

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.11.2020

Pronounced on : 04.12.2020

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

O.A.No.39 of 2018

in

C.S.No.39 of 2018

N.Sivakumar
Sole Proprietor,
M/s.Siva Agencies
R-92/4B, North Avenue,
Muthamizh Nagar,
Chennai – 600 118.

... Applicant / Plaintiff

Vs.

M/s.Siva Agencies
16/33, Patavattamma,
Kosapettai, Purasaiwalkam,
Chennai – 600 012.

... Respondent / Defendant

Prayer:- This application filed under Order XIV Rule 8 of O.S Rules read with Section 139 of C.P.C., praying to grant an order of interim injunction and restrain the Defendant from using the mark SIVA AGENCIES pending disposal of this original suit.

For Applicant / Plaintiff : Ms.C.Rekha Kumari

For Respondent / Defendant: Mr.M.Madhu Prakash

ORDER

This Application has been filed by the plaintiff in the suit, seeking an interim injunction against the Defendant from using the mark 'Siva Agencies' primarily on the ground that the Plaintiff has the benefit of registration of the said mark under the Trade Marks Act, 1999, in Trade Mark No.2503606 in Class 35.

2.The Plaint had been filed by Mr.N.Siva Kumar, Sole Proprietor of M/s.Siva Agencies, seeking permanent injunction restraining the Defendant from using the trade mark 'Siva Agencies' in connection with the business of Wholesale and Retail marketing and distribution services connected with the Sale of Cosmetics, FMCG Products, OTC Products, Medical and Pharmaceutical Preparations either as a trade mark or as a trading style for conducting business and for consequential reliefs and for costs.

3.In the plaint it had been stated that the Plaintiff has been conducting business under the name and style of M/s.Siva Agencies, from the year 1988 and engaged in the business of Wholesale and Retail

marketing and distribution services connected with the Sale of Cosmetics, FMCG Products, OTC Products, Medical and Pharmaceutical Preparations. The Plaintiff claimed that they have been using the mark from the year 1988, and had applied for registration and also obtained registration in Trade Mark No.2503606 in Class 35 which had also been entered in Journal No.1748. The Plaintiff had claimed that they have established reputation and goodwill and that the trade mark is well known and associated only with the Plaintiff.

4.The Defendant is also running an Agency engaged in the same business of Wholesale, Retail marketing and Distribution services connected with the sale of Cosmetics, FMCG Products, OTC Products, Medical and Pharmaceutical Preparations. It is claimed that the Defendant have no right to use the trade mark 'Siva Agencies'. It has been stated that adoption of the identical mark 'Siva Agencies' by the Defendant in the same business is bound to create confusion among the customers and the general public. It has also been stated that the Defendant wanted to get unjust enrichment by cashing on the reputation of the Plaintiff by passing off his trade as that of the Plaintiff's. It has also been stated that the Plaintiff was put to much loss and hardship. It has

also been stated that there is a danger that the business reputation and goodwill of the Plaintiff would be damaged. It was under these circumstances that the Suit had been filed.

5.In the affidavit filed in support of the said Original Application, the same averments as stated in the plaint had been pleaded.

6.Notice had been directed to the Defendant and counter affidavit has been filed.

7.In the counter affidavit, the Defendant has stated that they are also in the field of Distribution for the past eight years, but for a separate location. It was stated that distributors are appointed for separate locations and the distributors are not permitted to supply products outside the allotted areas. It was stated that the Plaintiff and the Defendant are conducting business in different locations. It was also stated that the word 'Siva Agencies' is a common name. It was stated that it indicates the name of a God and consequently, there cannot be any registration on such a mark.

8. Reliance had been placed on the *Registrar of Trade Marks Vs. Ashok Chandra Rakhit Ltd.*, reported in *AIR 1955 SC 558* and on *Bhole Baba Milk Food Industries Ltd. Vs. Parul Food Specialities Pvt. Ltd.*, reported in *2011 (48) PTC 235 (Del.)(DB)*. It was therefore stated that the Plaintiff cannot claim exclusive right to use the name 'Siva Agencies'. It was also stated that the Defendant is a worshipper of Lord Shiva and therefore had every right to use the name 'Siva Agencies'.

9. Heard arguments advanced by Ms.C.Rekha Kumari, learned counsel for the Applicant / Plaintiff and Mr.M.Madhu Prakash, learned counsel for the Respondent / Defendant.

10. For the sake of convenience, the parties would be referred as Plaintiff and Defendant.

11. The case of the Plaintiff is that they have the benefit of registration of the trade mark 'Siva Agencies' which had been registered in Class 35 relating to the business of Wholesale and Retail marketing and distribution services connected with the Sale of Cosmetics, FMCG

Products, OTC Products, Medical and Pharmaceutical Preparations, under Trade Mark No.2503606. It had been stated in the plaint that the Plaintiff had been in the business for a considerable period of time atleast from the year 1988. The Defendant is also running a business in the very same nature of distribution of very same and similar products also under the name 'Siva Agencies'.

12.It is the case of the Defendant that they have been in the business for the past eight years. The further defence taken is that the name 'Siva Agencies' is indicative of Lord Shiva and therefore the Plaintiff cannot claim exclusive right over the said mark.

13.Reliance has been placed in ***AIR 1955 SC 558, Registrar of Trade Marks Vs. Ashok Chandra Rakhit Ltd.*** That was a case wherein, the Respondent had adopted the trademark the word 'Shree' for selling Ghee. The Registrar of Trade Marks had found that the word 'Shree' was used by Hindus as an auspicious symbol and that a practise had been established in the Registry whereby, the word 'Shree' was registered only with a disclaimer. As against this order of the Registrar, the Respondent

had filed an Appeal before the High Court, which allowed the Appeal. The Hon'ble Supreme Court observed on Appeal by the Registrar of Trade Marks that as a consequence of disclaimer, the Respondent was left to protect its rights by a passing off action. It was observed that the High Court had not considered the possibility of the Respondent claiming a statutory right to the word 'Shree' and therefore, the Appeal was allowed.

14. Reliance had also been placed on *Bhole Baba Milk Food Industries Ltd. Vs. Parul Food Specialities Pvt. Ltd.*, reported in **2011 (48) PTC 235 (Del.) (DB)**, which related to a pictorial reflection of Lord Krishna standing on a lotus flower for dairy products. The Appellant was the registered proprietor of the word 'Krishna' written in a unique distinctive style. The Respondent therein had claimed that the word 'Krishna' is a common word and name of a Hindu God, who is associated with butter, milk and ghee and therefore, contended that the Appellant cannot claim exclusivity in the said word. The Division Bench of the Delhi High Court held that the registration obtained by the Appellant was not per-se to the word 'Krishna' but to the word 'Krishna' written in a

distinctive form, which is equivalent to a label. It was held that the Appellant cannot claim a right to a particular word of common origin.

15.The facts in the present case are distinguishable. The sole proprietor of 'Siva Agencies', the Plaintiff, is N.Siva Kumar. He had obviously coined the word 'Siva Agencies' not after Lord Siva, but after his own name. This is quite evident from examining the cause title to the plaint. The Defendant is represented by K.Balasubramaniam. There is no connection between the said name and 'Siva Agencies'. It is an arbitrary name chosen by the Defendant. It is stated in the affidavit, that the Defendant is a worshipper of Lord Shiva. But the coincidence of having the name 'Siva Agencies' in the same line of business, which business is the same as that of the Plaintiff and is the business of Wholesale, Retail marketing and Distribution services connected with the sale of Cosmetics, FMCG Products, OTC Products, Medical and Pharmaceutical Preparations, creates a strong impression that usage of the word 'Siva Agencies' by the Defendant is not for any particular purpose, but with intention to encroach on the reputation and goodwill already created by the Plaintiff. It is to be noted that the Plaintiff has been in the business even earlier to the Defendant.

16.During the course of arguments, the learned counsel for the Plaintiff also stated that complaints of confusion being created had been received from various purchasers and that they have credited amounts payable to the Plaintiff to the account of the Defendant.

17.Naturally, the adoption of the name 'Siva Agencies' by the Defendant has caused confusion in the minds of the purchasers. The nature of services by both the Plaintiff and the Defendant are the same. The nature of products are the same. The nature of purchasers are the same. The field of the business is the same. If there are two entities under the same name there is every possibility of confusion in the minds of the general public who avail the services of the Plaintiff and the Defendant.

18.The Hon'ble Supreme Court in *Ashok Chandra Rakhit, AIR 1955 SC 558* referred supra was examining an Appeal by the Registrar of Trade Marks against an order of the High Court, which had negated the registrations of the word 'Shree' with a disclaimer. The issue was therefore, totally different. In *Bhole Baba Milk Food Industries Ltd., 2011 (48) PTC 235 (Del.)(DB)*, referred supra, the Division Bench of the

High Court had found that usage of the word 'Krishna' for the products therein namely, butter, milk and ghee cannot be said to be unique in nature, since Lord Krishna had a reputation for association with milk and butter.

19. In the present case, the adoption of the mark, tradename and trade mark 'Siva Agencies' has no connection either with the nature of the trade or business. It is directly related to the name of the sole proprietor Siva Kumar. The Defendant can run his agency in any name. The usage by them of the name 'Siva Agencies' has to be attributed only to cashing on the reputation already built by the Plaintiff.

20. It would only be appropriate that the Plaintiff is protected in view of the registration in their name of the tradename / trade mark 'Siva Agencies' and parties let in evidence claiming reputation and disputing infringement of registered trade mark respectively. Till such time, it would only be appropriate that the registration of the mark 'Siva Agencies' is given its due weightage by the Court and there being complete similarity in the names and complete similarity in the name of business carried on by both the Plaintiff and the Defendant and complete

similarity in the range of products marketed by the Plaintiff and the Defendant and complete similarity in the purchasers of the said products and complete similarity in the method in which the products are marketed, I hold that it would only be appropriate that the registration of the mark 'Siva Agencies' by the Plaintiff is protected by an order of injunction. Registration of the trade mark by the Plaintiff establishes a prima facie case. The Plaintiff would be put to loss and hardship, if the Defendant continues to use the same trade name. Already there has been complaints of wrong crediting of amounts payable to the Plaintiff to the account of the Defendant. Even though these aspects have to be tested during recording of evidence, I hold that the fact that the Plaintiff has registered the trade mark has to be given due weightage by the Court.

21. In view of these reasons, there will be an order of injunction as claimed, till disposal of the suit.

22. No order as to costs.

04.12.2020

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

C.V.KARTHIKEYAN, J.,
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