

O.A.Nos.116 to 118 of 2021

in

C.S.No.75 of 2021

C.V.KARTHIKEYAN, J.

These applications have been filed by the plaintiff in the suit seeking protection from infringement of registered trademark, particularly Musclemman Device and the word PAHALWAN and also seeking protection of the artistic work of Musclemman Device and restraining the defendant from passing off their product with any other device similar to the artistic work of Musclemman of the plaintiff and also for restraining the defendant from infringing the copyright of the plaintiff, particularly with respect to the Musclemman Device.

2. It is to be mentioned that the plaintiff has restricted the scope of the suit from seeking an order of injunction with respect to the registered marks MRF SAHARA, MRF SAFARI and MRF CHEETAH, owing to the fact that in the counter affidavit, the respondent/defendant had stated that they have withdrawn the said trademarks. The suit is however maintained with respect to the device Musclemman Device and the word mark PAHALWAN.

3. Before going into facts, it would be appropriate to examine the case as made out in the plaint.

4. The plaintiff, is a Public Limited Company incorporated under the Companies Act, 1956 and had adopted the trademark MRF. It is claimed that the mark is distinct and identifiable to their goods. They are also Proprietors of the trademarks MRF PAHALWAN, MRF SAFARI. They are quite diligent in protecting from any infringement their artistic work which they use as their trademark logo of a Muscleman Device. The said logos are shown below:





5. The learned counsel for the plaintiff pointed out that this particular MUSCLEMAN DEVICE had been registered on 09.03.1984 in Registration No.418892 in Class 12 to the schedule of the Trade Marks Rules, 1999. Incidentally, aligning with the said device, the plaintiff had also registered as a word mark, the word PAHALWAN in Registration No.542604, again in Class 12 from 28.12.1990. The said marks are still subsisting.

6. In the plaint, the plaintiff has also stated the manner in which they have built their reputation and goodwill and along with the plaint, necessary documents have been filed. The Registration Certificates have also been filed. The Registration Certificate of the word PAHALWAN has been filed as a document in the suit. The plaintiff has also filed a Chartered

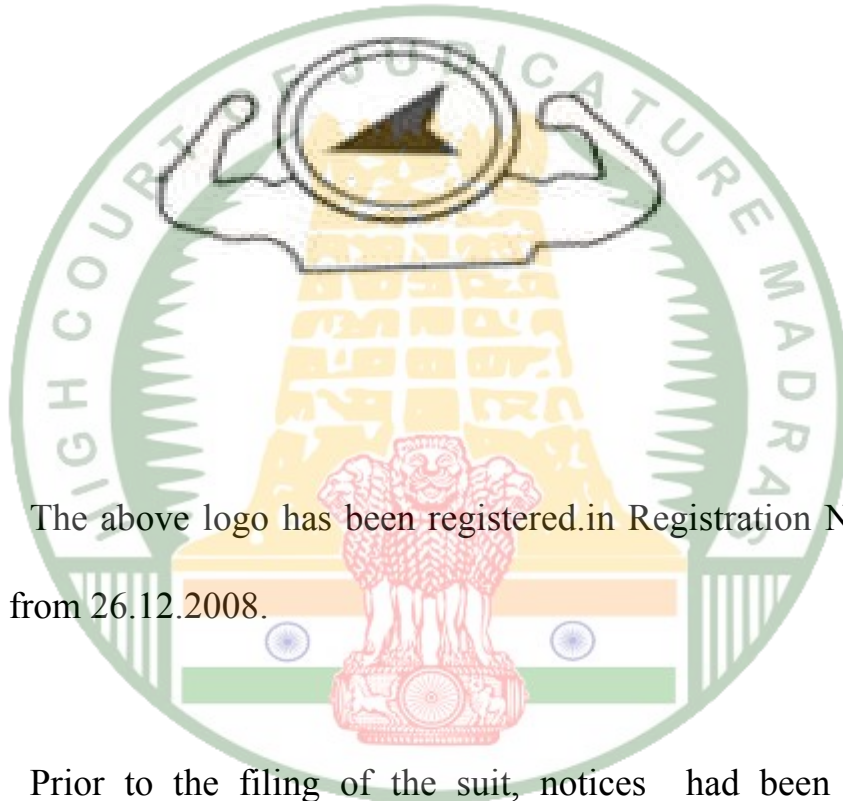
Accountant Certificate as a document, indicating the sales turnover and the expenditure on advertisement. The plaintiff's sales turnover had always been on an ascending scale and for the financial year 2019-2020, the plaintiff had a gross turnover of Rs.15991.14 crores and they have also expended on advertisement a sum of Rs.300.35 crores.

7. Naturally, the plaintiff is diligent in protectecting from any infringement, whether directly or deceptively, and in any manner their marks and their reputation.

8. The plaintiff is aggrieved by the defendant projecting a mark which according to the defendant themselves is not registered. The plaintiffs are aggrieved by the mark which is shown below:



9. It must also be pointed out that the defendant has registration of their mark POWER MAX. The plaintiff has any objection to the same, which is shown below:



10. The above logo has been registered.in Registration No.1458006 with effect from 26.12.2008.

11. Prior to the filing of the suit, notices had been exchanged between the parties. The plaintiff issued a notice on 09.07.2020 and a reply was also issued on 18.07.2020. These documents have been filed along with the plaint. A further notice had also been issued on 04.08.2020.

12. The grievance of the plaintiff is that, by introduction of the revised logo POWER MAX, by the addition of the Robo head with arms stretched outword, the defendant has come much close to the registered mark of the plaintiff.

13. It is the contention of Mr.G.N.Shukumar, learned counsel for the defendant that prior to usage of the present mark or applying for registration, the defendant caused a search in accordance with Rule 22 of the Trade Marks Rules and the Registry has also issued a certificate that there is no such similar mark already registered. Therefore, the learned counsel for the defendant claimed they have every right to proceed further with registration.

14. Mr.B.Madhan Babu, learned counsel for the plaintiff, however, disputed this statement and stated that the time for opposition would arise only when the mark of the defendant actually is advertised. That stage has not yet arrived. At any rate, I am not concerned with that issue. The narrow issue is whether the mark of the defendant which they are now using without any registration is close to that of the plaintiff and whether confusion could

be caused in the minds of the general public.

15. It is seen that both the plaintiff and the defendant are in the same trade, namely sales of tyres. The distribution channels are the same. This also indicates that not only the customers would be the same, but even the distributors and the products are the same. There could therefore be a confusion not only in the minds of the customers, but also in the minds of the traders.

16. The defendants are always permitted to use their registered logo POWER MAX with the two arms flexing the muscles and with a circle and an arrow inside the circle. But shifting that circle with the arrow to the chest and adding a head brings that logo quite close to the logo of the plaintiff. This cannot be permitted. A reference has been made to Section 29 (9) of the Trade Marks Act, 1999. That particular provision had been relied on with respect to the mark PAHALWAN. The spoken meaning of the word PAHALWAN, which literally means a strong person is indicative of a strong man.

17. The Court had tried to put across to the learned counsel for the defendant that they could continue using their registered logo and file a written statement and invite the plaintiff to let in evidence and the trial itself could be completed within a specified time framed as provided under the various provisions of the Commercial Courts Act, 2015. But, however, the learned counsel for the defendant insisted that they would continue to use the mark which is now sought to be enjoined by the plaintiff. At any rate, since the marks are quite similar and since there is every possibility of confusion arising in the minds of the general public and also among the traders who are to sell these products. I hold that the plaintiff has made out a *prima facie* case.

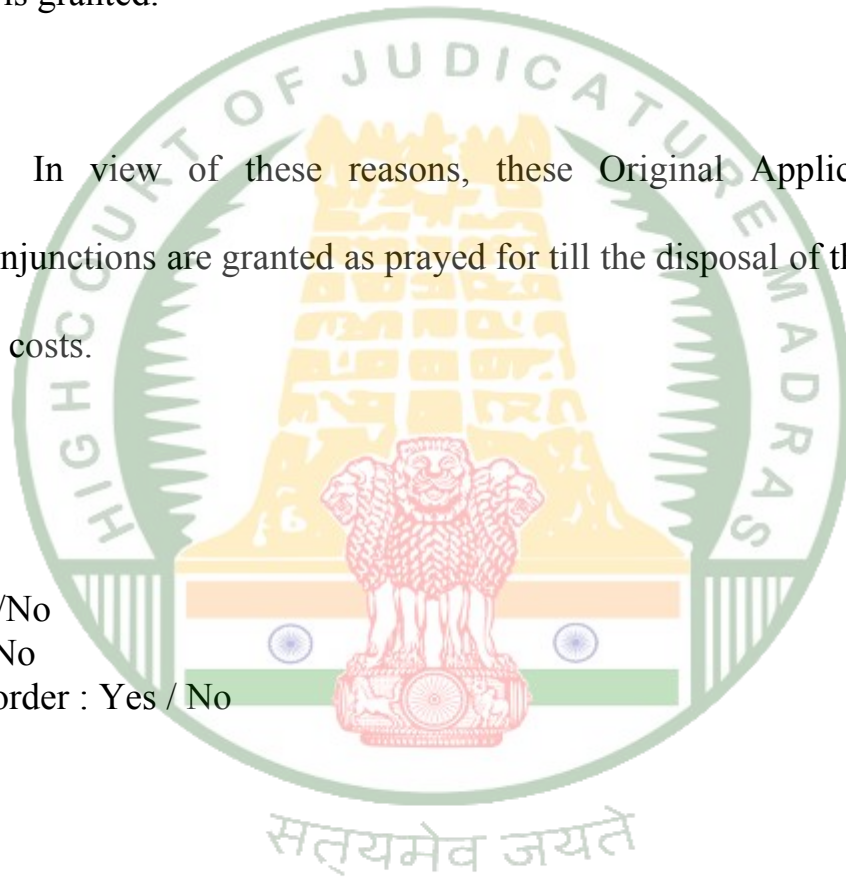
18. The balance of convenience certainly is in favour of the plaintiff and owing to the Registration a *prima facie* case is also made out by the plaintiff. It is a fact that the defendant has not registered their mark. The pendulum swings again in favour of the plaintiff.

19. In view of all these facts, I hold that it would only be appropriate that pending disposal of the suit and pending the parties taking up the opportunity of adducing evidence and explaining in the witness box, the similarities, the dissimilarities and the bonafide in the usage of the two marks, injunction is granted.

20. In view of these reasons, these Original Applications are allowed. Injunctions are granted as prayed for till the disposal of the suit. No order as to costs.

12.03.2021
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Index:Yes/No
Web:Yes/No
Speaking order : Yes / No
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