

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Suit (Comm. Div.) No.864 of 2018,
O.A.Nos.1165 & 1166 of 2018 and
A.No.9938 of 2018

M/s.MMC Pharmaceuticals Limited,
 A Company incorporated under the
 provisions of the Companies Act, 2013,
 1st Floor, Old No.3, New No.5,
 P.T.Road, 20th Avenue,
 Ashok Nagar, Chennai-600 083
 Rep. by its Managing Director,
 Mr.M.Rajarithnam

... Plaintiff

-VS-

1. Saarlife Healthcare
 40, Ganesh Marg,
 Gandhi Nagar,
 Indore-453 112.
2. Xylum Health Care,
 2-A, Parasram Marg,
 Gandhi Nagar,
 Indore-453 112.

... Defendants

Prayer: Plaint filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the O.S. Rules and Sections 27, 134 and 135 of the Trade Marks Act, 1999, seeking a) to grant a permanent injunction, restraining by an order of perpetual injunction, the Defendants, its Directors, their employees, agents, stockists, dealers or others directly or indirectly involved, from in any manner infringing and using in relation to any medicinal or pharmaceutical preparation, in manufacturing or marketing the pharmaceutical product bearing

the trademark **HEMOCARE** or any other trademark which is deceptively or confusingly similar to the Plaintiff's registered Trademark "**HEMOCARE**" Under No. 610700 in Class 05; b) to grant a permanent injunction, restraining the Defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical or medicinal preparation using the Trademark "**HEMOCARE**" or any other name which is in any way phonetically similar and visually dissimilar to the Plaintiff's Trademark "**HEMOCARE**" and pass off their pharmaceutical preparation "**HEMOCARE**" as the pharmaceutical preparation of the Plaintiff or enable others to pass off in any manner; c) to direct and decree the Defendants to deliver to the Plaintiff all the goods, dies, labels, wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending trademark "**HEMOCARE**" for destruction without compensation and d) to render true and faithful accounts of the profits illegally earned by the Defendants by using the deceptively similar and confusing trade name "**HEMOCARE**" and a decree for the said amount be passed in favour of the Plaintiff against the Defendants.

For Plaintiff : Ms.Gladys Daniel
For Defendants : Mr.R.Dhanabalraj

J U D G M E N T

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

(a) to grant a permanent injunction, restraining by an order of perpetual injunction, the Defendants, its Directors, their employees, agents, stockists, dealers or others directly or indirectly involved, from in any manner infringing and using in relation to any medicinal or pharmaceutical preparation, in manufacturing or marketing the

pharmaceutical product bearing the trademark **HEMOCARE** or any other trademark which is deceptively or confusingly similar to the Plaintiff's registered Trademark "**HEMOCARE**" Under No. 610700 in Class 05;

(b) to grant a permanent injunction, restraining the Defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical or medicinal preparation using the Trademark "**HEMOCARE**" or any other name which is in any way phonetically similar and visually dissimilar to the Plaintiff's Trademark "**HEMOCARE**" and pass off their pharmaceutical preparation "**HEMOCARE**" as the pharmaceutical preparation of the Plaintiff or enable others to pass off in any manner;

(c) to direct and decree the Defendants to deliver to the Plaintiff all the goods, dies, labels, wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending trademark "**HEMOCARE**" for destruction without compensation;

(d) to render true and faithful accounts of the profits illegally earned by the Defendants by using the deceptively similar and confusing trade name "**HEMOCARE**" and a decree for the said amount be passed in favour of the Plaintiff against the Defendants;

(e) to direct the Defendants to pay to the Plaintiff the costs to the suit; and

(f) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the parties have entered into a compromise and produced the Memorandum of Compromise dated 31.01.2019 entered into between the Plaintiff and the Defendants. For better understanding, the Memorandum of Compromise entered into between the parties is extracted hereunder:

**“MEMORANDUM OF COMPROMISE BETWEEN
THE PLAINTIFF AND THE DEFENDANTS”**

The Plaintiff and the Defendants have agreed to compromise the matter in the following terms:

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

2. The Defendants submits to a Judgment and Decree as prayed for in terms of prayer (a) & (b) of para 27 of the Plaint for

(a) granting a permanent injunction, restraining by an order of perpetual injunction, the Defendants, its Directors, their employees, agents, stockists, dealers or others directly or indirectly involved, from in any manner infringing and using in relation to any medicinal or pharmaceutical preparation, in manufacturing or marketing the pharmaceutical product bearing the trademark **HEMOCARE** or any other trademark which is deceptively or confusingly similar to the Plaintiff's registered Trademark **“HEMOCARE”** Under No. 610700 in Class 05.

(b) granting a permanent injunction, restraining the Defendants by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical or medicinal preparation using the Trademark **“HEMOCARE”** or any other name which is in any way phonetically similar and visually

dissimilar to the Plaintiff's Trademark "**HEMOCARE**" and pass off their pharmaceutical preparation "**HEMOCARE**" as the pharmaceutical preparation of the Plaintiff or enable others to pass off in any manner.

3. The Defendants undertakes not to apply for any Trade Mark seeking registration of the Trademark **HEMOCARE** or any mark deceptively similar thereto on the file of the Registrar of Trade Marks and also undertakes hereby not to assert any right in respect of the trademark **HEMOCARE** or similar sounding expression or its logo for any goods in future.

4. The Defendants undertakes to withdraw any Trademark application already filed in respect of the Trademark **HEMOCARE**.

5. The Defendants undertakes not to use any trading style with the mark **HEMOCARE**.

6. The Defendants undertakes not to oppose any application for registration of the Trademark **HEMOCARE** filed by the Plaintiff.

In view of the decree for permanent injunction the Plaintiff has given up the reliefs contained in prayers c, d & e in para 27 of the suit including cost of the suit."

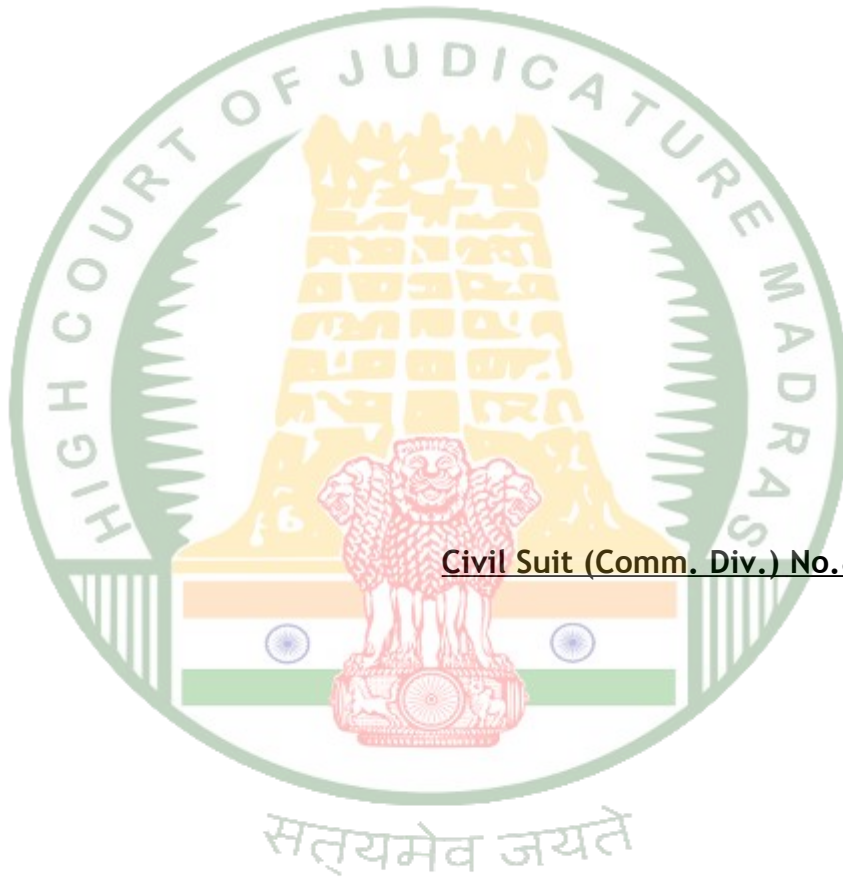
3. Recording the Memo of Compromise entered into between the parties dated 31.01.2019, this Civil Suit is decreed in terms of the Memorandum of Compromise. The Memorandum of Compromise shall form part of the Decree. No costs. Consequently, connected Applications are closed.

14.02.2019

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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S.VAIDYANATHAN,J.
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