

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.03.2021**

CORAM:

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

C.S.No.850 of 2004

1.Mr.K.L.George
43, Rams Plaza,
157 E, MTH Road,
Villivakkam, Chennai 600 049.

2.M/s.Fluxo Therm (India) Pvt. Ltd.,
Rep. by its Director,
Mr.K.L.George,
43, Rams Plaza,
157 E, MTH Road,
Villivakkam, Chennai 600 049.

... Plaintiffs

..Vs..

1.M/s.Fluxo Engineering Enterprises,
a Partnership Firm
represented by its Partnersh
43, Rams Plaza,
157 E, MTH Road,
Villivakkam, Chennai 600 049.

2.Mr.P.Eswaran, Partner,
M/s.Fluxo Engineering Enterprises,
7/4A, 5th Cross Street, Redhills Road,
Villivakkam, Chennai 600 049.

3.Mr.P.K.Krishnan, Partner,
M/s.Fluxo Engineering Enterprises,

43, Rams Plaza,
157 E, MTH Road,
Villivakkam, Chennai 600 049.

4.Mr.K.Suresh Kumar Nari, Partner,
M/s.Fluxo Engineering Enterprises,
M-14, Rail Nagar, Koyambedu,
Chennai 600 107.

... Defendants

PRAYER : Plaintiff filed under and Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Civil Procedure Code and Section 142 of the Trademarks Act, 1999, prayed for a Judgment and Decree:-

(i) Declare the threat contained in Legal notice dated 08.09.2004 issued on behalf of the defendants as ground less, unjust and malicious;

(ii) Permanent injunction restraining the defendants from continuing with threats of prosecution as contained in their legal notice dated 08.09.2004;

(iii) To pay costs of the suit.

For Plaintiffs : M/s.C.Samuel for M/s.M.Rajendran

For Defendants : M/s.Hanumantha Rao

J U D G M E N T

Suit had been filed under Section 142 of the Trademarks Act, 1999, seeking to declare that the threat in a legal notice dated 08.09.2004 is ground less and for a permanent injunction restraining the defendants from continuing the threats of prosecution and for costs.

2. The suit has been pending from the year 2004 onwards. There is no effective progress. However, since the suit had been filed under the provisions by the Trademarks Act, 1999, the lis can be categorized as the Commercial Dispute and a Commercial Division of this Court will have necessary jurisdiction to examine the issues under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015.

3. Plaintiff was directed to file an affidavit indicating whether the cause of action survives. Private Notice dated 02.03.2021 was issued to the

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plaintiff and the same was returned with an endorsement 'addressee left'.

The returned cover has been filed along with an affidavit.

4. In view of the said fact, suit is dismissed. However, liberty is granted to the plaintiff, if a fresh cause of action arises and if the defendant threatens legal action afresh as against the plaintiff to institute a suit.

5. 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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