

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.693 of 2018
and O.A.Nos.935 to 937 of 2018

Dell Inc.
 One Dell Way, Round Rock,
 Texas 78682-2244,
 United States of America

.. Plaintiff

Vs.

1.Mr.Deepak Sharma,
 Trading as Lakshya Technologies,
 Shop No.8, Nambi Trade Centre, 2nd Floor,
 Narashingapuram Street, Mount Road,
 Chennai - 600 002.
 Also at Shop No.8/31, Nambi Trade Centre, 3rd Floor,
 Narasingapuram Street, Mount Road,
 Chennai - 600 002.
 and Also at Shop No.160, SwamyNaicken Street,
 Chintardripet, Chennai - 600 002.

2.Mr.Shankar Purohit,
 Trading as Lakshya Technologies,
 Shop No.8, Nambi Trade Centre, 2nd Floor,
 Narashingapuram Street, Mount Road,
 Chennai - 600 002.

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 of CPC along with Sections 27, 28 and 29, 134 and 135 of the Trademarks Act, 1999 praying to;

A. pass a decree of permanent injunction to restrain the Defendants,

their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either by themselves and/or permitting the use of or supplying any goods to any third party, or clients of such a third party under the mark DELL or any mark similar thereto or using the mark DELL either singularly on its own or along with any other words/marks, as a part of its trademark/trade name or any other social media page or identification name or as a part of advertising and promotional material, either in physical form or in any digital form or any website or any other social media page, either owned or managed by them or by any of its associated and related concern or entity or in any manner whatsoever amounting to infringement of the Plaintiff's rights in respect of the registered trademark DELL;

B. To pass a decree of permanent injunction to restrain the Defendants, their their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either itself and/or permitting the use of or supplying any goods to any third party, or clients of such a third party, who are wrongfully using, or in any other manner, using or applying "DELL" and/or any other trademark deceptively or confusingly similar to the same or to plaintiff's well known trademark DELL in respect of and upon any type of product or service in any manner whatsoever as described hereinabove and doing any other acts as may lead to passing off of their goods/services as those of the plaintiff;

C. To pass a decree of permanent injunction to restrain the Defendants, their their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either itself and/or permitting the use of or supplying any goods to any third party, or clients of such a third party, who are wrongfully using, or in any other manner, using or applying "DELL" and/or any other trademark deceptively or confusingly similar to the same or to plaintiff's well known trademark DELL in respect of and upon any type of product or service in any manner whatsoever as described hereinabove and doing any other acts as may lead to dilution of well-known DELL marks of the plaintiff.

D. To pass a decree of mandatory injunction thereby directing the Defendants, their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner to recall and handover to the Plaintiff all finished/unfinished goods, packaging and promotional material, catalogues, stationery, all labels, signs, prints, packaging materials, cartons, wrappers and receptacles and any other material whatsoever relating to the counterfeit goods and bearing the trademark DELL or any other trademark, which is identical to and/or

deceptively and confusingly similar to the Plaintiff's well known trademark DELL and reimburse all customers from which the said materials are recalled at their own expense;

E. To direct the defendants to render accounts for profits earned by them through the sale of products, as mentioned hereinabove, bearing the trademark DELL and direct payment of such profits to the Plaintiff;

F. For a declaration that the trademark DELL of the plaintiff is a well-known trademark;

G. Costs of the suit be awarded to the Plaintiff; and

H. To pass such further or other reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thereby render justice.

For Plaintiff : Mr.R.Rajesh Ramanathan

For Defendants : Ms.Gladys Daniel

JUDGMENT

Mr.Rajesh Ramanathan, learned counsel of M/s.Factum Law (Law Firm) on record for sole plaintiff and Ms.Gladys Daniel, learned counsel on record for both the defendants are before this Commercial Division.

2. To be noted, there is a sole plaintiff and two defendant in this suit.

3. Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 17.12.2018, which reads as follows:

'There is a sole plaintiff and there are two

defendants in this suit.

2. *Ms.Reshma Rajagopal, learned counsel representing the counsel on record for sole plaintiff and Ms.V.Revathy, learned counsel representing the counsel on record for both the defendants are before this Commercial Division.*

3. *The defendants have filed a memo dated 12.12.2018 which reads as follows:*

'MEMO FILED ON BEHALF OF THE DEFENDANTS

It is humbly submitted that the Defendants are submitting to a decree in terms of sub paras A to D of para 43 of the Plaint.

Dated at Chennai on this the 12th day of December 2018.

sd/-

Counsel for Defendants'

4. *Both the defendants namely Mr.Deepak Sharma and Mr.Shankar Purohit are present in Court. They have produced their photo identity cards namely Aadhar cards and they have also given to the Court self attested photo copies of their photo identity cards.*

5. *Both the defendants, present in Court, reiterate the contents of the aforesaid memo, both the defendants confirm that the memo has been filed on instructions from them and both the defendants also submit that the main suit itself can be decreed in terms of the aforesaid memo subject of course to plaintiff giving up the prayers contained in sub-paragraphs (E) to (H) of the plaint prayer paragraph being paragraph*

No.43.

6. *Learned counsel for plaintiff seeks time to get instructions in this regard from the plaintiff.*

7. *In the light of the aforesaid narrative, in the next listing, for recording the aforesaid memo, presence of defendants are dispensed with as they are from Rajasthan.*

8. *At request of plaintiff to get instructions, list this matter under the same caption on 10.01.2019.'*

4. As would be evident from paragraph 8 of the earlier proceedings, learned counsel for plaintiff had sought time to get instructions about giving up prayers in sub-paragraphs (E) to (H) in the prayer paragraph of the plaint.

5. It is necessary to extract the prayer paragraph in the plaint. To be noted, prayer paragraph in the plaint is paragraph No.43 and the same reads as follows:

'43. Prayer:

**IN THE PREMISES STATED ABOVE, IT IS THEREFORE,
MOST RESPECTFULLY PRAYED THAT THIS HON'BLE
COURT MAY BE PLEASED TO:**

A. Pass a decree of permanent injunction to restrain the

Defendants, their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either by themselves and/or permitting the use of or supplying any goods to any third party, or clients of such a third party under the mark DELL or any mark similar thereto or using the mark DELL either singularly on its own or along with any other words/marks, as a part of its trademark/trade name or any other social media page or identification name or as a part of advertising and promotional material, either in physical form or in any digital form or any website or any other social media page, either owned or managed by them or by any of its associated and related concern or entity or in any manner whatsoever amounting to infringement of the Plaintiff's rights in respect of the registered trademark DELL;

B. Pass a decree of permanent injunction to restrain the Defendants, their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either itself and/or permitting the use of or supplying any goods to any third party, or clients of such a third party, who are wrongfully using, or in any other manner, using or applying "DELL" and/or any other trademark deceptively or confusingly similar to the same or to plaintiff's well known trademark DELL in respect of and upon any type of product or service in any manner

whatsoever as described hereinabove and doing any other acts as may lead to passing off of their goods/services as those of the plaintiff;

C. Pass a decree of permanent injunction to restrain the Defendants, their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner from manufacturing, stocking selling, marketing, advertising, exporting, either itself and/or permitting the use of or supplying any goods to any third party, or clients of such a third party, who are wrongfully using, or in any other manner, using or applying "DELL" and/or any other trademark deceptively or confusingly similar to the same or to plaintiff's well known trademark DELL in respect of and upon any type of product or service in any manner whatsoever as described hereinabove and doing any other acts as may lead to dilution of well-known DELL marks of the plaintiff.

D. Pass a decree of mandatory injunction thereby directing the Defendants, their agents, servants, partners, assigns, franchisees, distributors or any person claiming through them in any manner to recall and handover to the Plaintiff all finished/unfinished goods, packaging and promotional material, catalogues, stationery, all labels, signs, prints, packaging materials, cartons, wrappers and receptacles and any other material whatsoever relating to the counterfeit goods and bearing the trademark DELL or any other trademark, which is identical to and/or deceptively and confusingly

similar to the Plaintiff's well known trademark DELL and reimburse all customers from which the said materials are recalled at their own expense;

E. Direct defendants to render accounts for profits earned by them through the sale of products, as mentioned hereinabove, bearing the trademark DELL and direct payment of such profits to the Plaintiff;

F. A declaration that the trademark DELL of the plaintiff is a well-known trademark;

G. Costs of the suit be awarded to the Plaintiff; and

H. Pass such further or other reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thereby render justice.

6. In the light of the aforesaid memo dated 12.12.2018, earlier proceedings (extracted supra dated 17.12.2018) and in the light of Mr.Rajesh Ramanathan's submissions on instructions that the plaintiff is giving up prayers contained in sub-paragraphs (E), (F), (G) and (H), this suit will stand decreed in terms of prayers in sub-paragraphs (A), (B), (C) and (D). Prayers contained in sub-paragraphs (E), (F), (G) and (H) are given up by the plaintiff. Therefore, obviously there will be no order as to costs.

7. There is no dispute or disagreement between both learned counsel before me that this Commercial Division has powers to pass summary judgment under Order XIII-A of the amended The Code of Civil Procedure,

1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity). The grounds on which summary judgment can be passed are adumbrated in Rule 3 of Order XIII-A of amended CPC as amended by said Act. A perusal of Rule 3 reveals that in cases where plaintiff or defendant does not have real prospect of succeeding on the claim or successfully defending the claim, a summary judgment can be passed before recording oral evidence as long as there is no other compelling reason as to why the claim should not be disposed of in such a manner. This is adumbrated in sub-clauses (a) and (b) of Rule 3 of Order XIII-A of amended CPC as amended by said Act.

8. In the instant case, the narrative thus far makes it clear that in the light of the memo dated 12.12.2018 and confirmation of contents of the same by defendants 1 and 2 who were present in Court in person, defendants have no real prospect of successfully defending plaintiff's claim for reliefs contained in sub paragraphs (A), (B), (C) and (D) of prayer paragraph. Likewise, in the light of plaintiff counsel stating explicitly on instructions that plaintiff is giving up prayers contained in sub paragraphs (E), (F), (G) and (H), the question of even examining whether plaintiff has any real prospect of succeeding on its claim qua sub-paragraphs (E) (F) (G) and (H) does not arise. In other words, prayers in sub paragraphs (A), (B), (C) and (D) alone survive and defendants have no real prospect of

successfully defending those claims. There is no other compelling reason as to why these claims should not be disposed of without recording oral evidence. Therefore, this is summary judgment under Order XIII-A of amended CPC as amended by said Act.

9. Be that as it may, both learned counsel before me, on instructions, from their respective parties to this lis have made a request for a decree in the aforesaid terms and therefore aforesaid shall be a consent decree.

10. It is agreed between both counsel that with regard to prayer in sub-paragraph (D) supra, the material as per inventory in the Advocate Commissioner's report will be handed over by the defendants to the plaintiff's representative within a fortnight from today i.e., by 24.01.2019.

Suit is decreed on above terms.

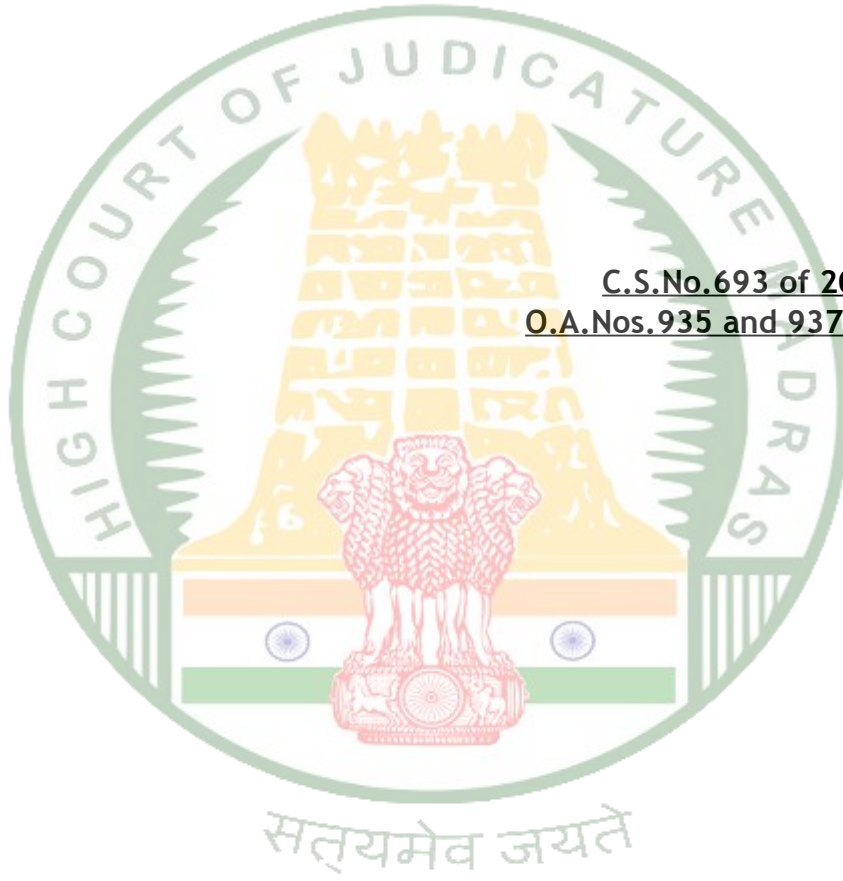
Index : Yes/No

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M.SUNDAR, J.

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