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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 4th DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.2178 of 2021

in

C.S. No.982 of 2017

M/s. Adyar Ananda Bhavan Sweets and Snacks
Rep. by its Partner, Mr.K.T. Venkatesan
Muthulakshmi Bhavan,
No.9, M.G. Road,
Shastri Nagar, Adyar,
Chennai – 600 020.

...Plaintiff

Vs.

Chennai Ananda Bhavan
Kinfra P.O, Muringoor Koratti,
Cochin-Thrissur HighWay NH47,
Thrissur - 680 309.
Kerala.

...Defendant

A.No.2178 of 2021:-

Chennai Ananda Bhavan
Kinfra P.O, Muringoor Koratti,
Cochin-Thrissur HighWay NH47,
Thrissur - 680 309.
Kerala.



Vs.

M/s. Adyar Ananda Bhavan Sweets and Snacks
Rep. by its Partner, Mr.K.T. Venkatesan
Muthulakshmi Bhavan,
No.9, M.G. Road,
Shastri Nagar, Adyar,
Chennai – 600 020.

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to set-aside the exparte judgement and decree dated 26.11.2019 made in C.S.No.982 of 2017.

This Application coming on this day before this court for hearing in the presence of Mr. K. Harishankar, advocates for the respondent herein and the applicant herein, not appearing in person or by advocate and upon reading the judge's summon and the affidavit of Ferose.V.K, and the counter affidavit of K.T.Venkatesan filed herein and the decree dated 26.11.2019 made in C.S.No.982 of 2017 and A.Nos. 2211, 2507 and 2508 of 2018 and this Court finds no merit in this application but only malafide intention to protract the proceedings and continue the infringement, which has now been restrained by this Court by order of the decree.

it is ordered as follows:-

That, the A.No.2178 of 2021, be and is hereby dismissed.

2) That the Applicant/defendant herein, do pay to the



respondent/plaintiff herein, a sum of Rs.50,000/- (fifty thousand rupees only) as costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
03rd DAY OF FEBRUARY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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SR

R-13.09.2021

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A. No.2178 of 2021
in
C.S. No.982 of 2017

ORDER

DATED: 04.08.2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 14/09/2021

APPROVED ON: 15/09/2021



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(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 4th DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.2178 of 2021

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A.No.2178 of 2021:-

Chennai Ananda Bhavan
Kinfra P.O, Muringoor Koratti,
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Thrissur - 680 309.
Kerala.

....Applicant/Defendant

Vs.

M/s. Adyar Ananda Bhavan Sweets and Snacks
Rep. by its Partner, Mr.K.T. Venkatesan



Muthulakshmi Bhavan,
No.9, M.G. Road,
Shastri Nagar, Adyar,
Chennai – 600 020.

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to set-aside the
exparte judgement and decree dated 26.11.2019 made in C.S.No.982 of
2017

This Application coming on this day before this court for hearing **the**
court made the following order:

This application is filed to set aside the exparte judgment and decree
dated 26.11.2019 made in C.S.No.982 of 2017.

2.The plaintiff/respondent has filed a detailed counter as to why this
application should be allowed.

3.Today, when the matter was listed for hearing, there is no
representation for the applicant/defendant.

4.The suit C.S.No.982 of 2017 was filed for declaration that the
defendant is infringing the plaintiff's registered trademark No.1225607 and
consequently, injunction restraining the defendant from infringing the
trademark and passing off and other connected reliefs. Along with the suit,
the plaintiff also sought for interim relief of injunction restraining the



under the name of “Chennai Ananda Bhavan”, which is deceptively similar to that of the plaintiff's mark “Adyar Ananda Bhavan”.

5.The defendant on receipt of the notice, has contested the application and sought to recall the interim injunction passed in O.A.Nos.1275 and 1276 of 2017. Having failed in his attempt before the learned Single Judge, intra Court Appeal is preferred by the applicant and the same also got disposed on 21.03.2018. As against the order passed in A.No.2213 of 2018, the defendant had preferred O.S.A.No.255 of 2018 and the same got disposed on 24.07.2018. The application filed by the applicant/defendant to reject the plaint on the ground of pecuniary jurisdiction was also rejected by this Court on 23.09.2019. In such circumstances, after disposing of the interlocutory applications in the suit, this Court has directed the defendant to file written statement on or before 01.10.2019 vide order dated 27.09.2019. The defendant had not filed his written statement and there was no representation for the defendant on that date. Hence, he was set exparte. Thereafter, the plaintiff has marshalled his witnesses before the learned Additional Master. On appreciation of the evidence, this Court has passed a decree on 26.11.2019.

6.From the narration of the events and the multiple applications taken out by the applicant/respondent in this matter clearly indicates that he has actively participated in the proceeding but failed to file his written



statement, inspite of granting time by this Court with the condition that if he failed to file his written statement on or before 01.10.2021 he will be set exparte. In such circumstances, after passing of the decree, now this application is filed wherein the applicant had stated that he has requested his counsel to seek further time for filing written statement but later on he could not meet his counsel to give instruction and consequently, the counsel is not able to file written statement leading to exparte order on 26.11.2019 and thereafter, exparte decree on 26.11.2019. The said reasoning per se is cock and bull story, when the applicant and the defendant had all opportunity to file his written statement ever since he received the suit summons and had all opportunity to file multiple applications and intra court appeal.

7.This Court having taken cognizance of the case under the Commercial Courts Act, it is bound to adhere the time line prescribed under the Act. The statute clearly mandates that the written statement has to be filed within 30days from the date of receipt of the suit summon failing which if due cause satisfactorily shown by the defendant, the delay in filing written statement can be condoned upto the period of 90 days. This time line is non negotiable and admittedly, in this case, the written statement is not filed within the time prescribed. This Court benevolently granted time



pending before the court and on 27.09.2019, has specifically ordered that the defendant should file his written statement on or before 01.10.2019, failing which the right of the defendant to file written statement will be forfeited.

8. Having conveniently abstained from the Court on 01.10.2019, the last date by which the defendant should have filed his written statement, after a lapse of 18 months, the present application is filed to set aside the ex parte decree and to accept the written statement. This Court finds no merit in this application but only malafide intention to protract the proceedings and continue the infringement, which has now been restrained by this Court by order of the decree. Hence, this application is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) payable to the respondent/plaintiff.

Sd./-G.J.J.,
04.08.2021

// Certified to be true copy //

Dated at Madras this day of 2021.

Court Officer(O.S.)

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