

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.1009 of 2001

Apex Laboratories Ltd.,
No.76, C.P.Ramaswamy Road,
Alwarpet, Chennai 600 018.

... Plaintiff

..Vs..

M/s.Gleam Pharmaceuticals Pvt. Ltd.,
87, Adarsha Pally, P.O. B.D.Span,
Khardah, Dist. - 24 Parganas (North)
State of West Bengal.

... Defendant

PRAYER : Complaint filed under Order IV O.S.Rules and under Order VII Rule 1 CPC read with Sections 105 and 106 of the Trade and Merchandise Marks Act, 1958, prayed for a Judgment and Decree:-

(a) granting a permanent injunction restraining the defendants above named by themselves, their servants, agents or anyone claiming through them from in any manner infringing the plaintiff's Registered Trademark ZINCOVIT by using the offending trademark ZICOVIT or

ZICOVIT JUNIOR or any other mark or marks which are identical and similar to the plaintiff's registered trademark ZINCOVIT;

(b) granting a permanent injunction restraining the defendants, their servants or agents or anyone claiming through them from in any manner passing off of their pharmaceutical products bearing the offending trademark ZICOVIT or ZICOVIT JUNIOR as and for the celebrated pharmaceutical products of the plaintiffs bearing the Registered Trademark ZINCOVIT, either by manufacturing, selling or offering for sale or in any manner advertising the same;

(c) Directing the defendants to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trademark ZICOVIT or ZICOVIT JUNIOR together with blocks and dyes for destruction;

(d) Directing the defendants to render a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trademark ZICOVIT or

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ZICOVIT JUNIOR and directing payment of such profits to the plaintiffs for the passing off committed by the defendants;

(e) For costs of the suit.

For Plaintiff : M/s.R.Sathish Kumar

For Defendant : No Appearance

J U D G M E N T

The suit had been pending from the year 2001 onwards. There has been no effective progress. The defendant had also not been served. In view of these facts, suit is dismissed. However, liberty is granted to the plaintiff to institute a fresh suit, if a fresh cause of action arises as against either the defendant or against anybody acting under the defendant or against any third party to protect their Trademark ZINCOVIT.

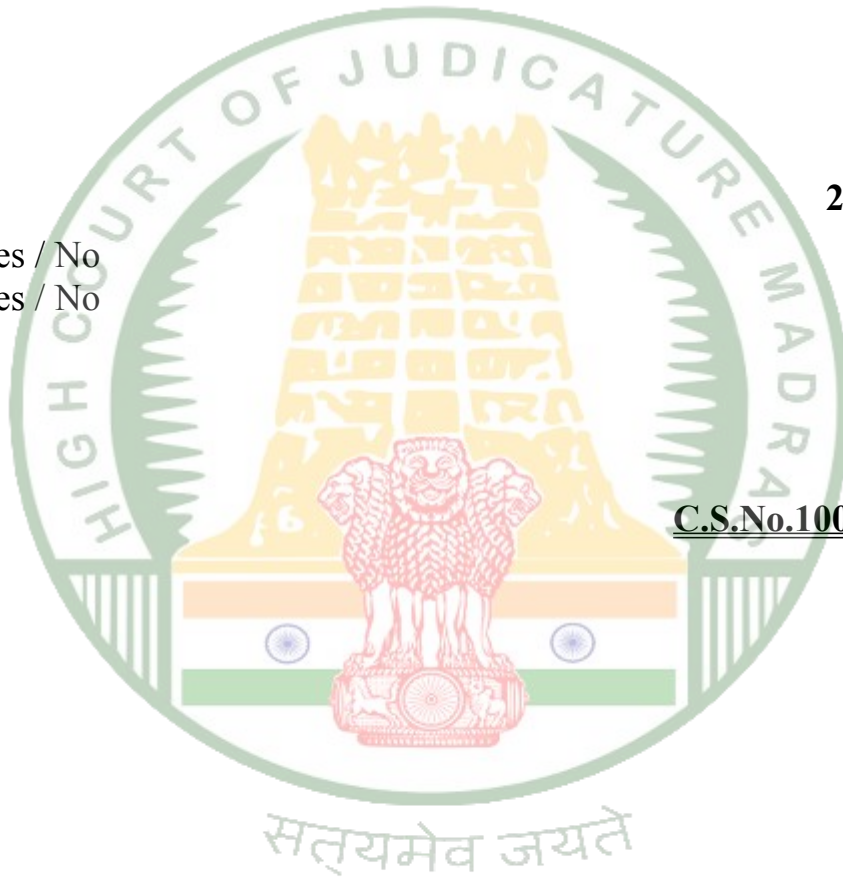
C.V.KARTHIKEYAN, J

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2. With the above observation, suit is dismissed. No order as to costs.

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Index : Yes / No
Web : Yes / No
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