



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12TH DAY OF NOVEMBER 2021

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.S.(Comm.Div) No.200 of 2013

and

A.No. 4006 of 2021

Cadila Healthcare Limited,
a Company registered under the
provisions of the Companies Act, 1956
and having its registered office at
'Zydus Tower', Satellite Cross Road,
Ahmedabad - 380 015
and having Branch Office at
First Floor, New No.24, Old No.16,
Dr.Subbarayan Nagar,
4th Street, Kodambakkam,
Chennai 600 024.
Represented by General Manager (Legal)
Mr.Mehul A.Pathak.

.. Plaintiff

/versus/

Smr.Madhu Somani
No.8, Vellala Street
Purasaiwalkam
Chennai 600 084.

..Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a
judgment and decree against the Defendants:-

(a)a permanent injunction, restraining the defendant, by



from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trade Mark **ATORLITE** or any other name which is in any way phonetically or deceptively similar to the Plaintiffs Trade marks **ATOR** and **ATORVA** and pass off their pharmaceutical preparation as the pharmaceutical preparation of the Plaintiffs or enable others to pass off in any manner.

(b)direct and decree the Defendant to deliver to the Plaintiff all the goods, dies, labels wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending trademark **ATORLITE** for destruction without compensation;

(c)The Defendant be ordered and directed to render true and faithful accounts of the profits legally earned by the Defendant by using the deceptively similar and confusing trade name **ATORLITE** and a decree for the said amount be passed in favour of the Plaintiff against the Defendant:

(d)directing the Defendant to pay to the Plaintiff's the costs of the suit.

A.No.4006 of 2021:-

Smr.Madhu Somani
No.8, Vellala Street
Purasaiwalkam
Chennai 600 084.

...Applicant/Defendant

-Versus-



Cadila Healthcare Limited,
a Company registered under the
provisions of the Companies Act, 1956
and having its registered office at
'Zydus Tower', Satellite Cross Road,
Ahmedabad - 380 015
and having Branch Office at
First Floor, New No.24, Old No.16,
Dr.Subbarayan Nagar,
4th Street, Kodambakkam,
Chennai 600 024.
Represented by General Manager (Legal)
Mr.Mehul A.Pathak.

.. Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to conduct an inquiry whether, the PW1 namely Hiren Trivedi, the Manager of Respondent/Plaintiff, has knowingly given false evidence, by dishonestly making false claim with intent to injure the Applicant/Defendant in the course of Cross Examination before Additional Master III on 15/09/2021 in C.S.No.200 of 2013 on the file of this Honble Court.

This suit along with the Application having been heard on 09.11.2021 in the Presence of Mrs.Gladys Daniel, Advocate for the Plaintiff in C.S.(Comm.Div) No.200 of 2013 and for the respondent in A.No. 4006 of 2021 and Mr.U.Kasipandian, Advocate for the defendant in C.S.(Comm.Div) No.200 of 2013 and for the applicant in A.No. 4006 of 2021 and upon reading the plaint filed in C.S.(Comm.Div) No.200 of 2013 and the Judges summons and the affidavit of Smt.Madhu Somani filed in



perusing the evidence adduced therein and having stood over consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the plaintiff is entitled for the reliefs sought for in this suit, and the suit itself has been taken up for final hearing and it has been decreed by this court and no useful purpose will be served in passing any further orders in this application, in the considered view of this court, this a frivolous application filed by the defendant without any merits,

it is ordered and decreed as follows:-

That Smt.Madhu Somani, the defendant herein, by herself , her servants, agents, men or anyone claiming through her, be and is hereby restrained by an order of permanent injunction, from from manufacturing, marketing, distributing, offering or advertising for sale, any pharmaceutical preparation using the trade mark ATORLITE or any other name which is in any way phonetically or deceptively similar to the plaintiff's trade marks ATOR and ATORVA and pass off her pharmaceutical preparation as the pharmaceutical preparation of the plaintiff's or enable others to pass off in any manner.

2) That the defendant herein, be and is hereby directed to destroy all the offending trademark articles/labels forth with.

3) That the defendant herein, be and is hereby directed to render true



and faithful accounts of the profits earned by her by using the offending trademark ATORLITE from the date of filing of this suit namely 01.04.2013 up to the date of this order.

4) That the defendant herein, do pay to the plaintiff herein, a sum of Rs.50,000/- (Rupees fifty thousand only) as costs of this suit;

5) That the A.No.4006 of 2021 be and is hereby dismissed.

6) That the applicant in A.No.4006 of 2021 do pay to the respondent in A.No.4006 of 2021 a sum of Rs.10,000/- (Rupees Ten thousand only) as costs of this application.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
12TH DAY OF NOVEMBER 2021.

SD/-

ASSISTANT REGISTRAR (Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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07/12/2021

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C.S.(Comm.Div) No.200 of 2013
and
A.No. 4006 of 2021

ORDER

DATED:12/11/2021

THE HON'BLE MR.JUSTICE
N.ANAND VENKATESH

FOR APPROVAL: 29/12/2021

APPROVED ON: 21/01/2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 09.11.2021

PRONOUNCING ORDERS ON : 12.11.2021

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit (Commercial Division) No.200 of 2013

CADILA HEALTHCARE Limited
a Company registered under the
provisions of the Companies Act, 1956
and having its registered office at
'Zydus Tower', Satellite Cross Road
Ahmedabad 380 015
and having Branch Office at
First Floor, New No.24, Old No.16
Dr.Subbarayan Nagar
4th Street, Kodambakkam
Chennai 600 024
Represented by General Manager (Legal)
Mr.Mehul A.Pathak

.. Plaintiff

/versus/

Smr.Madhu Somani
No.8, Vellala Street
Purasaiwalkam
Chennai 600 084.

..Defendant

Prayer: Civil Suit has been filed under Order IV, Rule 1 O.S.Rules and
Order VII, Rule 1 of the C.P.C. Read with Section 27, 134 & 135 of the
Trade Marks Act, 1999, praying to pass a judgment and decree for:-



(a)granting a permanent injunction, restraining the defendant, by themselves, their servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trade Mark **ATORLITE** or any other name which is in any way phonetically or deceptively similar to the Plaintiffs Trade marks **ATOR** and **ATORVA** and pass off their pharmaceutical preparation as the pharmaceutical preparation of the Plaintiffs or enable others to pass off in any manner.

(b)direct and decree the Defendant to deliver to the Plaintiff all the goods, dies, labels wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending trademark **ATORLITE** for destruction without compensation;

(c)The Defendant be ordered and directed to render true and faithful accounts of the profits legally earned by the Defendant by using the deceptively similar and confusing trade name **ATORLITE** and a decree for the said amount be passed in favour of the Plaintiff against the Defendant:

(d)directing the Defendant to pay to the Plaintiff's the costs of the suit.

For Plaintiff :Mrs.Gladys Daniel

For Defendant :Mr.U.Kasipandian

J U D G M E N T

(The case has been heard through Video Conferencing)

The instant suit has been filed seeking for the relief of



anyone claiming through the defendant, from manufacturing, marketing, distributing, offering, advertising for sale of any pharmaceutical preparation using the trade mark ATORLITE, which is deceptively similar to the plaintiff's trade marks ATOR and ATORVA and for other consequential reliefs.

2. The case of the plaintiff is that they are one of the leading pharmaceutical companies manufacturing and marketing pharmaceuticals and nutraceuticals products. The further case of the plaintiff is that they coined and adopted distinctive trade marks ATOR and ATORVA, under which the plaintiff manufactures and markets medicinal preparations. The plaintiff applied for registration of the trade marks ATOR and ATORVA and obtained the trade mark registration. It is further stated that the plaintiff is using this trade mark since 1999 continuously and the plaintiff has also given the sales figure of the mark for a period of 9 years from 2003-2004 to 2011-2012, in order to establish that they have made substantial sales by using this trade mark. The grievance of the plaintiff is that the defendant used a mark ATORLITE, which is deceptively similar to the trade mark of the plaintiff and thereby is causing confusion to the consumers and is dishonestly earning profits by misusing the goodwill and reputation of the plaintiff. Aggrieved by the same, the plaintiff has knocked the doors of this



Court, seeking for various reliefs.

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3. The defendant who entered appearance through their counsel, failed to file written statement in spite of several opportunities given to the defendant. This Court took into consideration the fact that the defendant did not file a written statement even after six years from the date of institution of this suit and consequently by an order dated 16.12.2019, forfeited the right of the defendant from filing the written statement. Hence, the defendant has not set up any defense on her side.

4. The only issue that arises for consideration in the present suit is that whether the defendant, by using the mark ATORLITE has infringed the plaintiff's trade marks ATOR and ATORVA and whether the same is phonetically, visually and structurally identical to the trade mark of the plaintiff and as to whether the plaintiff is entitled for the reliefs sought for in this suit.

5. The manager of the plaintiff company was examined as PW-1 and he was also permitted to be cross-examined by the counsel appearing on behalf of the defendant. Ex.P-1 to Ex.P-11 were marked and Ex.D-1 was marked in the course of cross-examination of PW-1.



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6. Heard Mrs.Gladys Daniel, learned counsel for the plaintiff and Mr.U.Kasipandian, learned counsel for the defendant.

7. The plaintiff has adopted distinctive trade marks ATOR and ATORVA under which they manufacture and market medicinal preparations. A close look at Ex.P-2 and Ex.P-3, reveals the fact that they are the applications made by the plaintiff seeking for the registration of the trade mark ATOR and ATORVA. The plaintiff has also applied for the trade mark ATORVA, claiming user of the said trade mark since 05.01.2000 and the same can be ascertained from Ex.P-4. Thereafter, the plaintiff launched the drug *Atorvastatin Calcium* and applied to the Drug Controller General of India for manufacturing such formulation and received the permission from the concerned authorities and the same can be seen from Ex.P-5 and Ex.P-6. The Brochure filed by the plaintiff, which has been marked as Ex.P-7, gives a clear indication on the visual, phonetic and structural image of the product. The plaintiff has also filed copies of sales invoices which has been marked as Ex.P-8, in order to establish the sales figures on sale of the products.



ATORLITE on 05.02.2009 and it was published in the Trade Marks Journal on 29.10.2012, which is marked as Ex.P-10. The plaintiff immediately filed a notice of opposition opposing the registration of trade mark and the same is evident on going through Ex.P-11. The specific case of the plaintiff is that the defendant has abandoned the trade mark and even the latest information available on the website shows that the defendant has not renewed her claim for trade mark ATORLITE and the Original Application has abated.

9.The authorized signatory of the plaintiff company was examined as PW-1 and he has deposed the entire facts. Even though the defendant lost his right to file a written statement, his right to cross examine PW-1 was not taken away and the counsel appearing on behalf of the defendant has cross examined PW-1. On a careful reading of the cross-examination, it is seen that the counsel has basically focused only on the competence of the authorized person to depose before the Court.

10. Before going into the claim made by the plaintiff, this Court has to examine the consequence of the defendant not filing a written statement. For this purpose, this Court must take note of the provisions of Order VIII Rule 10 of Civil Procedure Code, 1908, which provides for the procedure when the party fails to present a written statement called for by



judgment against the defendant, if it is convinced that the case, as set out in the plaint, is sufficient to grant a decree. The principles governing the exercise of such discretion under this rule has been succinctly explained by the Hon'ble Supreme Court in **Balraj Teneja and Another v. Sunil Madan and Another** reported in **[1999 8 SCC 396]**. The relevant portions in the judgment are extracted hereunder:

13. We may now consider the provisions of Order 8 Rule 9 as also the provisions contained in the other Rule, namely Rule 10, under which the instant suit has been decreed by the High Court. These Rules are quoted below:

"9. Subsequent pleadings -- No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Procedure when party fails to present written statement called for by Court -- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up."

14. This Rule, namely Rule 10, was also amended by the Code of Civil Procedure (Amendment) Act, 1976 (Act



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No. 104 of 1976). Prior to its amendment, it was held in a number of decisions that the rule can be invoked only in those situations where the Court has required the defendant to file the Written Statement in terms of Rule 9 of Order 8. A few other High Courts had taken the view that this Rule would be applicable even to those cases where a Written Statement was required to be filed under Order 8 Rule 1 CPC. The conflict of decisions has been set at rest by providing specifically under this rule that where a party from whom a Written Statement is required either under Rule 1 or Rule 9 of Order 8 fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit. Rule 10 thus governs both the situations where a Written Statement is required under Rule 1 of Order 8 as also where it has been demanded under Rule 9. In both the situations, if the Written Statement has not been filed by the defendant, it will be open to the Court to pronounce judgment against him or make such order in relation to the suit as it thinks fit. It is to be noticed that if the Written Statement is not filed, the Court is required to pronounce judgment against the defendant. The words "against him" are to be found in Rule 10 of Order 9 which obviously means that the judgment will be pronounced against the defendant. This rule also gives a discretion either to pronounce judgment against the defendant or "make such order in relation to the suit as it thinks fit." These words are of immense significance, inasmuch as they give a discretion to the Court not to pronounce judgment against the defendant and instead pass such order as it may



think fit in relation to the suit.

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11. The above judgment was followed by the Commercial Division of this Court in ***Star Music, rep. by its Partner .v. Yogesh Movie Makers and Others*** reported in ***2019 SCC OnLine Mad 7251*** and the suit was decreed under this rule, as the defendant has forfeited his right to file a written statement.

12. The rights of a defendant who does not file a written statement has been lucidly explained in ***Debendra Nath Dutt v. Sm.Satyabala Dasi and Others*** reported in ***AIR 1950 Calcutta 217*** and the relevant portions are extracted hereunder:

Thus then there are two consequences of not entering appearance under the Rules. One is that the Suit is liable to be heard ex parte and the other is that no written statement can be filed. In that context, I am not inclined to impose more punishment than those two so explicitly stated by the Rules. Therefore I am of the opinion that a party subject to these handicaps imposed by the Rules can still appear under the Civil Procedure Code when the suit is called on for hearing from the undefended list, not only to cross-examine the witnesses of the plaintiff and demolish in such manner the plaintiff's case on evidence that the Court will not pass any decree in the plaintiff's favour but also to make such arguments and submissions on law and on such evidence as the plaintiff may have brought to the



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Court. These are, in my opinion, valuable rights under the Code which are not taken away by any Rules of the original side. If that be so I fail to see why in such a case the terms of Order 9 Rules 8 and 9 of the Code cannot be made applicable to the original side of this Court notwithstanding the technicalities of "entering appearance" as introduced by the Rules of the original side practice. It may be that when because of the default in "entering appearance" the suit is liable to be heard ex parte, the defendant may not know or have notice when the suit is going to be heard. But that is immaterial and that is a risk to which such a defendant makes himself open by such default. But should he by any means whatever know that the suit is being heard from the undefended list he can nevertheless appear at such hearing and exercise the rights I have mentioned. Rankin C. J. in the Court of appeal sees the possibility of cross-examination in such a case by the defendant of plaintiff's witnesses. The learned Chief Justice observes as follows at p. 477 of that Report:

"If he does not enter appearance within the time limited the case will go into what is called the undefended list and when the case is on the undefended list it is not possible for the defendant without obtaining leave to enter appearance. He has a limited right to cross-examine witnesses adduced on behalf of the plaintiff if he appears at the time when the undefended case is down for hearing, but his position is that of a man who for not entering appearance in time is precluded from defending the suit whether he appears at the hearing or does not appear at the hearing."

[16] I have not been able to persuade myself to take the view that a suit can only be defended by filing a written statement or by "entering appearance" under the Rules. In my opinion filing



of written statement is not the only way of defending a suit. A defendant in my judgment may ably and successfully defend a suit against him by cross-examination and arguments. The confusion that should be avoided in this context is that the expression "entering of appearance" under the original side Rules is not co-extensive in its signification and import with the word "appears" or "appearance" of Order 9 Civil P. C. Rules of the original side do not say that a defendant who has not "entered appearance" cannot in any way "defend" the suit. They punish default of entering appearance only in two ways that I have mentioned, and in no other.

13. It is clear from the above that even if the defendant does not file a written statement, there is a possibility of cross examination on the side of the defendant and of course by virtue of such cross examination, the defendant cannot be allowed to set up his/her defense. At the best, the defendant can only put questions on the tenability of the claim made by the plaintiff. Yet another right that has been given to the defendant who does not file the written statement is that, he/she will also be allowed to make his/her arguments, when the suit is taken up for final hearing. In the present case, both these opportunities have been given to the defendant.

14. The defendant has also filed the written submission. A

careful reading of the written submission reveals that the defendant has



attempted to set up a defense. The defendant cannot be allowed to achieve indirectly what she was not able to do directly. Apart from raising technical objections, the defendant has gone into the provisions of the Trade Marks Act by claiming herself to be a registered proprietor and also has gone into the process of derivation of the name of the drug, as if the registered trade mark of the plaintiff is commonly used by many others. These are facts which require proper pleadings and letting in evidence to substantiate the same. In so far as the action sought to be taken against the plaintiff for offences under Sections 191, 208 and 209 of Indian Penal Code is concerned, this court has already dismissed the relevant application and therefore, there is no requirement to go into this issue while considering the merits of this suit.

15. The plaintiff company is basing their claim on their trade marks ATOR and ATORVA. By using this trade mark, the plaintiff is selling a formulation containing the drug *Atorvastatin Calcium*. It is clear from the records that the plaintiff has been using this trade mark since in the year 1999 and it has gained a reputation and goodwill in the market. The plaintiff also made sufficient sales by using the trade mark and the same is evident from the sales invoices that have been marked as Ex.P-8. The

defendant did apply for registration of trade mark ATORLITE in the year



2009 and this was opposed by the plaintiff which is evident from Ex.P-11.

Thereafter, the defendant has abandoned this trade mark and she did not even take any steps for its renewal. This finding is rendered in view of the fact that the defendant has not pleaded/filed anything to the contra. At one stage, the plaintiff was even prepared to withdraw this suit with a liberty to take steps as and when the defendant resumes business with this trade mark. At that point of time, the defendant came up with a plea that they are continuing to use the trade mark and hence, the plaintiff withdrew the memo filed before this Court and the same is evident from the order passed by this Court on 15.04.2021.

16.A closer look at the trade mark ATORLITE that is used by the defendant shows that it is being used for manufacturing and trading, medicinal and pharmaceutical preparations. This mark is deceptively and phonetically similar to the plaintiff's trade marks ATORVA and ATOR. The defendant was aware that the plaintiff has opposed the application submitted by the defendant for this trade mark and in spite of the same, continued to use this mark. Obviously, the defendant has adopted the trade mark only with a view to piggyback on the goodwill and reputation of the plaintiff.



manufacture of pharmaceutical products. Therefore, any confusion in the marks relating to pharmaceutical preparations can have serious consequences and it will go against public interest. The defendant's mark is phonetically, visually and structurally identical to the plaintiff's trade mark and it is bound to cause confusion as both the products will be made available through the same trade channels and to the same class of consumers. The above discussion leads to the conclusion that the mark ATORLITE used by the defendant has infringed the plaintiff's trade marks ATOR and ATORVA. That apart, the same is phonetically, visually and structurally identical to the trade mark of the plaintiff. Accordingly, the plaintiff is entitled for the reliefs sought for in this suit. All the issues are answered accordingly.

18. In fine, there shall be a decree for permanent injunction, restraining the defendant, by herself, her servants, agents, men, or anyone claiming through her from manufacturing, marketing, distributing, offering or advertising for sale, any pharmaceutical preparation using the trade mark ATORLITE or any other name which is in any way phonetically or deceptively similar to the plaintiff's trade marks ATOR and ATORVA and pass off her pharmaceutical preparation as the pharmaceutical preparation of the plaintiff's or enable others to pass off in any manner. There shall be a



mark articles/labels forthwith. There shall be a preliminary decree directing the defendant to render true and faithful accounts of the profits earned by her by using the offending trade mark ATORLITE, from the date of filing of this suit namely 01.04.2013 up to the date of the judgement and decree passed in this suit. The suit is decreed by imposing a cost of Rs. 50,000/- [Rupees Fifty Thousand Only] payable by the defendant to the plaintiff. Consequently, connected miscellaneous applications are closed.

List of Witness examined on the side of the Plaintiff:-

Mr.Hiren Trivedi ----- PW.1

List of Witness examined on the side of the Defendant:- ---

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	02.08.2018	Certified True copy of the Resolution passed by the Board of Directors at their Meeting Held on February 8, 2018.
2.	Ex.P2	20.12.1999	Application for Registration of Plaintiff's Trade Mark "ATOR" under No.892892-Photostat copy.
3.	Ex.P3	05.04.1999	Application for Registration of Plaintiff's Trade Mark "ATORVA" under No.849547 – Photostat copy
4.	Ex.P.4	07.06.2005	Application for Registration of Plaintiff's Trade Mark "ATORVA" under No.1361985 claiming user since 05.01.2000- – Photostat copy
5.	Ex.P.5	20.12.1999,2	Copies of the DGCI Permission and



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Sl. Nos.	Exhibits	Dated	Description of documents
		3.12.1999	Manufacturing License – Photostat copy
6.	Ex.P.6		Plaintiff's Product “ATORVA” - copy
7.	Ex.P.7		Copies of Product Brochure of the Plaintiff's Product “ATORVA” - Photostat copy
8.	Ex.P.8	13.07.2000 30.06.2001 21.12.2006 07.03.2006	Copies of Few Sales Invoices of Plaintiff's Product “ATORVA” - Photostat Copy
9.	Ex.P.9	09.03.2009	Copy of letter issued by the Plaintiff's Company Secretary – Photostat copy
10.	Ex.P.10	29.10.2012	Trade Mark Journal Advertisement of Defendant's Mark “ATORLITE” - copy
11.	Ex.P.11	28.01.2013	Notice of opposition filed to the Defendant's Trade mark Application – copy

List of the Exhibits marked on the side of the Defendants:-

S.No.	Exhibit	Date	Description of Documents
1	Ex.D.1	26.04.2007	Certified copy of Board Resolution.

Sd./-N.A.V.J.

12.11.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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