

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.261 of 2018 (A)

M/s.Thalappakatti Naidu Anandha Vilas Biriyani Hotel,
represented by its partner, D.Nagasamy,
having its branch office at Flat No.B3,
New No.17, Old No.18A,
11th Street, Nandanam extension,
Chennai-600 035. .. Plaintiff

/versus/

Dindigul Thalappalattu Restautant
Represented by Nithyananthan,
Next to Hotel Akshaya
Chennai-Thirupathi bypass,
Narayanapuram Koot Road,
Thiruvallur-631 303. .. Defendant

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC and Sections 134 and 135 of the Trademarks Act, 1999, prayed for (a) Granting a permanent injunction restraining the Defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the Plaintiff Trademark and Trading style “Thalappakatti Biriyani Hotel” by using the offending Trade Mark and Trading style “Thalapakattu” or

any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiff's Trademark "Thalappakatti Biriyani Hotel";

(b) Granting a permanent injunction restraining the Defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off the Plaintiff Trademark and Trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and Trading style "Thalapakattu" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiff's Trademark "Thalappakatti Biriyani Hotel";

(c) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "Thalapakattu" and directing payment of such profits to the Plaintiff by way of damages for infringement committed by the Defendant;

(d) Directing the defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade Mark "Thalapakattu" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes, brochures, printing blocks, etc., bearing the offending Trademark for destruction;

(e) Directing to the defendant to pay the Plaintiff the costs of the suit;

For plaintiff : Ms.S.Surya
for Mr.A.Jenasenan

JUDGMENT

The suit is filed by the plaintiff for infringement of trademark.

2. This Court, on considering the prima facie material available, granted interim injunction on 23.04.2018 and same was made absolute on 28.06.2018, based on the affidavit of service filed by the plaintiff/applicant in the interim injunction application. Thereafter, this Court directed the plaintiff to take steps to serve summon on the defendant. Since the suit summon was not served on several occasions, this matter was posted before the Master for taking steps, but there was no representation on behalf of the plaintiff. Hence, the matter was posted before this Court on 11.09.2020. This Court adjourned the matter at the request of the plaintiff's counsel to 12.10.2020. When the matter was listed on 12.10.2020, this Court permitted the plaintiff to serve summons

on the defendant through Court and also privately for the hearing date 04.12.2020. The plaintiff has not taken batta and the Registry has made a note that the batta memo has not been filed. Hence, on 04.12.2020 this Court again adjourned the matter to 18.01.2021.

3. When the matter was listed on 18.01.2021, the learned counsel for the plaintiff sought further time to take steps. Hence time granted till 19.02.2021 for issuance of fresh summons through Court and privately to the defendant. Batta paid by the plaintiff for Court summons returned unserved on 19.03.2021. The plaintiff has not taken private notice and has not filed affidavit of service. Therefore, this Court again ordered fresh summons through Court and privately to the defendant returnable by 29.04.2021.

4. Today, when the matter is listed, the learned counsel for the plaintiff submitted that further time may be granted to take batta since there was some difficulties in reaching the Registry. However, when the plaintiff was permitted to take private summons, he has not shown any interest to take private summons which was permitted. This clearly

shows that the plaintiff is not interested to serve a summon to the defendants. Hence the suit is dismissed for non prosecution. No costs.

29.04.2021

Speaking Order / Non-Speaking Order
Index : yes/no
rpl

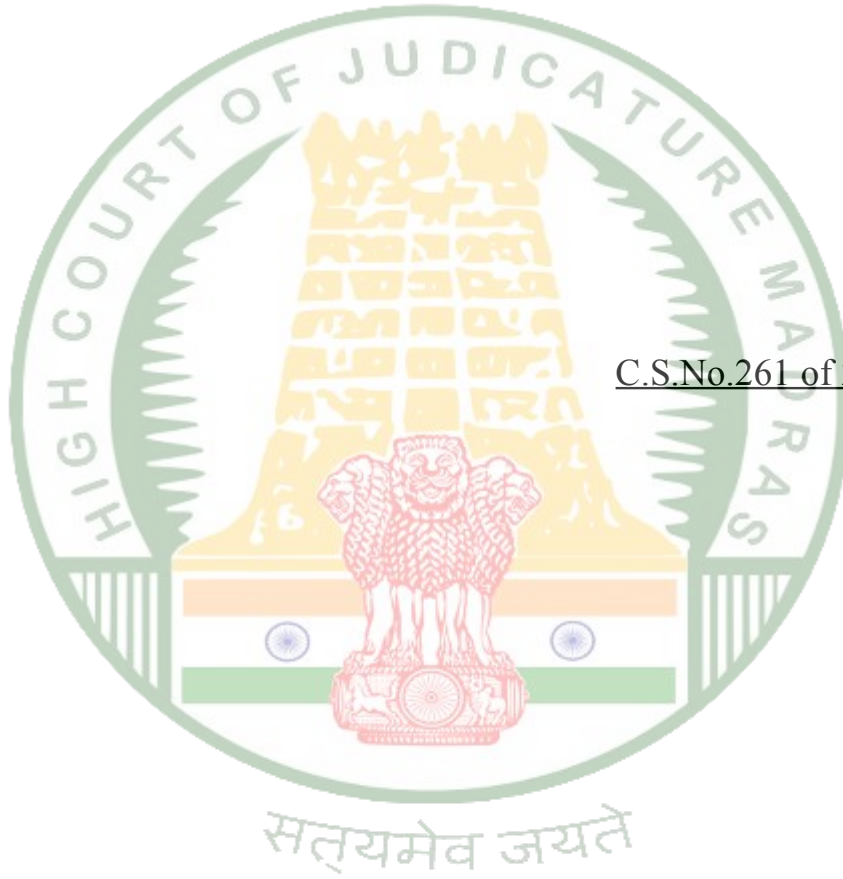


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