



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 22ND DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S. No.182 of 2014

M/s.S.Sivanesan & Co,
A Partnership firm duly registered
under the Indian Partnership Act, 1932
and having its Registered office at,
Waikiki Complex, No.289,
Purasawalkam High Road,
Chennai – 600 007.
represented by its partner Mr. S. Sivanesan

.. Plaintiff

/versus/

1.M/s.Kanchan Home Appliances,
rep. by Mrs.Kamala Devi,
A Sole Proprietorship Concern at
No.229, Mint Street,
Chennai – 600 003.

2.Rajendra Industries,
Vikhroli (W),
Mumbai – 400079.

3.Rishabh Home Appliances,
No.21, 1st Floor,
Municipal Industrial Estate,
Bapti Road,
Grant Road (E),
Greater Bombay,
Maharashtra – 400 008.

.. Defendants



judgment and decree against the defendants granting

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a) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's registered trademark "Premier" by using the offending trademark "Premier Dezire" or any other trademark or device which is identical or deceptively similar to or a colourable imitation to that of the plaintiff's registered trademark and trademark label "Premier".

b) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off goods of the defendants as that of the plaintiff by using the offending trademark "Premier Dezire" as and for the trademark of the plaintiff "Premier" or any other trademark label / device which is similar / deceptively similar to that of the plaintiff's registered trademark "Premier"..

c) Directing the defendants to surrender to the plaintiff the entire stocks, cartons with the infringing artistic work "Premier" and unused infringing trademark label "Premier Dezire" together with blocks and dies for destruction.

d) Directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of their products bearing the infringing labels "Premier Dezire" which are similar or deceptively similar

to the plaintiff's trademark and directing the payment of such profits to the



plaintiff.

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e) Directing the defendants to pay the costs of the suit to the plaintiff.

This suit Coming on this day before this Court for hearing in the presence of Mr.R.Rajesh, Advocate for the plaintiff herein and the defendant herein, not appearing in person or by advocate and upon reading the plaint filed herein and the learned Counsel for the plaintiff filed an affidavit dated 15.03.2021 morefully set out in the schedule hereunder, it is ordered as follows:-

That the suit in C.S.No. 182 of 2014, be and is hereby dismissed.

2. That the plaintiff herein, shall be at liberty to institute a fresh suit on a fresh cause of action against either the defendants or anybody acting under the defendants or against any other third party to seek protection of their registered mark “Premier”.

3. That there shall be no order as to costs of this suit.

(Schedule – Affidavit dated 15.03.2021)



EVK

26/04/2021

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C.S. No.182 of 2014

ORDER

DATED : 22.03.2021

THE HON'BLE MR.JUSTICE
C.V.KARTHIKEYAN

FOR APPROVAL: 26/07/2021

APPROVED ON: 30/07/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

C.S.No.182 of 2014

M/s.S.Sivanesan & Co,
A Partnership firm duly registered
under the Indian Partnership Act, 1932
and having its Registered office at,
Waikiki Complex, No.289,
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Chennai – 600 007. .. Plaintiff

/versus/

1.M/s.Kanchan Home Appliances,
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No.229, Mint Street,
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2.Rajendra Industries,
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No.21, 1st Floor,
Municipal Industrial Estate,
Bapti Road,
Grant Road (E),
Greater Bombay,
Maharashtra – 400 008.

.. Defendants



Procedure, 1908 read with Order IV Rule 1 of the High Court Original Side Rules, and Section 134 and 135 of the Trade Marks Act, 1999, prayed for a Judgment and Decree against the defendant:-

a).for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's registered trademark "Premier" by using the offending trademark "Premier Dezire" or any other trademark or device which is identical or deceptively similar to or a colourable imitation to that of the plaintiff's registered trademark and trademark label "Premier".

b).for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off goods of the defendants as that of the plaintiff by using the offending trademark "Premier Dezire" as and for the trademark of the plaintiff "Premier" or any other trademark label / device which is similar / deceptively similar to that of the plaintiff's registered trademark "Premier"..

c).Directing the defendants to surrender to the plaintiff the entire stocks, cartons with the infringing artistic work "Premier" and unused infringing trademark label "Premier Dezire" together with blocks and dies for destruction.

d).Directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of their products bearing the infringing labels "Premier Dezire" which are similar or deceptively similar to the plaintiff's trademark and directing the payment of such profits to the plaintiff.

e).Directing the defendants to pay the costs of the suit to the plaintiff.

For Plaintiff

: Mr.R.Rajesh

For Defendants

: No appearance



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JUDGMENT

The suit had been filed under Sections 134 and 135 of the Trade Marks Act, 1999, by the plaintiff, a Partnership firm, against the defendants seeking protection of their registered trademark “Premier”.

2.The suit has been pending for past nearly about seven years. However, since the suit had been filed invoking provisions of the Trade Marks Act, 1999, the *lis* can be categorized as commercial dispute and the Commercial Division of this Court will have necessary jurisdiction to examine the issues raised under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015.

3.The learned counsel for the plaintiff was requested to obtain an affidavit on behalf of the plaintiff indicating whether the cause of action still survives.

4.An affidavit dated 15.03.2021 had been presented in the Court on 18.03.2021. This has been sworn by the partner of the plaintiff. In the said affidavit, it had been stated as follows:

“4.I state that as the plaintiff when it was ascertained as to whether the defendants are still continuing to infringe the trademark of the plaintiff despite orders of this Hon'ble Court, the plaintiff could not at present find any trace of continuous infringement or passing off of the trademark of the plaintiff by the defendants.



5.I state that at the same time as a precautionary measure in the event of any infringement by the defendants of the plaintiff's trademark in future the plaintiff's rights may be protected by this Hon'ble Court by granting liberty and permission to the plaintiff to reopen this suit C.S.No.182 of 2014 and thus render justice.

6. I therefore humbly state that this Hon'ble Court may kindly upon taking into consideration of the above statements on record dispose of the suit accordingly and thus render justice”.

5.In view of the same, the suit is dismissed. No order as to costs. The affidavit dated 15.03.2021, shall form part of the decree.

3.However, liberty is granted to the plaintiff to institute a fresh suit on a fresh cause of action against either the defendants or anybody acting under the defendants or against any other third party to seek protection of their registered mark “Premier”.

Sd./-C.V.K.J.

22/03/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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