

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2020

PRONOUNCED ON : 29.01.2020

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Civil Suit No.55 of 2019 in**  
**O.A.Nos.55 of 57 of 2019 & A.No.476 of 2019**

M/s.Mohamed Aboobacker Chank  
Lungi Ltd.,  
No.190, Thambu Chetty Street,  
Chennai – 600 001.  
Represented by its Managing Director,  
Mr.K.M.Umar Farook. ... Plaintiff

Vs

1.M/s.Exhibition Society Ltd.,  
Rep. By its Honorary Secretary,  
Mukarramjahi Road,  
Patel Nagar,  
Ghosha Mahal North,  
Nampally, Hyderabad,  
Telengana – 500 001.

2.Telangana Stores,  
Stall No.469 and 478,  
Exhibition Grounds,  
Mukarramjahi Road,  
Patel Nagar,  
Ghosha Mahal North,  
Nampally, Hyderabad,  
Telengana – 500 001.

...

Defendant

**Prayer:-** This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of C.P.C., r/w Sectons 27, 28, 29, 134 and 135 of the Trade

Marks Act, 1999 and Sections 51, 55, 62 of the Copy Right Act, 1957 and Sections 2(1)(c)(xvii) and Section 7 of the Commercial Courts Act, 2015, for the following reliefs:-

*"a.For permanent injunction restraining the defendants by themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner infringing the plaintiff's registered trademarks CHANK, SANGU and the device of Conch as described in the Schedule A hereunder by using the identical mark SANGU and/or the offending deceptively similar label with the device of Conch, or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademarks SANGU and the device of Conch;*

*b.For permanent injunction restraining the defendants by themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner infringing the copyright in the artistic features associated with the plaintiff's artistic work Device of Conch as contained in the Schedule B hereunder by using the offending label with the device of Conch as contained in the Schedule B hereunder by using the offending label with the device of Conch or any other mark, label or device, which is a colourable imitation of the plaintiff's copyright in artistic work Device of Conch either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;*

*c.For permanent injunction restraining the defendants by*

*themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner passing off or enabling others to pass off the defendants' products as and for that of the plaintiff's products by using the identical trademark SANGU or through the offending label with the device of Conch or any other trademark which is identical or deceptively similar to the plaintiff's trademark SANGU, the device of Conch and / or the SANGU label, either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;*

*d.Directing the defendants to the plaintiff entire goods with the labels, packaging materials, stock of unused labels together with the blocks and dyes, name boards, sign-boards, stationery materials etc., containing the impugned mark SANGU and label with the device of Conch, for destruction;*

*e.Directing the defendants to render true and faithful accounts of the profits earned by them using the offending trademark SANGU and label with the device of Conch and pay such profits to the plaintiff as damages;*

*f.Directing the defendants to pay to the plaintiff the cost of the suit"*

For Plaintiff :Mr.A.Prasanna Venkat for  
APR Associates

For Defendants :Set Exparte

### **JUDGMENT**

The suit is for permanent injunction restraining the defendants from in any

manner infringing the plaintiff's registered trademark CHANK, SANGU and the device Conch by using the identical mark SANGU or any other mark deceptively similar to or a colourable imitation of the plaintiff's trademarks SANGU and the device of Conch. Also for permanent injunction restraining the defendants from infringing the copyright in the artistic features associated with the plaintiff's artistic work Device of Conch by using the offending label with the device of Conch or any mark, label or device, which is colourable imitation of the plaintiff's copyright in artistic work Device of Conch and relief of injunction restraining the defendants from passing off their goods as that of the plaintiff's by using the identical trademark SANGU. In addition, the consequential relief of surrender of offending materials and rendition of accounts and damages.

## 2.The case of the plaintiff:

Plaintiff company is registered under the Indian Companies Act. It is carrying on business in manufacturing of handloom, textile piece goods, kerchief, lungies, dhoties etc. The plaintiff's company are descendants of Late K.E.Mohamed Aboobacker, who commenced the said business in the year 1927. He conceived and adopted the trademark "CHANK" with the device of a "CONCH", which is the house mark and the most well received mark among the lungi brands in the market. After the demise of K.E.Mohamed Aboobacker in the year 1951, the descendants of the said M.E.Mohamed Aboobacker had promoted a partnership firm with 18 partners under the name and style Mohamed Aboobacker and Co.

The trademarks CHANK with the device CONCH was inherited by K.A.Ahamed Kader, the grandson of Late Mohamed Aboobacker. In the year 2000 the plaintiff company was incorporated having the members of Mohamed Aboobacker family as promoters and Directors. One of its Director, K.A. Ahamed Kader assigned the trade mark and the device in favour of the plaintiff. Also assigned the copyright in the artistic work in the trade mark label in favour of the plaintiff company.

3.In order to protect their trademark, the plaintiff has applied for and obtained registrations of the trade mark CHANK, SANGU – words perse, the device of Conch and also the composite label under the trade marks Act 1999, in class 24 and 25. The predecessors have also applied for and obtained registration of its CHANK label and SANGU label containing the device of Conch as its predominant feature along with other distinctive artistic features, colour scheme, get-up and lay out under the Copyright Act. The plaintiff has promoted their product with the trademark “CHANK” with the ‘device Conch’ and copyright of the artistic work through advertisements for nearly half a century every nook and corner of the country and had captured major market share. Its annual turnover for the year 2017-18 was Rs.25,40,29,712/- with promotional expense of Rs.29,79,001/-.

4.The plaintiff has very huge network of distribution and marketing. Its products are available everywhere. By virtue of public acquaintance, the trade marks CHANK/SANGU and the device of Conch have acquired secondary meaning to denote and connote the products of the plaintiff alone. For the past 70 years, the plaintiff’s trade mark and device has gained high reputation and goodwill

among the traders, customers and general public, the trademarks CHANK/SANGU and the device of Conch, have each become well-known marks of the plaintiff.

5.Unscrupulous merchants flocking to take undue advantage of the reputation of the plaintiff's trademark and to make quick profits, tried to sell products bearing identical or deceptively similar trade marks. They cause confusion amongst the trade and public and likely to ruin the reputation and goodwill build by the plaintiff. The plaintiff in response to such threats to their intellectual property rights, has from time and again taken actions against such unscrupulous traders by placing advertisement cautioning public not to be deceived and to the infringers legal action.

6.The first defendant, has been conducting annual industrial exhibition for a period of 6 weeks during the month of January – February. In the year 2016, to the shock of the plaintiff, they found counterfeit products of the plaintiff sold in the exhibition by other entities and immediately the same was brought to the notice of the organisers of the exhibition. However, no action was taken in this regard by the first defendant. Again on 11/12/2016, the plaintiff issued notice to the first defendants not to permit unscrupulous merchants to sell counterfeit products of the plaintiff during the exhibition to be held between 01/01/2017 and 15/02/2017. However, the first defendant had not chosen to respond to the notice. While so, during the second week of January 2019, in the exhibition organised by the first defendant, the second defendant was found selling products under the trade name SANGU in the stall numbers 469 and 478 without the permission of the plaintiff.

Thus, brazen acts of infringement and passing off committed by the defendants. The label adopted by the defendants is identical to the plaintiff's registered trademark and copyright in the artistic work "device of Conch". The overall impression of the defendant's label will conclusively prove beyond doubt that it has been adopted with the sole and unbridled malafide intention to confuse the trade and public.

7. Considering the class of customers, channels of trade and the price involved, an ordinary person with average intelligence and imperfect recollection would not be able to distinguish between the plaintiff's distinctive CHANK label with the device of Conch with the defendants imitative label SANGU also with the device of Conch at its centre. Considering the cheaper price of the product sold by the defendants, there is reasonable apprehension about its quality. Any substandard product sold imitating the trade mark and the device of the plaintiff will cause damage to the reputation and sale. Hence, the present suit for injunction and damages.

8. This court on 21/01/2019, granted interim injunction in the Original Application Nos.55 to 57 of 2019, being *prima facie* satisfied that the plaintiff has made out case of infringement of 13 trademarks and 3 copyright registration certificates which are annexed as plaint documents. Taking note of the fact that the plaintiff as well as the second defendant have taken stalls in the exhibition organised by the first defendant, the Court has held that the balance of convenience is in favour of the plaintiff and if the defendants are not restrained

from selling the products imitating the plaintiff's trademark and copyright, irreparable legal injury incapable of compensation will occur.

9. That apart, on the same date ( ie 21/01/2019) in Application No.476 of 2019 also ordered appointment of Advocate Commissioner to go to the premises of the defendants or other places that may be pointed out by the plaintiff by taking inventory of offending goods with offending trademark labels. Accordingly, Mr.Karthik Selvaraj, Adocate has inspected the defendants premises and had submitted report to this court on 7/06/2019.

10. Meanwhile, the second defendant has filed application to condone the delay of 68 days in filing the written statement. The said application No.4450 of 2019 was allowed on 02/07/2019 on terms. The second defendant has paid the cost of Rs.2,000/- to the Adayar Cancer Institute as per the order of this court passed in Application No. 4450/2019 dated 02/07/2019. However, thereafter, the learned counsel for the second defendant has filed a memo reporting no instruction from his client. Therefore, on 21/08/2019, this court has passed the following order:-

*"When this matter was taken up for hearing on 16.08.2019, the learned counsel appearing for the second defendant filed an affidavit stating that he has no instructions from his client and hence, this Court directed the registry to print the name of the second defendant and list the matter*

today.

*2.Today, when the matter is called none appeared on behalf of the second defendant despite their name is printed in the cause list. Hence, the second defendant is set exparte. The first defendant was already set exparte on 07.06.2019.*

*3.Registry is directed to post the matter before the learned Additional Master -I for recording ex-parte evidence on 05.09.2019. After completing the evidence, list the matter before this Court on 13.09.2019."*

11.Pursuant to this order, the plaintiff has testified before the Addition Master by filing proof affidavit on 23/09/2019. Marked 29 documents ( Exs.P-1 to P-29) and one material object (M.O.1) containing the video of the sale effected by the 2<sup>nd</sup> defendant at the first defendant exhibition. On 22/01/2020 filed additional proof affidavit and marked Ex.P.30 series which are the certificate copies of Exs.P 10, P.11, P.12,P.14 and P.16.

12.The Heard the learned counsel for the plaintiff and perused the pleadings, documents along with the report of the advocate commissioner which is taken as court document (Ex C-1).

13.The documents relied by the plaintiff discloses that the plaintiffs predecessor firm M/s.Mohamed Aboobecker & Co got registered on 27/04/1951 ( Ex P-2). The plaintiff company which got incorporated under the Indian Companies Act in the year 2000 ( Ex P-3) has got the assignment of the 13 trademarks and 3 copyrights from its predecessor. The rights are periodically

renewed and alive. Ex P-4 indicates that Mr. M.E. Mohamed Aboobacker trading as Mohamed Aboobacker & Co is the original owner of the trade mark and device depicted below:-



14.The proprietorship to the said trade mark is granted on condition that, the conch mark shall always be used within a square or rectangular device as it appears in the representation annexed hereto and the mark shall not be used on export to Ceylon. Also we find that, the transliteration of the depictions is given in the advertisement published in the Trade Mark Journal for the word " Sanghu" (சங்கு) found in tamil, as meaning " Conch".

15.The said trade mark has been registered on 01/12/1942. Following this, the other 12 trade marks with the name and device and 3 copyrights with artistic work of 'Conch' has been obtained by the plaintiff predecessors/ assignors. Exs.P- 5 to P-19 are the photocopy of those trademark registration certificates and copyright certificates. Under Exs.P-20 and P-21, the proprietorship of these

trademarks and copyrights has been assigned to the plaintiff. To prove the plaintiff trademark "CHANK" , SANGU and the device Conch are well known trademark and the plaintiff dominate the market with substantial turnover Ex.P-23 and P-24 are relied.

16.To substantiate infringement and passing off, Ex.P-29 (photographs of the defendant product and the stall of the 2<sup>nd</sup> defendant in the first defendant exhibition) and the report of the Advocate Commissioner marked as Ex C-1 are relied.

17.From the commissioner report, this court find that the imitated and offending materials were found during the inspection by the Advocate commissioner both at the 2<sup>nd</sup> defendant premises as well as the supplier of the offending product M/s Ravi Textiles, A-17, New Madhina Complex, Pathergatti Hyderabad. The advocate commissioner has taken inventory of the offending product. At the 2<sup>nd</sup> defendant premises, he has found 57 lungies bearing the impugned trademark/label SANGU. From the supplier premises M/s.Ravi Textiles, he has found 81 offending lungies with the offending mark/label and 60 lungies similar to the offending lungies.

18.The Advocate commissioner has also enclosed the photographs of the offending mark/label found in the 2<sup>nd</sup> defendant premises. Those photos tallies the photographs marked as Ex P-29.

19.The litmus test for infringement/passing off is well laid in **Parle**

**Products (P) Ltd -vs- J.P. & Co reported in 1972(1) SCC 618** at paragraph 9

and the same is extracted below:-

*"It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluko Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in ,our opinion who has a look at one of the packets to-day may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to. him some time after he*

*had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the Bar as in our view each case will have to be, judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it."*

20.This Court on apply the said litmus test, holds that the 2<sup>nd</sup> defendant has imitated the registered trade mark and copyright of the plaintiff by using the word perse SANGU and the device Conch which is deceptively similar to the plaintiff's registered trademark and copyright. Any ordinary purchaser with average intelligence and imperfect recollection will be definitely deceived by the product of the 2<sup>nd</sup> defendant sold in the first defendant exhibition as that of the plaintiff's product of well known trade mark.

21.In the result, prayer (a), (b) and (c) for permanent injunctions sought for in the plaint allowed. Regarding prayer (d), the Advocate commissioner has already taken inventory of the offending material found in possession of the 2<sup>nd</sup> defendant and his supplier M/s.Ravi Textiles. Therefore, the defendants are directed to surrender those offending materials to the plaintiff within 60 days from the date of the judgment, failing which, the plaintiff is at liberty to file appropriate petition for execution.

22.In so far as the prayer (e) of the plaint is concerend, though, the plaintiff

has claimed damages and sought for rendition of accounts, no substantial evidence let in by the plaintiff to assess the damages. Hence, the relief sought in plaint prayer (e) is dismissed. Accordingly, the suit is partly allowed with costs. Consequently, connected applications are closed.

29.01.2020

jbm

Index: Yes/No

Speaking order/non speaking order

**List of witnesses examined on the side of the plaintiff :-**

Mr.S.Clement (P.W.1)

**List of witness examined on the side of the defendants :-**

Nil

**List of exhibits marked on the side of the plaintiff :-**

Ex.P.1 is the original of the extract of the minutes of the Board meeting of the plaintiff held on 30.01.2019 authorising P.W.1 to depose before this Hon'ble Court.

Ex.P.2 is the Photocopy of the certificate of registration of plaintiff's predecessor firm dated 27.04.1951.

Ex.P3 is the Photocopy of the Certificate of incorporation of the Plaintiff Company dated 19.06.2000.

Ex.P4 is the Photocopy of the Certificate of Registration of the trademark **SANGU label** in Class 24 under no. 68878 along with renewal certificates dated 01.12.1942.

Ex.P5 is the Photocopy of the Certificate of Registration of the trademark

**CHANK BRAND** label in Class 24 under no. 91228 along with renewal certificates dated 11.01.1944.

Ex.P6 is the photocopy of the Certificate of Registration of the trademark **CRANK BRAND** label in Class 24 under no. 139556 along with renewal certificates dated 12.07.1949.

Ex.P7 is the photocopy of the Certificate of Registration of the trademark **SANGU label** in Class 24 under no. 149449 along with renewal certificates dated 15.06.1951 .

Ex.P8 is the photocopy of the Certificate of Registration of the trademark **SANGU label** in Class 24 under no. 187874 along with renewal certificates dated 29.11.1958.

Ex.P9 is the photocopy of the Certificate of Registration of the trademark **CHANK** in Class 24 under no.187875 along with renewal certificates dated 29.11.1958.

Ex.P10 is the photocopy of the Certificate of Registration of the trademark **Conch Device** in Class 24 under no. 224172 along with renewal certificates dated 04.19.1964 .

Ex.P 11 is the photocopy of the Certificate of Registration of the trademark SANGU in Class 24 under no. 224215 along with renewal certificates dated 07.09.1964.

Ex.P 12 is the photocopy of the Certificate of Registration of the trademark CHANK BRAND in Class 24 under no. 224216 along with renewal certificates dated 07.09.1964.

Ex.P 13 is the photocopy of the Certificate of Registration of the trademark CHANK BRAND in Class 25 under no. 510648 dated 22.05.1989.

Ex.P 14 is the photocopy of the Certificate of Registration of the trademark CHANK in Class 25 under no. 510649 dated 22.05.1989.

Ex.P 15 is the photocopy of the Certificate of Registration of the trademark SANGU in Class 24 under no. 1007512 along with renewal certificate dated 04.05.2001.

Ex.P 16 is the photocopy of the Certificate of Registration of the trademark SANGU label in Class 24 under no. I 030868 along with renewal certificate

dated 26.07.2001.

Ex.P 17 is the photocopy of the Copyright registration under no. A- 52239/93 in respect of CHANK (CONCH) dated 30.06.1993.

Ex.PI8 is the photocopy of the Copyright registration under no. A-52397/93 in respect of CHANK 17.12.1993.

Ex.P 19 is the photocopy of the Copyright registration under no. A- 69149/2005 in respect of SANGU dated 04.04.2005.

Ex.P20 is the photocopy of the Deed of assignment of copyright in various labels by plaintiff s predecessor to the plaintiff.

Ex.P21 is the photocopy of the Deed of assignment by Plaintiff s predecessor to the plaintiff in respect of various trademarks dated 30.06.2000.

Ex.P22 is the photocopy of the Deed of assignment by Plaintiff s predecessor to the plaintiff in respect of various trademarks dated 10.05.2008.

Ex.P23 is the photocopy of the Details of Annual sales turnover and advertisement expenses dated 16.01.2019.

Ex.P24 is the photocopy of the Advertisements in respect of the mark **CHANK** dated nil.

Ex.P25 is the photocopy of the Print out from the website of the 1 st Defendant setting out the dernils with respect to the All India Industriai Exhibition, 2019 (Numaish 2019) dated nil.

Ex .P26 is the photocopy of the Details of the allotment of a stall in favour of the Plaintiff at All India Industrial Exhibition, 2019 (Numaish 2019) dated nil.

Ex.P27 is the photocopy of the Communication addressed to the 1st Defendant by the Plaintiff dated 16.12.2016.

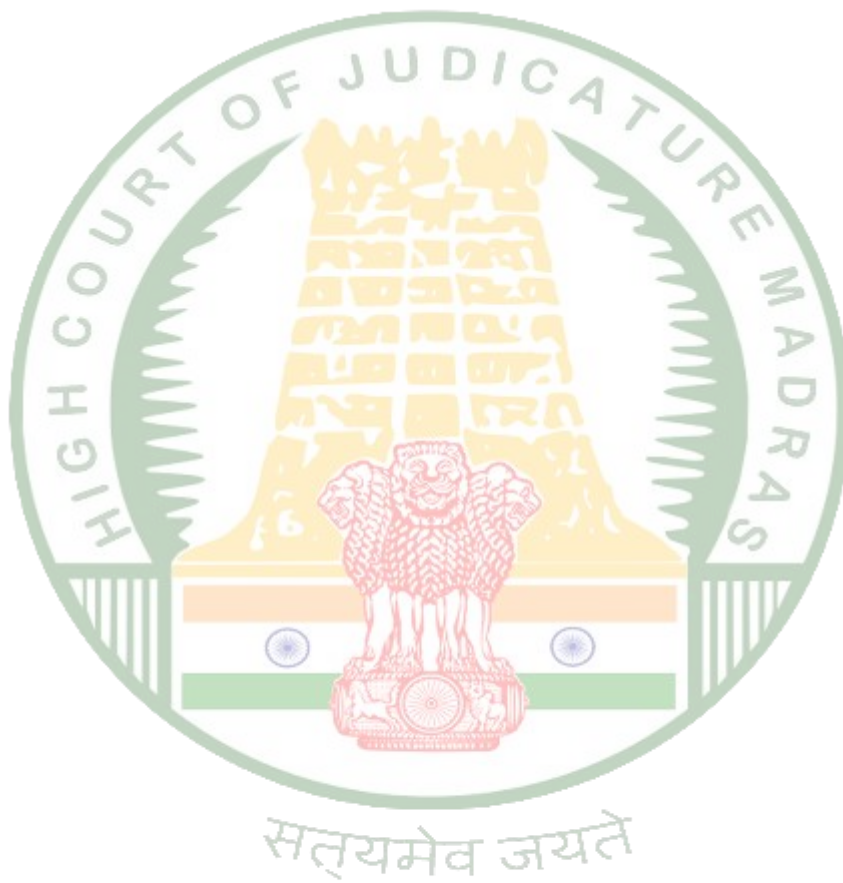
Ex.P28 is the photocopy of the Photograph of Plaintiffs' label.

Ex.P.29 is the photocopy of the photograph of 2<sup>nd</sup> Defendants' label

M.O.1 is a Compact Disc containing a video of the sale effected by the 2<sup>nd</sup> defendant.

**List of exhibits marked on the side of the defendant:-**

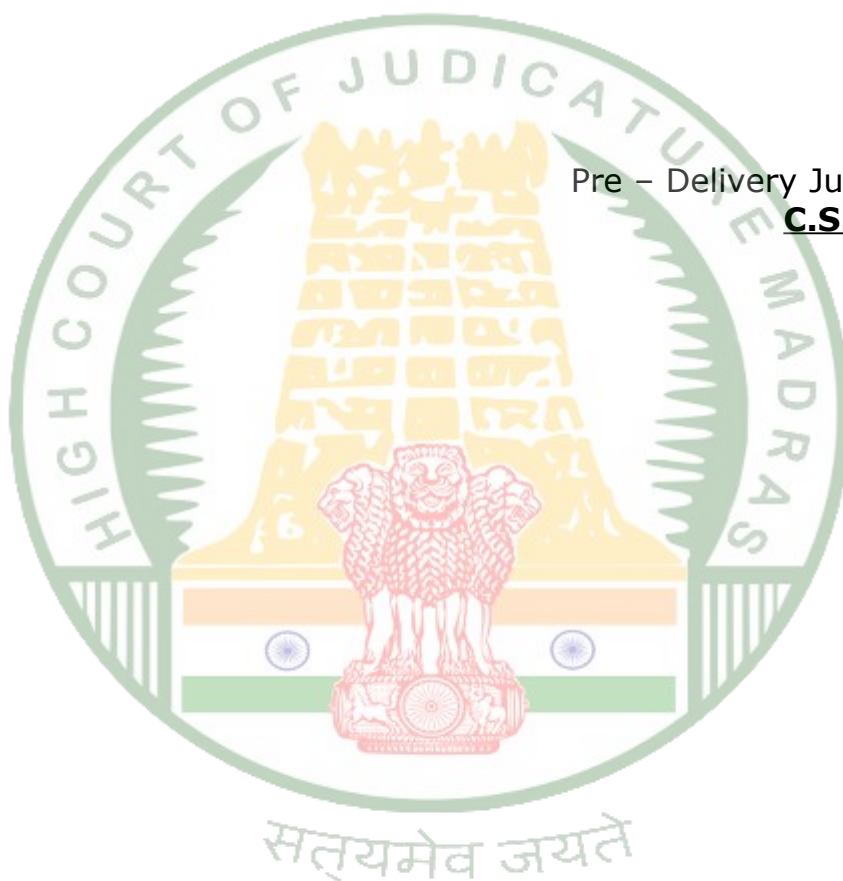
*Nil*



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**G.JAYACHANDRAN.J.,**

jbm



Pre – Delivery Judgment made in  
**C.S.No.55 of 2019**

29.01.2020

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