

A.No.1558 of 2021
in C.S(Comm.Div.)No.142 of 2021

DR.G.JAYACHANDRAN, J.

The defendant herein has filed an affidavit stating that he is no longer using the mark “Oyalo”, which is the subject matter of the present suit. Further, it is submitted that after the grant of injunction against the respondent/defendant, taking legal opinion and with an intention to avoid litigation, he has changed the trademark to “SILFA” and he has discarded all the printed cards which was used as an insert for displaying the name “Oyalo” and also withdrawn the trademark Application No.4462232 for Oyalo on 24.09.2021.

2. The learned counsel appearing for the plaintiff satisfies with the affidavit, however, to ensure that infringing trademark “Oyalo” has been withdrawn or replaced, the Court shall appoint an Advocate Commissioner to inspect the premises of the defendant and file a report.

3. The learned counsel appearing for the respondent/defendant has no objection. However, put a caveat that, the Advocate Commissioner shall not disturb his regular business in the course of inspecting the defendant's premises.

4. Considering the submissions, this Court is of the view that to give quietus to the issue taking note of the affidavit filed by the defendant and to ensure that the undertaking given by the defendant is complied with, the Advocate Commissioner may visit the premises of the defendant at No.28/28, KNP Colony 1st Street, Kangayam Cross Road, Tirupur-641 601, Tirupur District on 04.10.2021 and make inspection of the premises and take inventory of infringed goods if any carrying the mark “Oyalo” and file a report to this Court on 07.10.2021.

5. Ms.Judy Selva (Enrl.No.3667/2017) No.27, III Floor, Pandu Klix Plaza Door No.330, 168, Thambu Chetty Street, Chennai-600 001 is appointed as Advocate Commissioner. The learned counsel for the plaintiff shall bear the travel expenses of the Advocate Commissioner and pay the cash remuneration of Rs.25,000/-.

Call the matter on 07.10.2021.

27.09.2021

Note: Issue order copy on 28.09.2021

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