

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.306 of 2000

Mars, Incorporated,
6885, Elm Street,
Mclean,
Virginia 22101-3883,
United States of America.
Rep. By its Power of Attorney
Mr.A.Arulselvan

...Plaintiff

.Vs.

1.Akshay Industries,
No.107, Rajshree Industrial Estate,
Chitalsar, Manpada,
Ghodbunder Road,
Thane (West), Mumbai – 400 607.
Rep. By its Proprietor
Mr.Raju Jituri

2.Kunal International
73, Diagonal Road,
Opp. IIIrd Block,
Post Office, Next to Jayanagar Medicals,
4th Block, Jayanagar,
Bangalore – 560 011.

3.Bhushan Goyal

... Defendants

Plaint filed under Order IV Rule 1 of the Original Side Rules, Order VII Rule 1 of Code of Civil Procedure read with Sections 27, 105 and 106 of the trade and Merchandise Marks Act, 1958 praying for:

a) Granting a perpetual order and injunction restraining the defendants by themselves, their partners, heirs, legal representatives, successors in business, assigns, servants, agents, distributors, stockists, representatives or any of them from selling, distributing or offering for sale milk shake machines, ice slush machines, ice cream machines bearing the mark GALAXY or in any manner passing off or enabling others to pass-off the defendants milk shake/ ice slush machines as and for the goods of the plaintiff by use of the trade mark GALAXY or any mark similar thereto or in any other manner whatsoever;

b) a preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by them by use of trade mark GALAXY or any mark similar thereto and a final decree be passed in favour of plaintiff for the amount of profits found to have been made by the defendants after the latter have rendered accounts;

c) the defendants be ordered to surrender to plaintiff for destruction all machines, moulds, labels, plates, blocks, dyes, prints, packing material and other materials bearing the trade mark GALAXY or any mark similar thereto and;

d) for costs of the suit.

For Plaintiff : Mr.Rahul M.Shankar
for Mr.Amarnath Babu

For Defendants : Mrs.Vasutha Thiyagarajan

J U D G M E N T

The plaintiff has come up with the above suit seeking

a) To grant a perpetual order and injunction restraining the defendants by themselves, their partners, heirs, legal representatives, successors in business, assigns, servants, agents, distributors, stockists, representatives or any of them from selling, distributing or offering for sale milk shake machines, ice slush machines, ice cream machines bearing the mark GALAXY or in any manner passing off or enabling others to pass-off the defendants milk shake/ ice slush machines as and for the goods of the plaintiff by use of the trade mark GALAXY or any mark similar thereto or in any other manner whatsoever;

b) a preliminary decree in favour of the plaintiff directing the defendants to render account of profits made by them by use of trade mark GALAXY or any mark similar thereto and a final decree be passed in favour of plaintiff for the amount of profits found to have been made

by the defendants after the latter have rendered accounts;

c) the defendants be ordered to surrender to plaintiff for destruction all machines, moulds, labels, plates, blocks, dyes, prints, packing material and other materials bearing the trade mark GALAXY or any mark similar thereto and;

d) for costs of the suit.

2. Mr.Rahul M.Shankar, learned counsel representing the counsel for the plaintiff would submit that there is no instructions from his client.

3. Mrs.Vasutha Thiagarajan, learned counsel appearing for the defendants is also in the same boat. She would however state that the defendants have changed their name and therefore the cause of action may not survive.

4. Since neither of the parties have shown interest in prosecuting the suit, the suit is dismissed for non-prosecution reserving liberty for the plaintiff to file a fresh suit in the event of any infringement or passing off

in future. No costs.

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Index : No

Internet : Yes

Non-speaking order

List of the witnesses examined on the side of the plaintiff: Nil

List of Exhibits marked on the side of the plaintiff : Nil

List of the witnesses examined on the side of the defendants: Nil

List of Exhibits marked on the side of the defendants: Nil

16.06.2021

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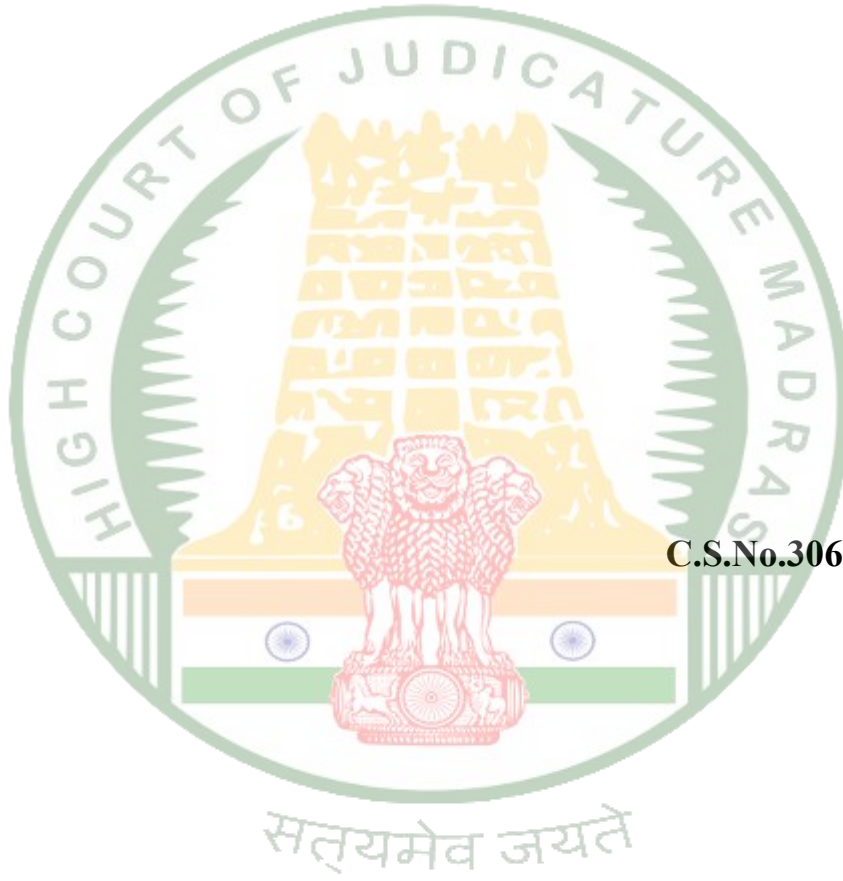
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R.SUBRAMANIAN, J.

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