

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)Nos.607 & 608 of 2021

Uyir Agriculture Private Limited
rep. by its Managing Director
Thirugnanasambandam
AB Block, Door No.34, 5th Street,
Plot No.4872, Anna Nagar,
Chennai-600 040

Also at

No.42, Bhuvanam Illam
Periyanna Street
Erode.

... Petitioner/Plaintiff
in both petitions

Vs.

1.Ueir Organic Food Private Limited
rep. by its Managing Director
No.38, Main Street
Kalipalayam
Elavanatham Post
Arachalur
Erode-638 101.

2.Mrs.Thiruselvi

... Respondents/Defendants
in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the impugned common order dated 18.01.2021 in I.A Nos. 284 & 285 of 2020 in O.S No.406 of 2020 on the file the Principal

District Judge's at Erode, allowing the memo filed by the defendants and thereby vacating the interim injunction granted under Order XXXIX Rule 1 of Code of Civil Procedure, 1908, on the unnumbered memo dated 22.12.2020 filed by the defendants.

For Petitioner

in both petitions : M/s.K.Ashok Kumar

For Respondents

in both petitions : M/s.C.Pratap

COMMON ORDER

(These cases have been heard through video conference)

These two revision petitions have been filed by the petitioner/ plaintiff in O.S.No.406 of 2020 pending on the file of the Principal District Judge, Erode, questioning the order dated 18.01.2021 in an unnumbered memo dated 22.12.2020 which had been filed by the defendants in the suit in I.A.Nos.284 & 285 of 2020.

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2. The suit in O.S No.406 of 2020 had been filed taking advantage of the provisions of the Trade Mark Act 1999 seeking permanent injunction restraining the respondents from in any manner infringing the registered

Trademark of the plaintiffs viz., wordmark "Uyir" bearing Registration No.3278983, 3278984, 3278985, 3278986 and 3278987 in English under Class 29, 39, 31, 32 and 35 respectively and also the wordmark "caph;" bearing Registration Nos.3847815, 3847816, 3847817, 3847818 and 3847819 in Tamil under Class 29, 30, 31, 32 and 35 and also for consequential relief of injunction and for costs.

3. Along with the suit, the plaintiff had filed two applications in I.A Nos.284 and 285 of 2020. The relief sought in I.A. No.284 of 2020 was for interim injunction restraining the respondents/defendants from in any manner passing off mark as that of the plaintiff by using the offending trademark "Ueir" and the relief sought in I.A.No.285 of 2020 was for interim injunction restraining the respondents/defendants from infringing the registered Trademark of the plaintiff viz., wordmark "Uyir" in English and "caph;" in Tamil. When the said applications came up for consideration before the learned Principal District Judge, Erode on 30.11.2020, the learned Judge had passed a detailed order and in the docket sheet had recorded as follows:

In the result, ad-interim injunction is granted as against the respondents/defendants as prayed for upto 22.12.2020. Order 39 Rule 3 of CPC to be complied with. Notice to the respondents by then. Private Notice permitted.

4. It is on record that the plaintiffs had issued notice through registered post to the defendants on 30.11.2020. It must also be kept in mind that during that particular period, owing to Covid-19 pandemic, petitions could be filed before the Court of Principal District Judge, only through the drop boxes kept for that particular purpose and petitions could be filed and received by Principal District Judge, on every Mondays, Wednesdays and Fridays. It is seen that 30.11.2020 was a Monday. On that day, interim injunction was granted. There was an obligation under Order 39 Rule 3(a) for the plaintiff to serve all the relevant records to the defendants either on the same day or on the next day. Notices were sent on 01.12.2020. There was a further obligation that an affidavit to that effect should be filed either on the date of granting of interim injunction or on the next day. The next day i.e 01.12.2020 was a

Tuesday, on which date the drop boxes were not available before the Court complex. Hence, an affidavit of compliance had been filed on 02.12.2020, the immediately next successive day, in the drop box. The affidavit could be filed only on 02.12.2020.

5. Thereafter, a memo came to be filed by the defendants complaining non-compliance of provisions of Order 39 Rule 3(a) of CPC. The learned Principal District Judge while examining the facts noted that the affidavit had not been filed on 01.12.2020 and therefore, vacated the interim injunction.

6. It is under the directions of the Principal District Judge that the drop box are kept on every Monday, Wednesday and Friday and as a fact, they are not available on Tuesday. Since 01.12.2020 was a Tuesday, the affidavit could be filed only on 02.12.2020. सत्यमेव जयते

7. If a complaint had been received by the learned judge of non-compliance of the stipulation under Order 39 Rule 3(a) CPC, he should have examined whether notice had been issued or sent as required under Section 39 Rule 3(a) of CPC. As fact, it had been sent on 01.12.2020. The affidavit

filed on 02.12.2020 cannot be held against the plaintiff. I hold that the Principal District Judge should not have, on the basis of the memo vacated the order of interim injunction already granted on 30.11.2020. That part of the order passed by the learned Principal District Judge is required to be interfered with.

8. The learned counsel for the petitioner would submit that subsequent to the particular order, counter has been filed in the said application and arguments have been advanced. In the counter affidavit, it had been stated that an application has been filed before the Intellectual Property Appellate Board and taking that fact into account, the learned Principal District Judge had stayed further proceedings in I.A Nos. 284 & 285 of 2020.

9. I am not going into that particular aspect, since the present petitions are focused only on the order dated 18.01.2021, vacating the interim order by passing such order in an unnumbered memo, holding non-compliance of stipulation under Order 39 Rule 3(a) CPC. The said order is interfered with.

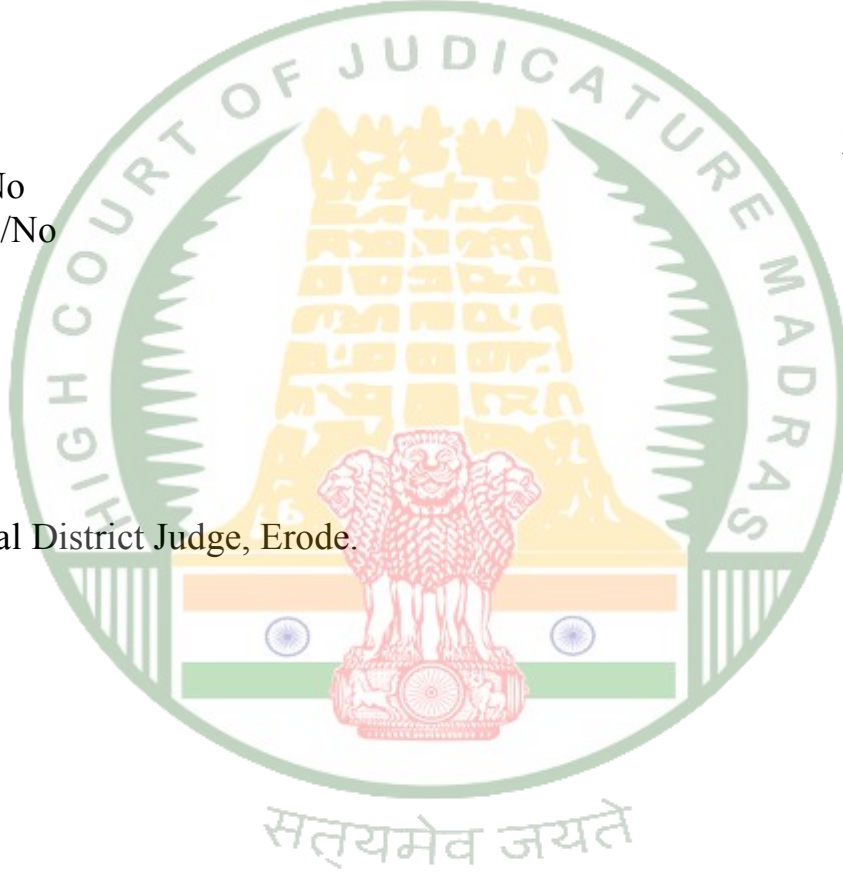
10. In the result, this Civil Revision Petition is allowed. The order of interim injunction granted in I.A Nos.284 & 285 of 2020 on 18.01.2021 is restored. The learned Principal District Judge, Erode may re-examine the entire issue on the basis of the counter filed. No order as to costs.

23.04.2021

Index:Yes/No
Internet:Yes/No
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To

The Principal District Judge, Erode.



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C.V.KARTHIKEYAN, J.,

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