

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Suit (Comm. Div.) No.767 of 2018

M/s.Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai 600 032
rep. by its Authorized Signatory,
D.Jude F.L.S. Durai Pandian

...Plaintiff

Vs.

Bafna Biotech,
Village Limtara,
Itwari Bazaar,
Dhamtari,
Chattisgarh - 493 773.

...Defendant

Plaint filed under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 O.S. Rules, read with Sections 27, 28, 29, 134, 135 of the Trade Marks Act, 1999 and Sections 51, 55 and 62 of the Copyrights Act, 1957.

For Plaintiff : Mr.R.Sathish Kumar

For Defendant : Mr.G.Sankar

JUDGMENT

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

(a) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.487453 in Class 5 and other registered trademarks by using a deceptively similar trademark ZINCOVITA or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

(b) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels/artistic works which are a substantial reproduction of Plaintiffs' registered copyright under Nos. A-54243/1997 and A-91339/2011 and A-108878/2014 in colour scheme, get up and layout for their ZINCOVITA for any syrup, drops tablets etc., or in any other manner whatsoever;

(c) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off

the Defendants' products under the trademark ZINCOVITA as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's ZINCOVIT trademark or artistic work or in any other manner whatsoever;

(d) the Defendants be ordered to surrender to Plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark ZINCOVITA label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label.

(e) a preliminary decree be passed in favour of the Plaintiffs directing the Defendants to render account of profits made by use of trademark and copyright in the artistic work ZINCOVITA label and a final decree be passed in favour of the Plaintiffs for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts;

(f) for costs of the suit; and

(g) pass such further or other reliefs as this Court may deem fit and necessary in the circumstances of the case and thereby render justice.

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the parties have entered into compromise and produced the Memorandum of Compromise dated 12.02.2019 entered into between the Plaintiff and the Defendant. For better understanding, the Memorandum of Compromise entered into between the parties is extracted hereunder:

**MEMORANDUM OF COMPROMISE ENTERED INTO
BETWEEN THE PLAINTIFF AND THE DEFENDANT**

The Plaintiff and the Defendant jointly submit as follows:

"(i) That the Defendant is carrying on manufacturing of Pharma and other products at Village Limtara, Itwari Bazaar, Dhamtari, Chattisgarh - 493 773.

(ii) That the Defendant has stopped manufacturing and marketing the product ZINCOVITA. That the Defendant undertakes to this Hon'ble Court that it will not manufacture or market or otherwise deal with the products bearing the trademark ZINCOVITA or any other trademark identical or deceptively similar to the Plaintiff's product ZINCOVIT at point of any point in future whatsoever.

(iii) The Plaintiff and the Defendant pray that the above suit may be decreed in terms of Prayers (a) to (c) of Paragraph 34 of the Plaint and the Plaintiff is willing to give up the reliefs under prayers 34(d), 34(e) and 34(f) of this Suit in view of this Memorandum of compromise."

3. The Defendant has also filed an Affidavit dated 30.01.2019 that due to illness, he was unable to attend the Court on 28.01.2019 and prayed this Court to dispense with his personal appearance on the said date.

4. Recording the Memo of Compromise entered into between the parties and the Affidavit dated 30.01.2019 filed by the Defendant, **this Civil Suit is decreed in terms of the Memorandum of Compromise.** The Memorandum of Compromise shall form part of the Decree. No costs.

12.02.2019

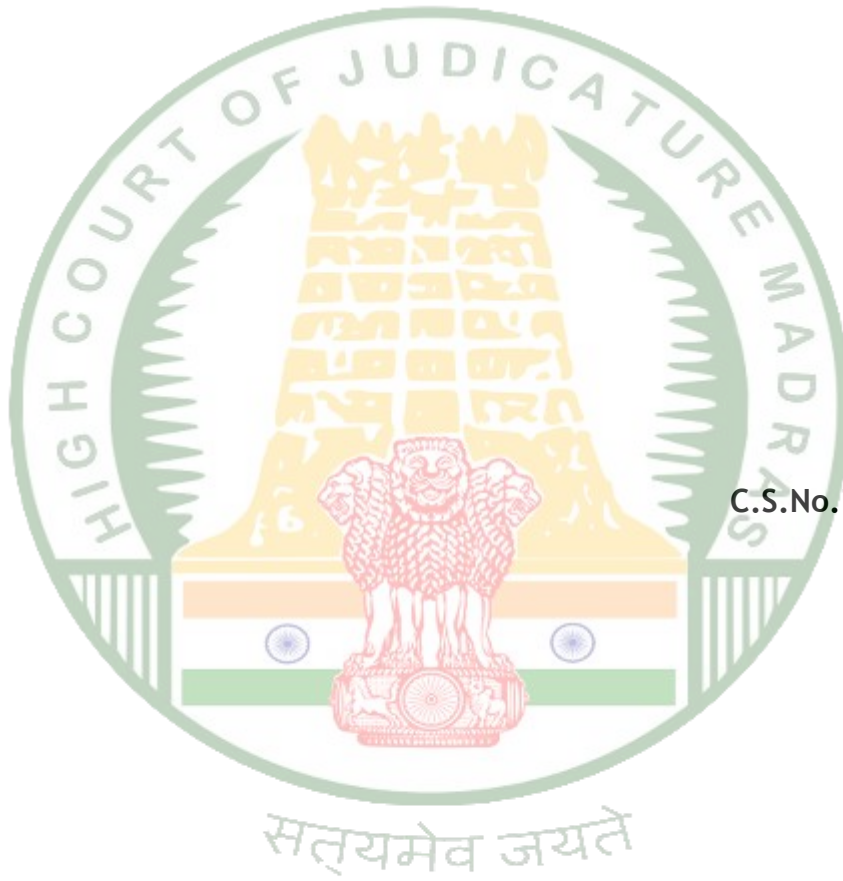
Index : Yes/No
Speaking Order : Yes/No

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S.VAIDYANATHAN,J.

(aeb)



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