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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY THE 25th DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A. No.1361 of 2021

in

O.A.No.39 of 2018

in

C.S. No.39 of 2018

Mr.N.Sivakumar,
Sole Proprietor of M/s.Siva Agencies,
No.R-92/4B, North Avenue,
Muthamizh Nagar, Chennai-600 118. ... Petitioner/Applicant/Plaintiff
-Versus-

M/s.Siva Agencies,
No.16/33, Patavattamma,
Kosapettai, Purasaiwalkam,
Chennai-600 012. ... Respondent/Respondent/Defendant

A. No.1361 of 2021:-

Application praying that this Hon'ble Court be pleased to punish the Respondent/Respondent/Defendant for wilful disobedience of the interim injunction dated 04.12.2020 passed by this Hon'ble Court in O.A.No.39 of 2018 in C.S.No.39 of 2018.

This application coming on this day before this court for hearing in the presence of M/s C.Rekha Kumari, Advocate for the Applicant herein, and Mr.M.Madhu Prakash, Advocate for the Respondent herein, and upon reading the Judges Summons and the affidavit of N.Sivakumar filed herein,



04.12.2020 made in O.A.No.39 of 2018 in C.S.No.39 of 2018, and this court having observed that having now come forward to change their name and place records before this court that they have changed their name from “Siva Agencies” to “Shree Siva Agencies”, this Court does not want to penalise the respondent/defendant for their act of wilful disobedience and taking note of the fact that one of the partner had died in the course of the pending suit and the deceased partner, being a family member, the disobedience is not viewed as a wilful disobedience, **it is ordered as follows:-**

That the A.No.1361 of 2021, be and is hereby dismissed.

2. That anyhow, if any infringement by the defendant in future is brought to the notice of this court, it shall be viewed seriously.

3. That the suit C.S.No.39 of 2018 be posted on 03.09.2021 for case management hearing.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
25th DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (COMM.CASES)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)



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01.09.2021

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A. No.1361 of 2021
in
O.A.No.39 of 2018
in
C.S. No.39 of 2018

ORDER

DATED : 25.08.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 01.09.2021

APPROVED ON: 01.09.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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This Application coming on this day before this court for hearing

the court made the following order:-



wilful dis-obedience of the injunction order granted by this court on 04.12.2020 passed in C.S.No.39 of 2018.

2. The suit is filed for injunction restraining the defendant from carrying on business under the name of “Siva Agencies”, which is the registered trademark of the plaintiff. This court on 04.12.2020, after hearing the contesting parties, has granted interim injunction restraining the defendant from using the registered trademark of the defendant “Siva Agencies”.

3. In spite of the order of injunction alleging that the defendant continues to carry on his trade under the mark “Siva Agencies”, the present application is filed to punish the defendant for wilful disobedience of the injunction order.

4. The respondent/defendant has filed an affidavit sworn on 23.08.2021, wherein it is stated that after the injunction order, he changed the name of the firm as “Shree Siva Agencies” but the same could not be intimated to the counsel due to the sudden death of one of the partner by the name Mohan Kumar. Thereafter, the partnership also been duly reconstituted. Since there is no wilful disobedience of the Court order, he may be purged of the contempt proceedings. Expressing his unconditional apology, he seeks indulgence of this court to dispose the application



recording his undertaking.

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5. Learned counsel appearing for the plaintiff/respondent submitted that the injunction order was passed by this court on 04.12.2020, after hearing both sides. The defendant in defiance to the court order continues to carry on his trade till even today. The death of one of the partner and the reconstitution of the partner deed on 18.08.2021 are all long after the injunction order. There is no justifiable cause for the defendant to continue his business after 04.12.2020 in the name of “Siva Agencies”.

6. Heard the learned counsels and the affidavit filed by the respondent/defendant perused.

7. It is to be noted that the order of injunction was granted by this court on 04.12.2020. Thereafter, the defendant is restrained from using the trade mark “Siva Agencies”. Only in the partnership deed dated 18.08.2021, it appears that the defendant has changed their business name “Shree Siva Agencies”. This could be seen from the partnership deed dated 18.08.2021, clause (1) which reads us below:

“As and from the date of this deed, the partners shall carry on the said business in the new business name “Shree Siva Agencies” necessitated by a Court Order.”



8. It is obviously clear that only from 18.08.2021, the defendant has changed their name. Clearly, there is evidence as admitted by the defendant themselves that they have not changed the name immediately after the injunction order but have taken nearly 8 months to do it.

Sd./-G.J.J.

25.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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