnish all the data and accounts of all transactions undertaken, services rendered and the profits obtained during the course of their business relating to services under the impugned trade name and trademarks 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', to the plaintiffs;

(e) An order directing the defendant to pay preliminary damages for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the plaintiff apart from such damages as calculated upon accounts being rendered by the defendant.

(f) An order of delivery up of all finished and unfinished materials including signage, cards, stationary, accessories, labels, brochures, printed materials including hoardings and other material bearing the impugned 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES' trade name and trademark or any mark identical with or deceptively similar to the plaintiffs' trade mark/name 'FORCE 1', by the defendant to the plaintiffs for the purpose of destruction;

(g) Costs.

For Plaintiffs : Mr.M.S.Bharath

For Defendant : Mr.M.Sathiavel

J U D G M E N T

Today (18.09.2019), when the matter is called, the learned counsel for the plaintiffs submitted that the matter has been settled between the parties and he has filed the Memo of Compromise dated 18.09.2019, before this Court. He also prayed that the suit may be decreed in terms of the said Memo of Compromise.

2. The said Memo of Compromise reads as follows:

"1. The plaintiff No.1 is an Indian citizen, the registered proprietor of the marks FORCE 1 and other FORCE 1 formative marks. Plaintiff No.2 is a Private Limited Company having registered Office at No.6, 5th Cross Street, Indira Nagar, Adyar, Chennai – 600 020 and Head Office at 1 B, Suvarna Darshan, No.47, Second Main Road, Gandhi Nagar, Adyar, Chennai – 600 020, Tamil Nadu. Plaintiff No.2 is duly represented by Mr.Bobby Thomas, Chief Executive Officer and Director of Plaintiff No.2.

2. The defendant is M/s.Force 1 Security Services, Proprietorship firm, Rep. by its proprietor Mr.Harjit Singh Gill 301, Safee Complex Opp. B.R.C. Mandir Udhna Navsari Road Surat (Gujarat) – 394 220.

3. The plaintiffs have filed the present suit against the defendant for the following relief:

(a) A permanent injunction restraining the defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives and anyone acting for or on their behalf from in any manner directly or indirectly using the trademark and/or trade name and/or domain 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', www.force1securityservices.com and/or any mark/name similar to the plaintiffs' trademark/name 'FORCE 1', amounting to infringement of plaintiff No.1's registered trade mark as referred to in paragraph 17 of the Plaint.

(b) A permanent injunction restraining the defendant, their directors, proprietors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives and anyone acting for or on their behalf from in any manner directly or indirectly using the trademark and/or trade name and/or domain 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', www.force1securityservices.com and/or any mark/name similar to the plaintiffs' trademark/name 'FORCE 1', amounting to passing off of the defendant's business/services as those of the plaintiffs';

(c) An order directing the defendant to surrender the ownership of the domain www.force1securityservices.com and/or any other domain directly or indirectly in their ownership or control bearing the mark 'FORCE 1' in favour of the plaintiffs;

(d) An order directing the defendant to furnish all the data and accounts of all transactions undertaken, services rendered and the profits obtained during the course of their business relating to services under the impugned trade name and trademarks 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES', to the plaintiffs;

(e) An order directing the defendant to pay preliminary damages for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the plaintiff apart from such damages as calculated upon accounts being rendered by the defendant.

(f) An order for delivery up of all finished and unfinished materials including signage, cards, stationary, accessories, labels, brochures, printed materials including hoardings and other material bearing the impugned 'FORCE 1', 'FORCE 1 SECURITY', 'FORCE 1 SECURITY SERVICES' trade name and trademark or any mark identical with or deceptively similar to the plaintiffs' trade mark/name 'FORCE 1', by the defendant to the plaintiffs for the purpose of destruction;

(g) Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

4. This Hon'ble Court was pleased to grant an ex parte interim injunction in favour of the plaintiffs and against the defendant in O.A.Nos.909 & 910 of 2018 filed in the present suit vide order dated 01.10.2019. The said order of interim injunction was further extended until further orders vide order dated 22.10.2019 and is currently in force.

5. Pursuant to the same, the plaintiffs and the defendant above named have arrived at a settlement on the following terms and conditions.

6. The defendant agrees and undertakes to change their trade name from 'FORCE 1 SECURITY' to Focus 1 Security Services and logo as depicted in Annexure A. The defendant agrees and undertakes to effect the change from the mark 'FORCE 1 SECURITY' to Focus 1 Security Services including as a trade name, trademark, and in all forms of use, including government and statutory registrations, within a period of 6 months from the date of decree of the present suit.

7. The defendant agrees and acknowledges that the first plaintiff is the registered proprietor of the trademark 'FORCE 1' as detailed below and has exclusive statutory rights by virtue of such registrations and proprietary and

common law rights on account of prior, long and extensive use of the trademark 'FORCE 1' to the exclusion of others

S.No.	REGN. NO.	CLASS	MARK	STATUS
1	1043875	16		Filed on 11.09.2001 Registered Valid till 11.09.2021
2	1238707	42		Filed on 22.09.2003 Registered Valid till 22.09.2003
3	1480989	39	FORCE 1	Filed on 23.08.2006 Registered Valid till 23.08.2026
4	1480990	39		Filed on 23.08.2006 Registered Valid till 23.08.2026
5	1480991	42	FORCE 1	Filed on 23.08.2006 Registered Valid till 23.08.2026

S.No.	REGN. NO.	CLASS	MARK	STATUS
6	1480992	42		Filed on 23.08.2006 Registered Valid till 23.08.2026

8. The defendant agrees and undertakes that they shall not use 'FORCE 1' or any other mark similar thereto as a trademark, trade name, business name or in any other manner, in relation to any of their products, services and business, at present or at any point in time in the future.

9. The defendant confirms that they shall withdraw their trademark  ('FORCE 1 SECURITY')

FORCE -1 SECURITY

filed under Application No.3433254 in Class 45. The defendant also confirms that no fresh trademark application in respect of the said mark or any mark similar to the plaintiff's trademark 'FORCE 1' has been preferred by them.

10. The defendant agrees and undertakes that they shall not use 'FORCE 1' or any other mark similar thereto in any of their advertising/marketing/promotional material in any form or domain, including hoardings,

letter heads, invoices or any other material used in respect of their business.

11. The defendant agrees and undertakes that they shall not challenge the trademark/copyright registrations of the plaintiff as mentioned above in Clause 5 and including any other trademark/copyright for the mark 'FORCE 1' filed by the plaintiff at any point in time in the future.

12. The defendant submits to the judgement and decree as prayed for in terms of Prayer 49(a) and (b).

13. Should the defendant be found to be in breach or violation of the present Memorandum of Compromise at any future date, they agree to be liable to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as liquidated damages apart from such other amount as may be calculated as unliquidated damages to the plaintiff.

14. All the aforesaid undertakings will be binding henceforth on the said defendant, their directors, proprietor, partners, successors-in-business, legal representatives and assignees.

15. Subject to the aforesaid express undertaking by the defendant, the plaintiffs agree to give up the other reliefs, i.e., Prayers 49 (c), (d), (e), & (f), and (g) claimed in the Plaint.

16. It is therefore humbly prayed that the present Memorandum of Compromise may be recorded and a decree in terms of paragraphs 49(a) and (b) of the Plaint

may be passed in favour of the plaintiff and against the defendant by this Hon'ble Court, incorporating the terms of the settlement as a part thereof."

3. The said Memo of Compromise is recorded and the same shall form part of the decree.

4. Considering the submission made by the plaintiffs' counsel, this Court is inclined to decree the present suit in terms of the Memo of Compromise, dated 18.09.2019, filed by the plaintiffs' counsel. Accordingly, as per the terms of the said Memo of Compromise, this Suit is decreed as prayed for, in respect of prayer (a) & (b). As far as prayer (c), (d), (e), (f) & (g) are concerned, the plaintiffs have given up the same, as they stated in the Memo of Compromise. Consequently, connected Applications are closed.

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Index : Yes/No

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