

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.701 of 2014

1.Bharat Balar,
F-3, First Floor, Akshaya Plaza,
108, Adittanar Salai,
Egmore,
Chennai - 600 002.

2.White Lion Trading Private Ltd.,
F-3, First Floor, Akshaya Plaza,
108, Adittanar Salai,
Egmore,
Chennai - 600 002.
rep. by its Managing Director,
Mr.Bharat Balar.

... Plaintiffs

..Vs..

1.Rajendra Distributors,
38/41, Reghunayakuly Street,
Park Town,
Chennai - 600 003.

2.Sha Mahendra Kumar Asuram,
Director,
Rajendra Distributors,
No.2, Nyniappa Maistry Street,
Chennai - 600 003.

3.Sha Asuram Madaji,
Director,
Rajendra Distributors,
No.2, Nyniappa Maistry Street,
Chennai - 600 003.

... Defendants

PRAYER : Plaintiff filed under and Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure read with Section 27 of the Trademarks Act, 1999 and Sections 11 and 22 of Designs Act, 2000 prayed for a Judgment and Decree:-

(a) a Permanent injunction restraining the defendants by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives, or any one claiming through them from in any manner infringing the plaintiffs' copyright in the registered design by manufacturing, assembling, sale and distribution of containers with or without idly plates with identical designs for their products or any product which is an imitation of the plaintiffs' copyright in the registered design no.256062 dated 27th August 2012 in class 07-02 for Unitary Multilayer Container and idly plates or in any other manner whatsoever;

(b) a Permanent injunction restraining the defendants, by

themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them from in any manner passing off and enabling others to pass off their containers with or without idly plates as and for plaintiffs' Unitary Multilayer Container and idly plates by using the identical shape and configuration for their products or any other Products which are identical to that of or an obvious imitation of the plaintiffs' Unitary Multilayer Container and idly plates respectively and amount to product passing off or in any other manner whatsoever;

(c) The defendants be ordered to surrender to the plaintiffs for destruction, all moulds, blocks, dyes, Brouchers and all other materials used for the manufacture and marketing of containers and idly plates which are identical to or an obvious imitation of the plaintiffs' copyright in the registered design;

(d) a preliminary decree be passed in favour of the plaintiffs directing the defendants to render account of profits made by imitating imitation of the plaintiffs' copyright in the registered design in respect of

Unitary Multilayer Container and idly plates and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

(e) the defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.5,00,000/- as damages for acts of Design infringement and passing off committed by the defendants by manufacture and sale of containers and idly plates bearing the Shape and configuration and design of the plaintiffs;

(f) for costs of the suit.

For Plaintiff : M/s.Chandhini
for Mr.Arun C.Mohan

For Defendants : Mr.Kalyan Jhabakh
for M/s.Surana and Surana

JUDGMENT

On 29.12.2020 a Letter had been addressed by the learned counsel for the plaintiff to the Registrar (Original Side Commercial Division of Madras High Court).

2. The Letter is extracted below:

"AAM/RS/1603/

The Registrar,
Original Side
Commercial Division
Madras High Court
Chennai.
Dear Sir,

Ref: Madras High Court - **CS (Commercial)**
No.701 of 2014 - Bharat Balar and White
Lion Trading Private Ltd., - V -
Rajendra Distributors and 2 others.

We write on behalf of the Plaintiff in the above captioned matter.

We hereby withdraw the **Civil Suit (Commercial Division) No.701 of 2014** as per our client's instructions.

The said suit and injunction are listed for hearing before Hon'ble Mr.Justice C.V.Karthikeyan on 4th January 2021.

Kindly take this as an endorsement and do the needful.

*Yours faithfully,
sd/-----
(ARUN C.MOHAN)
Counsel for Plaintiff."*

3. It is to be mentioned that a memo had also been filed by the learned counsel for the defendants and they have also stated as follows:

"1. It is submitted the Defendant herein had filed an application under Section 19 of the Designs Act, 2000 seeking cancellation of the registration of Registered Design No.256062 in Class 07 - 02 in the name of the Plaintiff.

2. It is submitted that the Deputy Controller of Patents and Designs by order dated 19th June 2020 the application filed by the Defendants for the cancellation of the registered Design No.256062 dated 27th August 2013 in respect of "Unitary Container" in 07 - 02 was allowed and it was ordered to record that the said design as cancelled in the Register of Designs.

3. The order dated 19th June 2020 is enclosed herewith.

It is therefore prayed that this Hon'ble Court may be pleased to record this memo and pass appropriate orders.

*Dated at Chennai on this 6th day of November
2020.*

*sd/----
(SURANA AND SURANA)
Counsel for Defendant."*

4. The order dated 19.06.2020 passed by the Deputy Controller and Patents and Designs has also been enclosed. At any rate, since the plaintiff has indicated withdrawal without any liberty, the suit is dismissed as withdrawn. No order as to costs.

07.01.2021

Index : Yes / No
Web : Yes / No
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C.V.KARTHIKEYAN, J

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