

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.838 of 2018
and O.A.No.1138 of 2018

M/s.Bombay Pen Depot,
Represented by its Proprietor,
Mr.A JORAWAR SINGH
No.42, Narayana Mudali Street,
Sowcarpet, Chennai - 600 079.

.. Plaintiff

Vs.

1. M/s.Linc Pens and Plastics LTD
BODY INCORPORATE
Satyam towers, 1st Floor, 3, Alipore Road,
Kolkatta /West Bengal - 700 027.

2. M/s.J.K.Enterprises,
No.114, Perambur Barracks Road,
Vepery, Chennai - 600 007.

.. Defendants

This Civil Suit is preferred, under Order VII Rule 1 CPC read with Order IV Rule 1 O.S. Rules of the Madras High Court and Section 11, 29, 134, 135 Trade Marks Act, 1999, praying to

a) granting a interim injunction restraining the Defendants by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of STATIONERY GOODS LIKE PENS, PENCILS and other goods in class 16 using the mark PENTONIC or similar sounding names in the course of their business and pass off their STATIONERY GOODS LIKE PENS, PENCILS and other goods in class 16 using the trade mark PENOTIC for the goods of the plaintiff or enable others to pass off.

b) directing the defendants to surrender to the plaintiff all the STATIONERYGOODS packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade mark PENTONIC or other deceptively similar trade marks in respect of above.

c) For a preliminary decree in favour of the plaintiff, directing the Defendants to render an account of profits made by them by the use of the Trade Mark PENTONIC on the good referred and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the Defendants, after the Defendants have rendered accounts

d) directing the Defendant to pay to the Plaintiff the costs to the suit, and

e) Pass such further or other order, as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Ms.J.Vennila

For Defendants : Mr.P.V.Balasubramaniam and
Mr. Kirowjtt B.Masumder

JUDGMENT

There is one plaintiff and there are two defendants.

2. Ms.J.Vennila, learned counsel on behalf of plaintiff and Mr.P.V.Balasubramaniam, learned counsel of M/s.BFS Legal [Law Firm] along with Mr.Kirowjtt B.Masumder, learned counsel on behalf of defendants are before this Commercial Division.

3. On behalf of plaintiff, Mr.Jorawar Singh, who has signed and verified the plaint, is present in Court. On behalf of defendants, Mr.Ram Narayan Mishra, is present. This Commercial Division is informed that Mr.Ram Narayan Mishra, is the authorised signatory of the first defendant company. With regard to second defendant, this Commercial Division is informed that one Mr.Jaya Kumar is carrying on business in the name and style 'J.K.Enterprises' as sole proprietor. In other words, second defendant is a sole Proprietary concern.

4. Both learned counsel on instructions from their respective parties submit that this suit has been amicably settled amongst the parties to this lis and they have reduced the same to writing by way of a 'Memorandum of Compromise dated 01.01.2019' (hereinafter referred to as 'said MOC' for brevity)

5. To be noted, with regard to second defendant, it is submitted that Mr.Jaya Kumar is traveling and has some personal difficulty in being present before this Commercial Division today. Learned counsel makes a request that his presence may please be dispensed with for recording said MOC. Learned counsel on both sides also submit that all the three parties to the lis have signed the said MOC in the presence of one another and their respective

counsel have also countersigned the same. In this view of the matter, the presence of Mr.Jaya Kumar, carrying on business in the name and style 'J.K.Enterprises' as sole proprietor (second defendant) is dispensed with for recording said MOC.

6. Said MOC includes a schedule running to seven pages. Though there is only one schedule, this schedule has been described as schedule-I.

7. Said MOC reads as follows:

MEMORANDUM OF COMPROMISE

The plaintiff is M/s. BOMBAY PEN DEPOT, a proprietary concern represented by its sole represent namely Mr.A.Jorawar Singh, son of Mr.Ajay Singh, Hindu, aged about 56 years, carrying on business at No.42, Narayana Mudali Street, Sowcarpet, Chennai - 600079.

1. The 1st defendant is M/s.LINC PEN AND PLASTICS LTD, a company incorporated under the provision of the Companies Act, 2013 having Regd. Office at Satyam Towers, 1st Floor, 3 Alipore Road, Kolkatta/West Bengal - 700 027.

2. The 2nd Defendant is M/s.J.K. Enterprises the constitution of which is not known to the Plaintiff, having office at No.114 Perambur Barracks Road, Vepery, Chennai - 600 007 distributor of the 1st Defendant.

3. The Plaintiff was the owner and proprietor of the trademarks



which stand registered under nos.2843180 and 3691736 in class 16.

4. The 1st Defendant has now, in terms of a Deed of Assignment dated February 1, 2019, entered into between the Plaintiff and 1st Defendant, acquired the above said trademarks of the plaintiff namely



which stand registered under nos.2843180 and 3691736 in class 16, including associated Common Law Rights, for a valuable consideration of 15,00,000/- (Rupees Fifteen Lakhs Only) by Demand Draft Nos. 068815, 068816, 068817, of INR 5 lakhs each, dated 29/01/2019, Drawn on HDFC Bank in favor of the plaintiff and the plaintiff acknowledges receipt of the same and has relinquished all rights, title and interest in the said trademarks in favor of the 1st Defendant.

5. The plaintiff agrees to dispose of the existing inventories under the above said trademarks



on or before 31.03.2020 with the label and packing style as per schedule-1 and shall not use or cause to use, the marks



PENOTIC or any similar mark after 31.03.2020, on its products or any digital material.

6. The Plaintiff agrees to withdraw its oppositions to the trade mark applications of the 1st Defendant, being opposition Nos.Kol-949738 to 3783410 in class 16, Kol-949739 to 3783411 in class 16, Kol-949740 to 3783413 in Class 18, Kol-949741 to 3783414 in Class 25, Kol- 949742 to 3783416 in Class 35, Kol -949743 to 3783415 in Class 32, and shall file such requests with the Registrar of Trademarks, Kolkata, within 10 days of the execution of this Memorandum.

7. The Plaintiff may use the artistic work, label, packing material, box as per schedule -1, without using/affixing, in any manner, the said trade mark Penotic appearing therein after 31.03.2020 and the 1st defendant will not restrict them to use the same.

8. The 1st Defendant agrees to withdraw the suit before the Learned District Judge, 24 parganas South at Alipore, being Title suit No.19 of 2018 and all related petitions/applications, within 10 days of the execution of this Memorandum, in view of the assignment of trade marks



9. The Plaintiff and Defendants state hereby states that, as on date, there are no other proceedings between them in connection

with the trademarks PENOTIC or PENTONIC, if any such proceedings are found later, the same shall be mutually withdrawn by the respective Party.

10. This Memorandum has been entered into between the Plaintiff and Defendants, on their own free will without any undue influence and coercion from any quarters and nothing stated herein shall be constituted to be an admission of liability on behalf of the plaintiff and Defendants.

11. It is understood and agreed by both parties that this Memorandum is binding on and shall inure to the benefit of Plaintiff and Defendants and their group entities, predecessors, successors, Directors, Partners, Proprietors, owners, Agents, Promoters, Assigns, sister concerns, affiliates, principals, partners, licensees etc., or any other entity through which the parties may act, directly or indirectly.

12. All parties shall bear their own respective costs.

13. The Plaintiff is giving up the suit reliefs, against the Defendants, subject to a decree in terms of the Memo of Compromise.

It is therefore prayed that this Hon'ble Court may be pleased to decree the suit in terms of the Memo of Compromise and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai on this the 1st Day of February 2019.

sd/-
Plaintiff

sd/-
First Defendant
sd/-

Second Defendant

sd/-

sd/-

Counsel for Plaintiff

Counsel for Defendants

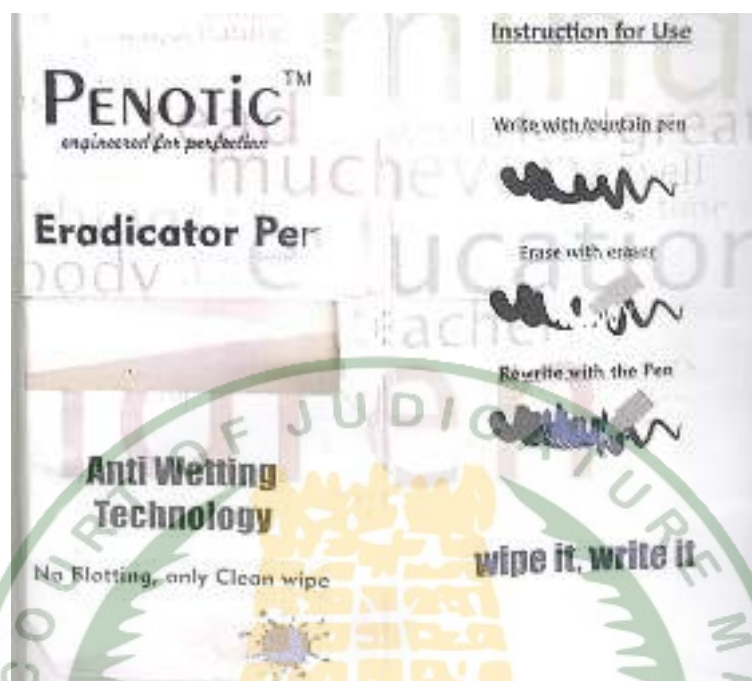


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8. In the light of the narrative supra and in the light of the common request made by both sides that this suit itself may please be disposed of in terms of said MOC by way of a compromise decree, there shall be a compromise decree in terms of said MOC in the instant suit. The aforesaid parties to the lis present in Court, i.e., Mr.Jorwar Singh and Mr.Ram Narayan Mishra confirm that they have signed the said MOC after understanding all the terms therein. They also made a request that the main suit itself may please be disposed of in terms of said MOC, besides saying that the second defendant will remain bound by such a compromise decree.

9. Said MOC together with aforementioned schedule as well as the self

attested photo copies of photo identity cards of the parties to the lis present in Court shall all form part of the compromise decree.

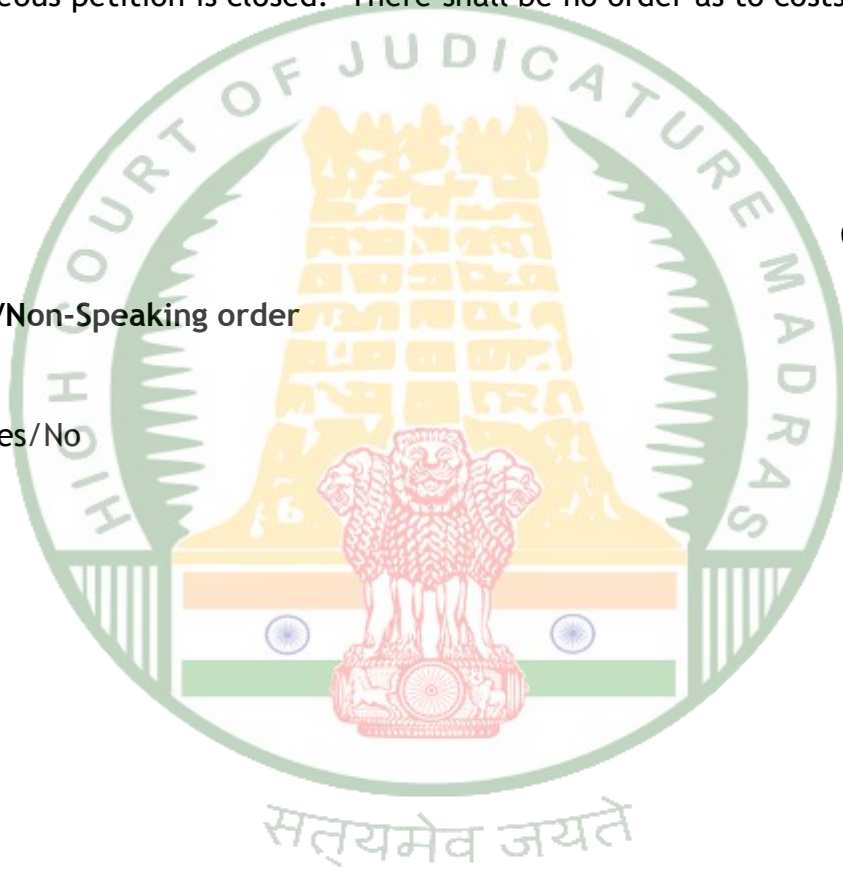
10. Suit is decreed on above terms. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

01.02.2019

Speaking/Non-Speaking order

Index : Yes/No

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M.SUNDAR, J.

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