

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2021

CORAM:

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

C.S.No.342 of 2002

Vijay Nahar  
Proprietor  
M/s.Overseas Incorporation

.. Plaintiff

/versus/

1.M/s.Meenakshi Impex  
2.M/s.Raja Enterprises  
3.Mr.Kanthilal Jain  
4.M/s.Refill Indo Trading Company  
5.Mr.Shantilal  
6.M/s.Shantilal & Co.

.. Defendants

*(with regard to defendants 2 to 6,  
separate order was passed on 05.09.2020.)*

This Civil Suit is filed under Order VI Rule 1 of CPC read with Sections 105 and 106 of the Trade and Merchandise Act, 1958, prayed for a Judgment and Decree jointly and severally against the defendants:-

a).for a permanent interim injunction restraining the defendants, their partners, agents, any one claiming through or under them from using or selling the Bouncing Balls with the trademark 'Toy House', with its

specific or similar packing, colour combination and selling and passing off such Bouncing Balls and other toys under the trademark design and colour combination of the plaintiff.

b).for a declaration that the defendants their men or agents or not entitled to sell the product, high Bouncing Balls with the same design, size, carton packing, colour combination and trademark without the written permission of the plaintiff or anything similar to the plaintiff's goods.

c).directing the defendants to surrender to the plaintiff all the goods and toys namely High Bouncing Balls that have been imported or bought through them.

d).directing the defendants to render honest and true account of, the profits that the defendants derived from the business by using the design, colour combination and carton packing trademark, trade name of the plaintiff and pass on such profit to the plaintiff by way of damages.

e).directing the defendants 1 to 6 to pay to the plaintiff, the cost of the suit.

For Plaintiff : No appearance

For Defendant : No appearance

### **JUDGMENT**

The matter was listed after a considerable number of years on 02.03.2021. The learned counsel for the plaintiff was requested to examine and file an affidavit whether cause of action still survives as

against the 1<sup>st</sup> defendant.

2.It is noted that a judgment had been passed recording the compromise memo, which had been entered into between the plaintiff and the 2<sup>nd</sup> to 6<sup>th</sup> defendants. That judgment was passed on 05.09.2002.

3.On 16.03.2021, when the matter was again listed, the jurisdiction was determined and the learned counsel for the plaintiff however stated that they have given change of vakalat to the plaintiff. The name and address of the plaintiff was directed to be printed in the cause list. As directed, it is printed in the cause list, though mentioned as sole defendant. The name and address of the 1<sup>st</sup> defendant has also been printed in the cause list.

4.Today, when the matter is taken up for hearing, there is no representation on behalf of the plaintiff and the defendant. Hence, the suit is dismissed for non-prosecution. No order as to costs.

24.03.2021

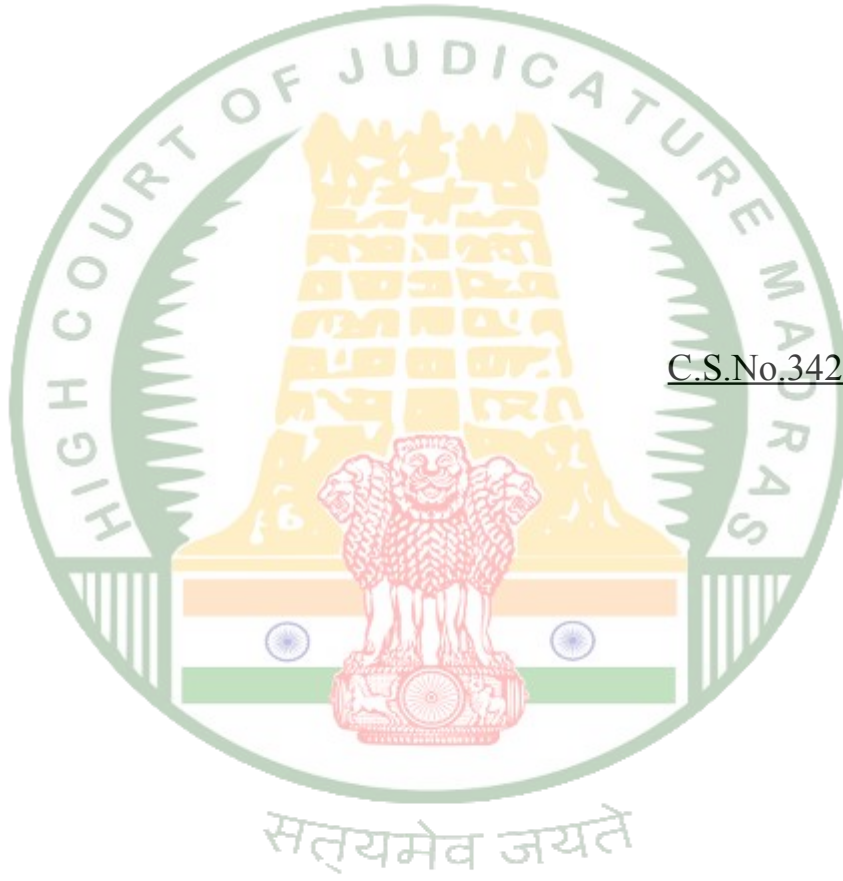
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Internet : Yes / No

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**C.V.KARTHIKEYAN,J.**

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