

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.918 of 2003

G.Thirumoorthy,
Sole Proprietor of
Kalyani Covering,
Picnic Plaza, No.2, R.K.Mutt Road,
Mylapore, Chennai 600 004.

... Plaintiff

..Vs..

Shri Kaviyani Covering Maaligai,
No.7, Corporation Commercial Complex,
Town Bus Stand, Thanjavur.

... Defendant

PRAYER : Plaintiff filed under and Order VII Rule 1 of CPC read with Order IV Rule 1 of Original Side Rules of Madras High Court read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999, prayed for a Judgment and Decree:-

(a) A permanent injunction restraining the defendant, their partners / proprietor as the case may be, their servants, agents, distributors,

stockists, wholesalers, retailers and representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademark KALYANI COVERING under No.485271 in class 14 by the use of a deceptively similar trademark / trade name / business concern KAVIYANI COVERING or any other trademark / trade name or business concern, which is identical to or deceptively similar to the plaintiff's registered trademark KALYANI COVERING in respect of gold covering ornaments and jewellery.

(b) A permanent injunction restraining the defendant, their partners / proprietor as the case may be, their servants, agents, distributors, stockists, wholesalers, retailers and representatives or any one claiming through or under them from in any manner passing off or enabling others to pass off the defendant's gold covering ornaments and jewellery by use of the trademark / trade name / business concern KAVIYANI COVERING or any other trademark / trade name / business concern, which is deceptively similar to the plaintiff's trademark / trade name / business concern KALYANI COVERING, as and for the plaintiff's registered trademark / trade name /

business concern KALYANI COVERING in respect of gold covering ornaments and jewellery, or any other manner whatsoever.

(c) The defendant be ordered to surrender to the plaintiff for destruction, all pouches, containers, cartons, packing wrappers and all other material bearing the trademark KAVIYANI COVERING or any other trademark / trade name / business concern, which is phonetically and structurally similar to the plaintiff's registered trademark KALYANI COVERING.

(d) A preliminary decree be passed in favour of the plaintiff directing the defendant to render true and faithful account of profits made by use of trademark / trade name / business concern KAVIYANI COVERING and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the later have rendered accounts.

(e) The defendant be ordered to pay to the plaintiff, a sum of Rs.1000/- (Rupees One Thousand only) towards liquidated damages for their

wrongful and illegal activities by dishonestly using the trade mark / trade name / business concern KAVIYANI COVERING.

(f) For costs of this Suit.

For Plaintiff : Ms.Chandhini Pradeep Kumar
for Mr.Arun C.Mohan

For Defendant : No Appearance

JUDGMENT

A letter had been addressed by the learned counsel for the plaintiff to the Registrar, Original Side, Commercial Division, Madras High Court dated 12.03.2021.

2. The said Letter is as follows:

"We write on behalf of the Plaintiff in the above captioned matter.

We hereby withdraw the Civil Suit No.918 of 2003 as per our client's instructions.

The said suit is listed for hearing before Hon'ble Mr.Justice C.V.Karthikeyan on 15th March 2021.

Kindly take this as an endorsement and do the needful."

3. Along with the said letter a memo had been filed. The memo is as follows:

"1. That the plaintiff herein above does not want to prosecute the case and seeks liberty to file fresh suit.

2. Therefore, the plaintiff craves leave of the Hon'ble Court to withdraw the present Civil Suit No.918 of 2003.

Dated at Chennai, this the 12th day of March 2021."

4. In view of the said communication, suit is dismissed for non prosecution. However, if a fresh cause of action arises or if the plaintiff has any fresh grievances as against the defendant, then the plaintiff is always at liberty to file a fresh suit. No order as to costs.

WEB COPY

15.03.2021

Index : Yes / No

Web : Yes / No

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