

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.238 of 2020
and O.A.No.437 of 2020
and A.Nos.2650, 2651 of 2020

M/s.V.V.V & Sons Edible Oils Limited,
Represented by its Director,
M.Rajiv Vignesh,
No.443, Bazaar, Virudhunagar - 626 001.

... Plaintiff

..Vs..

M/s.Sivaraja Impex Company,
No.182/1A, Kattayapuram,
Virudhunagar - 626 001.

... Defendant

PRAYER : Complaint filed under and Order IV Rule 1 of the Madras High Court Original Side Rules read with Sections 134 & 135 of the Trademarks Act, 1999 prayed for a Judgment and Decree:-

(a) A permanent injunction restraining the defendants, their men or agents or anybody claiming under them from in any way infringing the registered composite trade mark of the plaintiff by affixing IDHAYAM on their goods within India;

(b) damages of Rs.10,00,000/- to be paid by the defendants to the plaintiff;

(c) For costs of the suit.

For Plaintiff : Mr.V.Anand

JUDGMENT

An affidavit has been placed on record which had been sworn by Mr.M.Rajiv Vignesh, Director of the plaintiff's company.

2. Heard Mr.V.Anand, learned counsel for the plaintiff.

3. The relevant portion of the affidavit is extracted below:

"1. I submit that I am Director of the Plaintiff Company and I am aware of the facts of the case.

2. I submit that we have filed the above suit for infringement of our registered trade mark and damages of Rupees ten Lakhs as against the defendant.

3. I submit that during the course of hearing in the interlocutory applications the respondent / defendant, agreed to file an affidavit undertaking that they would not use the trade mark Idhayam in the goods exported by them to their principal in the USA, without prejudice to their rights in the O.S.A.Nos.63 and 64 of 2019. The undertaking affidavit to that effect has been filed by the defendant on 29.01.2021 and recorded by this Hon'ble Court. However the second relief in the suit is for damages claimed by us from the defendant. Therefore the present affidavit is filed.

4. I submit that we agree and accept the undertaking affidavit of the defendant dated 29.01.2021, filed and recorded, and in consideration thereof we hereby abandon our relief (b) in the suit namely "(b) damages of Rs.10,00,000/- to be paid by the defendants to the plaintiff;"

For all the reasons mentioned above it is prayed that this Hon'ble Court may be pleased to dismiss the suit as withdrawn with reference to prayer (b) and Decree the suit with reference to Prayer (a) without prejudice to rights of the defendant in the unnumbered

O.S.A.Sr.No.160854 of 2019, and in the O.S.A.Nos.63 and 64 of 2019, and thus render Justice.

sd/---

*For V.V.V & Sons Edible Oils
Limited, Director.*

*Solemnly affirmed and signed)(Before me,
in my presence affirming
the contents to be true at Chennai)(sd/-
on 11.02.2021.)(Advocate, Chennai."*

4. It is also seen that in parallel suits which have been pending Original Side Appeals have been preferred and even in the affidavit itself it had been stated that the rights of the defendant to pursue the Original Side Appeals particularly O.S.A.Nos.63, 64 of 2019 and also O.S.S.R.No.160854 of 2019 have been retained and reserved with the defendant.

5. By way of the affidavit the plaintiffs gives up the relief of damages for Rs.10,00,000/- (Rupees Ten Lakhs only). My attention is also drawn to an affidavit filed by Mr.C.Sreeraja, CEO and Authroised Signatory of the defendant's company. The said affidavit is also extracted below:

"1. I am a CEO & Authorised signatory of the defendant company and aware of the facts of the case. I am duly authorised to file this undertaking affidavit.

2. I submit that the Plaintiff has filed the suit for permanent Injunction restraining infringement by my company. I, on behalf of my company hereby undertake, without prejudice to our rights in the O.S.A.Nos.63 and 64 of 2019 and our unnumbered O.S.A.Sr.No.160854 of 2019, all pending on the file of this Hon'ble Court, that like in the past, in future too we would export our goods to M/s.Meenakshi LLC USA or any other firm or Company without affixing the "IDHAYAM" mark in any manner whatsoever. This undertaking may be recorded and appropriate Decree may be passed saving our rights in the pending appellate proceedings.

*sd/---
For Shivaraja Impex Company
Authorised Signatory / Proprietrix*

*Solemnly affirmed and signed)(Before me
in my presence at Chennai)(sd/-
on 29.01.2021.)(Advocate, Chennai."*

C.V.KARTHIKEYAN, J

rna

6. The defendant has also undertaken to export goods without affixing the "IDHAYAM" mark.

7. It naturally follows that the suit should be decreed with respect to relief (a). The suit is dismissed with respect to relief (b) as not pressed.

8. Suit is partly decreed. No order as to costs. Connected applications are closed. The affidavits shall form part of the decree.

16.02.2021

Index : Yes / No

Web : Yes / No

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