

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Suit (Comm. Div.) No.791 of 2018

1. Aqua Pump Industries
rep by its Managing Partner
Mr. Ramaswamy Kumaravelu
Thudiyalur Post, Coimbatore 641 034
Having their branch office at
New No 10, Old No 26
Errabalu Chetty Street, Parrys Corner
Chennai - 600 001.
2. Aqua Sub Engineering
rep by its Managing Partner
Mr. Ramaswamy Kumaravelu
Thudiyalur Post, Coimbatore 641 034
Having their branch office at
New No 10, Old No 26
Errabalu Chetty Street, Parrys Corner
Chennai - 600001.

... Plaintiffs

VS.

M/s. Samay Ele. Eng. Co.,
Rep by its Partners
Mr. Divyeshbhai N. Kamani
Mr. Kantibhai K. Kalawadiya,
Mr. Hansrajbhai K. Kalawadiya
Maruti Ind. Area,
Opp. Octroy Naka, Gondal Road,
Charbhuja Marble Street,
Behind Ashok Janretar,
Rajkot, Gujarat.

... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules and Order VII, Rule 1 of the Code of Civil Procedure read with Sections, 27, 134 and 135 of the Trademarks Act, 1999. .

For Plaintiffs : Ms.V.Revathy

For Defendant : Mr.P.Dhanabal Raj

J U D G M E N T

This Civil Suit has been filed by the plaintiffs seeking for the following reliefs:

(a) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Plaintiff's registered Trade Mark **TEXMO/ TEXON** as such or prefix or suffix in Submersible Pump, V3 to V8 Borwell and Open Well Submersibles, Electric Motor and spare parts in Class 07 or in any other goods manufactured and sold by the Defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark **TEXMO** or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-

II) renumbered as 2702778, 2702779, 2702780 & 2702781, respectively.

(b) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO/TEXON** as such or with prefix or suffix in Submersible Pump, V3 to V8 Borwell and Open Well Submersibles, Electric Motor and spare parts in Class 07 or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs Trade Mark **TEXMO** or in any manner pass off the Plaintiffs' goods.

(c) directing the Defendant to surrender to the Plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trademark **TEXON** or other deceptively similar to the Plaintiffs trademark **TEXMO**;

(d) directing the Defendant to render an account of profits made by them by the use of the impugned trademark **TEXON** on the goods referred

and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts;

(e) directing the Defendant to pay to the Plaintiffs the costs of the suit.

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the Plaintiffs and the Defendant have settled the dispute and filed a Joint Memo of Compromise dated 22.03.2019 entered into between them. For better understanding, the Memorandum of Compromise entered into between the parties is extracted hereunder:

“The Plaintiffs and the Defendant have agreed to compromise the matter in the following terms:

1. The terms Plaintiffs and Defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2. The Defendant submits to a Judgment and Decree as below:

(a) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Plaintiff's registered Trade Mark **TEXMO/TEXON** as such or prefix or suffix in Submersible Pump, V3 to V8 Borwell and Open Well Submersibles, Electric Motor and spare parts in Class 07 or in any other goods manufactured and sold by the Defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the

Plaintiffs' registered Trade Mark **TEXMO** or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

(b) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO/TEXON** as such or with prefix or suffix in Submersible Pump, V3 to V8 Borwell and Open Well Submersibles, Electric Motor and spare parts in Class 07 or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs Trade Mark **TEXMO** or in any manner pass off the Plaintiffs' goods.

3. The Defendant undertakes to withdraw the Trade Mark **TEXON** under Application No. 3367766 dated 20.9.2016 with respect to Submersible Pump, V3 To V8 Borwell And Open Well Submersibles, Electric Motor And Spare Parts in Class-07, advertised in the Trademark Journal No. 1820 dated 23.10.2017.

4. The Defendant undertakes hereby not to assert any right in respect of the expression **TEXMO/TEXON** by filing Trademark Applications or using the same or similar sounding expression or its logo for any goods in future.

5. The Defendant also undertake to withdraw any Application in respect of **TEXMO/TEXON** or any other similar sounding marks that have already been filed that is not within the knowledge of the Plaintiffs.

6. The Defendant shall not make any application for registration of the Trademark **TEXMO/TEXON** as such or with prefix or suffix in any goods manufactured and sold by

the Defendant in future.

7. The Defendant undertakes not to oppose or initiate any Rectification proceedings against the Plaintiffs' Trademark Applications or their Registered Trademarks.

8. The Defendant submits that Mr. Hansrajbhai K. Kalawadiya has retired from the Defendant firm on 23/07/2013 by virtue of Retirement Deed executed in this regard. Hence the memo of compromise is being signed by only 2 partners.

In view of the decree for permanent injunction the Plaintiffs have given up the reliefs contained in prayers c, d & e in para 20 of the suit including cost of the suit."

4. Recording the same, this Civil Suit is decreed in terms of the Memorandum of Compromise. The Memorandum of Compromise shall form part of the Decree. No costs. Consequently, connected Original Application Nos.1097 and 1100 of 2018 and Application No.9074 of 2018 are closed. Refund of Court fee to the Plaintiff, as permissible under the Rules, is ordered.

सत्यमेव जयते

03.04.2019

Index : Yes/No

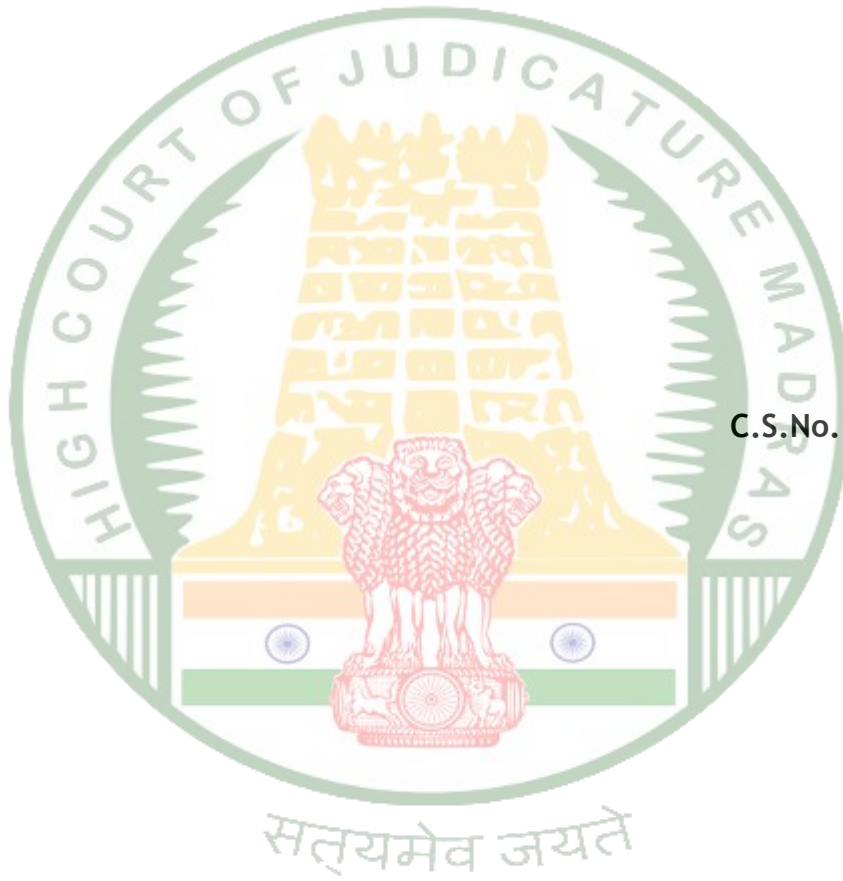
Speaking Order : Yes/No

(aeb)

WEB COPY

S.VAIDYANATHAN,J.

(aeb)



C.S.No.791 of 2018

WEB COPY

03.04.2019