

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.110 of 2020
and O.A.Nos.148, 149, 150 of 2020
and A.No.1070 of 2020

M/s. Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai 600 032
rep by its Authorised Signatory,
D.Jude F.L.S.Durai Pandian ... Plaintiff

..Vs..

Helbrede Healthcare Limited,
Helbrede House, Plot No.441,
Vadsar Kalali Road, Vadodra,
Gujarat - 390 010. ... Defendant

PRAYER : Complaint filed under and Order VII Rule 1 CPC and Order IV Rule 1 of Original Side Rules, Read With Sections 27, 28, 29, 134, 135 of the Trademarks Act, 1999 and Sections 51, 55, 62 of the Copyrights Act, 1957, prayed for a Judgment and Decree:-

(a) a Permanent injunction restraining the defendants, by itself, its

partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.487453 in Class 5 and other registered trademarks by using a deceptively similar trademark ZYNCOVIT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

(b) a permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels / artistic works which are a substantial reproduction of plaintiff's registered copyright under Nos. A-54243/1997 and A-91339/2011 and A-108878/2014 in colour scheme, get up and layout for their ZYNCOVIT for any syrup, drops tablets etc., or in any other manner whatsoever;

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(c) a permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and / or

enabling others to pass off the defendants' products under the trademark ZYNCOVIT as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and / or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's ZINCOVIT trademark or artistic work or in any other manner whatsoever;

(d) the defendants be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark ZYNCOVIT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label.

(e) a preliminary decree be passed in favour of the plaintiffs directing the defendants to render account to profits made by use of trademark and copyright in the artistic work ZYNCOVIT label and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered

accounts;

(f) for costs of the suit.

For Plaintiff : M/s.R.Sathish Kumar

For Defendant : M/s.Shabnam Banu

JUDGMENT

A Memorandum of Compromise had been entered into between the plaintiff and the defendant and it had also been written down and the original had been filed in Court. This Memorandum of Compromise had been signed by the Chief Vigilance Officer of the plaintiff and by the Proprietor of the defendant.

2. The relevant portions of the Memorandum of Compromise are as follows:

"2. The Defendant approached the plaintiff for amicable settlement of the dispute and the plaintiff also

agreed to settle the dispute on the following terms and conditions reduced hereunder;

a. That the defendant is carrying on manufacturing of Pharma and other products at SCO-2, Sushant Complex, Devi Nagar, Sector-3, Panchkula (H.R.) - 134109. The defendant had manufactured the product named ZYNCOVIT which they admit and agree is identical to that of the plaintiff's registered trademark ZINCOVIT.

d. The Defendant undertakes to the plaintiff and to this Hon'ble Court that they have stopped manufacturing and marketing the product ZYNCOVIT.

e. That the Defendant undertakes that it will not manufacture or market or otherwise deal with the products bearing the trademark ZYNCOVIT or any other trademark identical or deceptively similar to the plaintiff's product ZINCOVIT at point of any point in future whatsoever.

f. The defendant states that they are willing to hand over the unused cartons, material, strips, products, labels, dyes, blocks, moulds, screen prints, packing

materials and other materials of the products with the trademark ZYNCOVIT to the plaintiff's representative at a mutually accepted date and time.

g. The Plaintiff and Defendant pray that the above suit may be decreed in terms of Prayers (a)(b) and (c) of Paragraph 34 of the Complaint and the plaintiff is willing to give up the reliefs under Prayers 34(e) of the Suit in view of this Memorandum of compromise.

h. The defendant further undertakes and agrees that upon any breach of the terms of this compromise by them, their agents, successors or representatives, they agree to pay a sum of Rs.25,00,000/- to the plaintiff as liquidated damages besides such other action that the plaintiff is entitled to take against them.

In the above circumstances, it is prayed that this Hon'ble Court may be pleased to pass a Judgment and Decree in terms of the Memo of Compromise and pass such further or other order which may deem fit and proper to the facts and circumstances of the case and thus render

justice."

3. This Memorandum of Compromise has also been signed by the learned counsel for the plaintiff and the learned counsel for the defendant. It is dated 30.10.2020.

4. In view of the same, suit is decreed in terms of Memorandum of Compromise. No order as to costs. Consequently, the connected Application and Original Applications are closed. The Memorandum of Compromise shall form part of the Decree.

11.01.2021

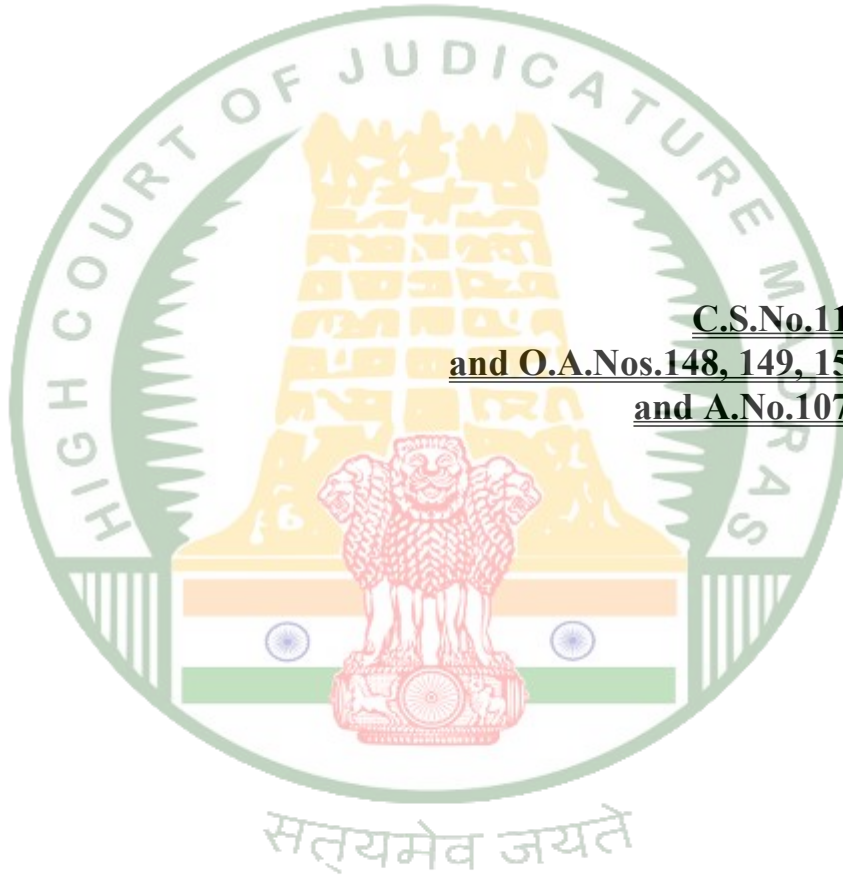
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C.V.KARTHIKEYAN, J

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