

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.812 of 1998
and
O.A.Nos.709 and 710 of 1998
and
A.No.66 and 67 of 1999
and
A.Nos.2392 and 2393 of 2001

Gyandee International,
by sole Proprietor,
Mr.Gyanchand,
47, Kamatchi Nagar,
Valasaravakkam,
Chennai – 600 087. .. Plaintiff

/versus/

Salzer Electronics Ltd.,
Samichettypalayam,
Jothipuram P.O.,
Coimbatore – 641 047. .. Defendant

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This Civil Suit is filed under Order VII, Rule 1 of the Original Side Rules, Order VII, Rule 1 of C.P.C., 1908, under Section 54 of Designs Patent Act, 1970 prayed for a judgment and decree against the Defendant for:-

a).restraining the defendants, their men, agent, stockist and dealers from issuing threat of any nature in the form of circular, advertisement or notice or otherwise threatening the plaintiff with legal action on account of infringement of Design or passing-off by any means either directly or indirectly, or any circular with reference to the plaintiff's Rotary Switch as per in the M.O.No.1 and thus interfering in the course of the plaintiff's business of Rotary Switches and thereby affecting their reputation in any manner;

(b)declaring the circular/caution letter dated 10th August 1998, issued by the Defendant is unjustifiable;

(c)directing the Defendant to-pay a sum of Rs.10,00,000/- by way of damages.

For Plaintiff : Ms.Gladys Daniel

For Defendant : Ms.Chandhini Pradeep
For M/s.Arun C Mohan

JUDGMENT

This suit had been filed by a sole proprietorship concern Gyandeep International represented by its sole proprietor Gyanchand carrying on business in Chennai, taking advantage of Section 54 of the Designs Act, 1911, read with Sections 104 and 106 of Patents Act, 1970 and the relevant provisions of the Original Side Rules and the Code of Civil Procedure, 1908 seeking a Judgment and Decree against the Defendant Salzer Electronics Limited, a Public Limited Company incorporated under The Companies Act, 1956 and having its registered office at Coimbatore, restraining the defendant from issuing threat of any nature more particularly in the form of circular / caution letter and more specifically with reference to letter dated 10.08.1998, threatening the plaintiff with legal action on account of infringement of design or passing off and with reference to the plaintiff's Rotary Switches and for a consequential declaration that the circular / caution letter dated 10.08.1998 should not be acted upon by the defendant and for a further direction to pay a sum of Rs.10,00,000/- by way of damages.

2.The suit is pending on the file of this Court for the past 22

years. The defendant had joined issues with the plaintiff and had also filed written statement. The issues were also framed on 08.12.2000. The issues framed were as follows:

“1.Is not the suit maintainable under the Designs Act, 1911?

2.Is the Design registration granted in favour of the defendant new and novel under the Act?

3.Is the defendant entitled to claim exclusive right over the colour scheme of the article?

4.Is the plaintiff not entitled for permanent injunction as prayed for under the Act?”

3. Thereafter, the suit was despatched to oblivion and kept safely in the Registry. It has not seen the light of the day. The matter was again taken up in July 2019 on the constitution of the Commercial Division. The *lis* was examined and it was determined that the *lis* was a commercial dispute and therefore, this Court/Commercial Division had jurisdiction to examine the issues raised under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015.

4. In August 2019, a learned Single Judge of this Court had also

determined the Case Management Schedule calling upon the counsels to take up the opportunity to examine the witnesses. The matter was then posted before the learned Additional Master No.II for that purpose. The plaintiff did not commence evidence. They complained that the documents were not available with the Registry. The time passed by without any effective hearing. The matter was again posted before this Court and had been coming up from July 2020 on successive intervals.

5.Finally, the defendant had come forward to file an affidavit dated 29.01.2021 and presented in the Registry on 01.02.2021. This affidavit had been sworn by Mr.D.Rajeshkumar, Joint Managing Director of the defendant. Along with the affidavit, a Board Resolution had also been filed authorizing Mr.D.Rajeshkumar to appear before the Court of law and apart from other obligations thrust on him the power to sign affidavits was also given.

6.Now, the brief facts are to be examined. The plaintiff had commenced business in manufacturing Electrical Rotary Switches around the end of 1997. The plaintiff claimed that there were no manufacturers

who claimed originality in the design of rotary switches as on that date. The plaintiff claimed that they had made due diligence and examined whether there were registered patents or designs with respect to rotary switches. To the best of the information received, there were no such patents. The plaintiff then invested in this business and also appointed a distributor. Then the plaintiff found about the defendant who was also in the same line of business.

7.The defendant filed C.S.No.151 of 1997 seeking a permanent injunction to protect Zenith Mould and Tools Pvt. Ltd., from infringing their registered design No.165316 in Class 3 and had also obtained an ex-parte order of injunction. The defendant then filed C.S.No.488 of 1997 against Standard Gold Switch-gear Engineers and another, seeking protection of their design No.173499 and also obtained orders of injunction.

8.Apprehending that, the defendant would similarly file a suit , the plaintiff initially entered a caveat. At that juncture, the defendant had released a circular letter to all the dealers naming the agent of the

plaintiff, Mothi Electricals, and stated that there is an order of injunction against circulating and dealing in rotary switches with the trademark of ZEEDO.

9. In the plaint the bonafide of the plaintiff, their turnover and the justification for the institution of the suit to protect them from any legal action which the plaintiff apprehended that the defendant would initiate had been pleaded. It is under these circumstances, that the suit has been filed.

10.A Written statement had also been filed. The defendant claimed that they are in the business of manufacturing and selling a wide range of switches, rotary switches, parts, components, fittings of switches. They had obtained the knowhow from SALZER SCHALGERETE FABRIK of West Germany on payment of consideration. They had also been given the right to improve the original design. They have a factory at Coimbatore. They claimed that the rotary switches manufactured by them have the extraordinary quality of switching over from one phase to another, when there is a power cut and

thus the customer would be able to get constant power supply. They had also stated about the unique qualities of their rotary switches. They also gave the details of the designs which have been registered in their name. They had also given their turnover. They denied the averments made in the plaint and reiterated their stand that the plaintiff have no right to manufacture and sell ZEEDO Rotary Switches which, according to the defendant, are an exact imitation of the defendant's registered design.

11.As stated on the basis of the said pleadings, issues had also been framed but the parties have not taken up the invitation to adduce evidence.

12.At this juncture, Mr.D.Rajeshkumar, Joint Managing Director of the defendant had filed an affidavit and in the said affidavit, he had stated as follows:

“I, D.Rajeshkumar, son of R.Doraiswamy, aged about 49 years, working for gain at Samichettypalayam, Jothipuram P.O., Coimbatore 641 047 now temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:-

I am the Joint Managing Director of the defendant herein and I am well acquainted with the facts of the present case and I am duly authorized on behalf of the defendant to swear this affidavit. I crave leave to refer to the plaint and written statement as part and parcel to this affidavit for better appreciation of this case.

2. We undertake that no infringement proceedings or passing off action on account of design Nos. 166861, 166862, 173497, 174566, 173496, 173499, 173500, 173498, 165316 all in Class-3 shall be initiated against the plaintiff herein.

It is therefore it is most respectfully prayed that this Hon'ble Court may be pleased to accept this undertaking filed by me on behalf of the defendant and record the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thereby render justice.

Sd/-

Counsel for the defendant

*Sd/-D.Rajesh Kumar
Jt. Managing Director & CFO
(DIN : 00003126)"*

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13. It is seen that he had specifically undertaken that the defendant would not initiate any infringement proceeding or passing off action on account of design Nos. 166861, 166862, 173497, 174566,

173496, 173499, 173500, 173498, 165316. The defendant had obtained design registration as mentioned above. They had given the details in their written statement in paragraph 1.4. It is as follows:

SL.NO.	DESIGN REGN. NO.	DATE	TITLE	VALID UPTO
1.	165316	11/2/93	CONTACT STAGE AND COVER PLATE	11/2/2008
2.	166861	21/2/94	CONTACT HOUSING	21/2/2009
3.	166862	21/2/94	RAIL MOUNTING BASE	21/2/2009
4.	173496	1/4/97	COVER PLATE TOP	1/4/2012
5.	173497	1/4/97	CONTACT STAGE	1/4/2012
6.	173498	1/4/97	LATCHING	1/4/2012
7.	173499	1/4/97	FRONT PLATE	1/4/2012
8.	173500	1/4/97	LATCHING	1/4/2012
9.	174566	21/8/97	SWITCH	21/8/2002

14.However, in view of the categorical statement made in the affidavit that no infringement proceedings or passing off action would be initiated against the plaintiff, the said undertaking is recorded and without answering the issues framed, the suit is decreed with respect to the relief seeking a restraint against the defendants, their men, agent, stockist and dealers from issuing threat of any nature in the form of

circular, advertisement or notice or otherwise threatening the plaintiff with legal action on account of infringement of Design or passing-off by any means either directly or indirectly, or any circular with reference to the plaintiff's Rotary Switch and thus interfering in the course of the plaintiff's business of Rotary Switches and thereby affecting their reputation in any manner.

15.The circular / action letter dated 10.08.1998 issued by the defendant, cannot not be operated upon and a declaration to that effect is also granted.

16.The learned counsel for the plaintiff stated that the plaintiff is giving up the claim for damages of Rs.10,00,000/-. Such statement made across the bar is recorded.

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17.In view of the above facts, the suit is partly decreed with respect to relief (a) and (b) and dismissed with respect to relief (c). No order as to costs. Consequently, the connected applications are closed.

12.02.2021

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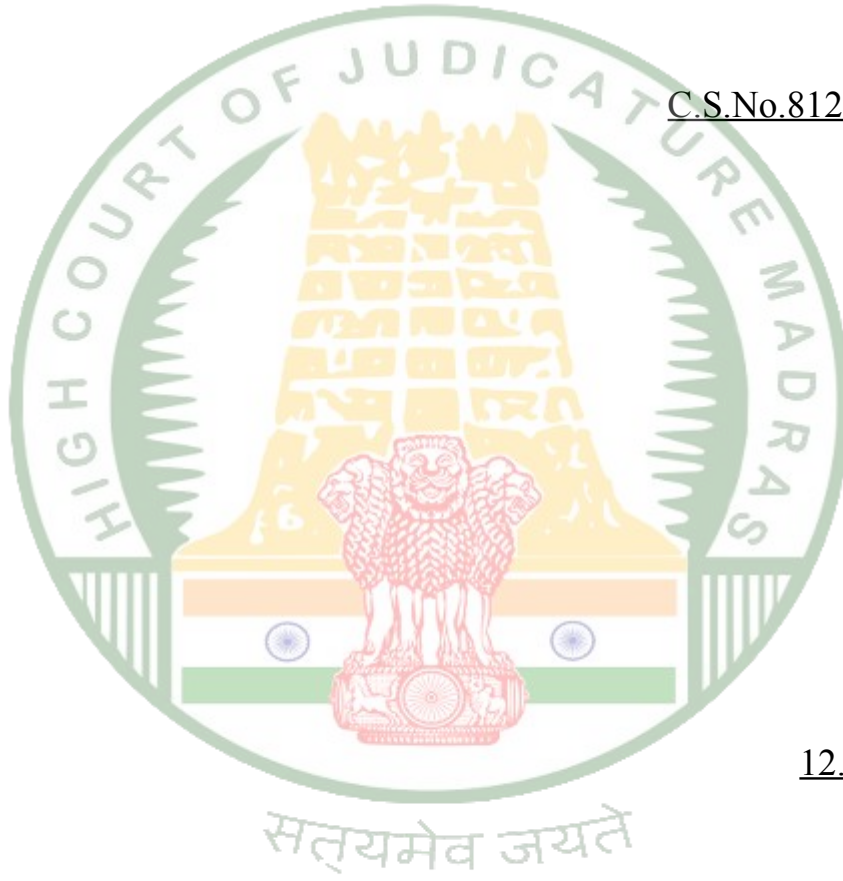
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C.V.KARTHIKEYAN.J.,

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