

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.350 of 2020
and O.A.Nos.657, 658, 659 of 2020
and A.No.2910 of 2020

M/s. Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai 600 032
rep by its Authorised Signatory,
D.Jude F.L.S.Durai Pandian ... Plaintiff

..Vs..

M/s.Elder Projects Limited,
301-302, 3rd Floor, Plot No.174,
Kunthu Commerce Centre,
Near Ayyappa Temple, Bangur Nagar,
Goregaon West, Mumbai 400 090. ... Defendant

PRAYER : Complaint filed under and Order VII Rule 1 CPC and Order IV
Rule 1 of Original Side Rules, Read With Sections 27, 28, 29, 134, 135 of
the Trademarks Act, 1999 and Sections 51, 55, 62 of the Copyrights Act,
1957, prayed for a Judgment and Decree:-

(a) a Permanent injunction restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.487453 in Class 5 and other registered trademarks by using a deceptively similar trademark ZINCODER or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

(b) a permanent injunction restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels / artistic works which are a substantial reproduction of plaintiff's registered copyright under Nos. A-112789/2017 and other registered copyrights in colour scheme, get up and layout for their ZINCODER for any syrup, drops tablets etc., or in any other manner whatsoever;

(c) a permanent injunction restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any

one claiming through or under them from in any manner passing off and / or enabling others to pass off the defendant' products under the trademark ZINCODER as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and / or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's ZINCODERM or ZINCOVIT trademark or artistic work or in any other manner whatsoever;

(d) the defendant be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark ZINCODER label or any mark deceptively similar to plaintiffs' trademarks ZINCODERM/ZINCOVIT and the artistic work ZINCOVIT label.

(e) a preliminary decree be passed in favour of the plaintiffs directing the defendant to render account to profits made by use of trademark and copyright in the artistic work ZINCODER label and a final decree be passed in favour of the plaintiffs for the amount of profits thus

found to have been made by the defendant after the latter have rendered accounts;

(f) for costs of the suit.

For Plaintiff : M/s.R.Sathish Kumar

For Defendant : M/s.V.M.Venkatramana

JUDGMENT

The plaintiff and the defendant have entered into a compromise and recording the same the Memorandum of Compromise dated 11.01.2021 had been presented in Court on 20.01.2021. This Memorandum of Compromise had been signed by the Chief Vigilance Officer on behalf of the plaintiff and by the Legal Executive of the defendant. The learned counsel for the plaintiff and the learned counsel for the defendant have also signed in the Memorandum of Compromise.

2. The relevant portions of the Memorandum of Compromise are as follows:

"2. The Defendant approached the plaintiff for amicable settlement of the dispute and the plaintiff also agreed to settle the dispute on the following terms and conditions reduced hereunder;

*a. That the defendant undertakes that it will not manufacture or market or otherwise deal with the products bearing the trademark ZINCODER or any other trademark identical or deceptively similar to the plaintiff's product ZINCOVIT and / or ZINCODERM at point of any point in future whatsoever and has agreed to change their trademark to **ELCOPLEX-ZC** which is agreed by the plaintiff.*

b. The plaintiff and defendant pray that the

above suit may be decreed in terms of Prayers (a), (b) and (c) of Paragraph 35 of the Plaint and the plaintiff is willing to give up the reliefs under Prayers 35(d), 35(e), 35(f) and 35(g) of the Suit in view of this Memorandum of Compromise.

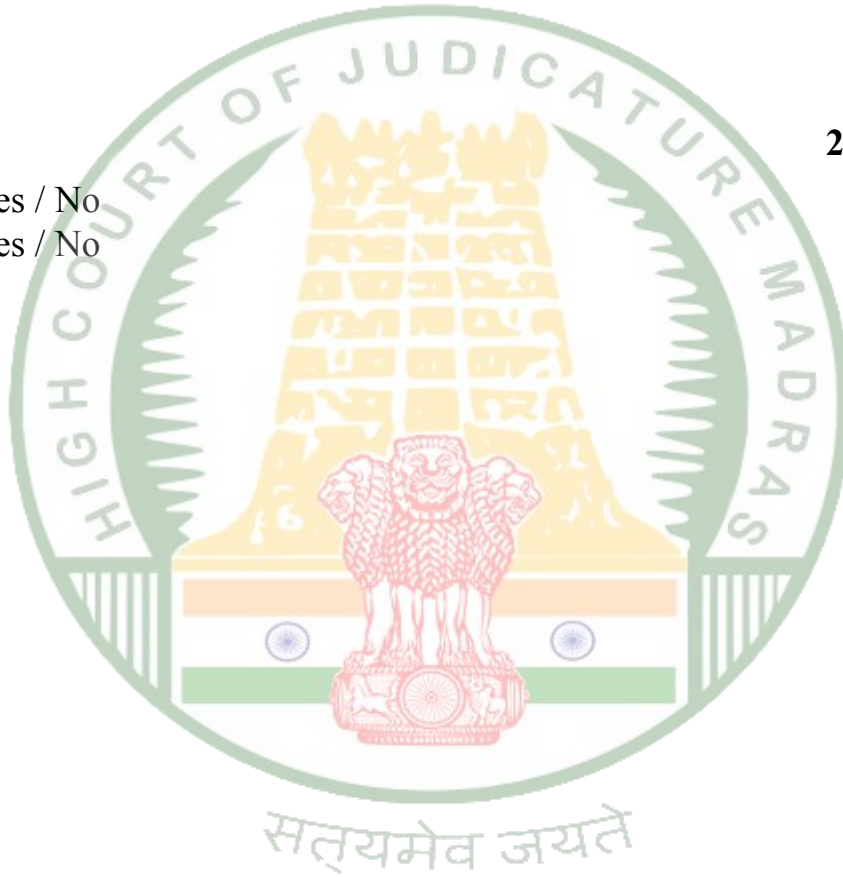
c. That the Defendant undertakes to the plaintiff that in the event of breach of this undertaking to this Hon'ble Court, they are liable for punitive damages to the plaintiff in addition to any other legal right available to the plaintiff.

In the above circumstances, it is prayed that this Hon'ble Court may be pleased to pass a Judgment and Decree in terms of the Memo of Compromise and pass such further or other order which may deem fit and proper to the facts and circumstances of the case and thus render justice."

3. In view of the same, suit is decreed in terms of Memorandum of Compromise. No order as to costs. Consequently, the connected Application and Original Applications are closed. The Memorandum of Compromise shall form part of the Decree.

25.01.2021

Index : Yes / No
Web : Yes / No
rna

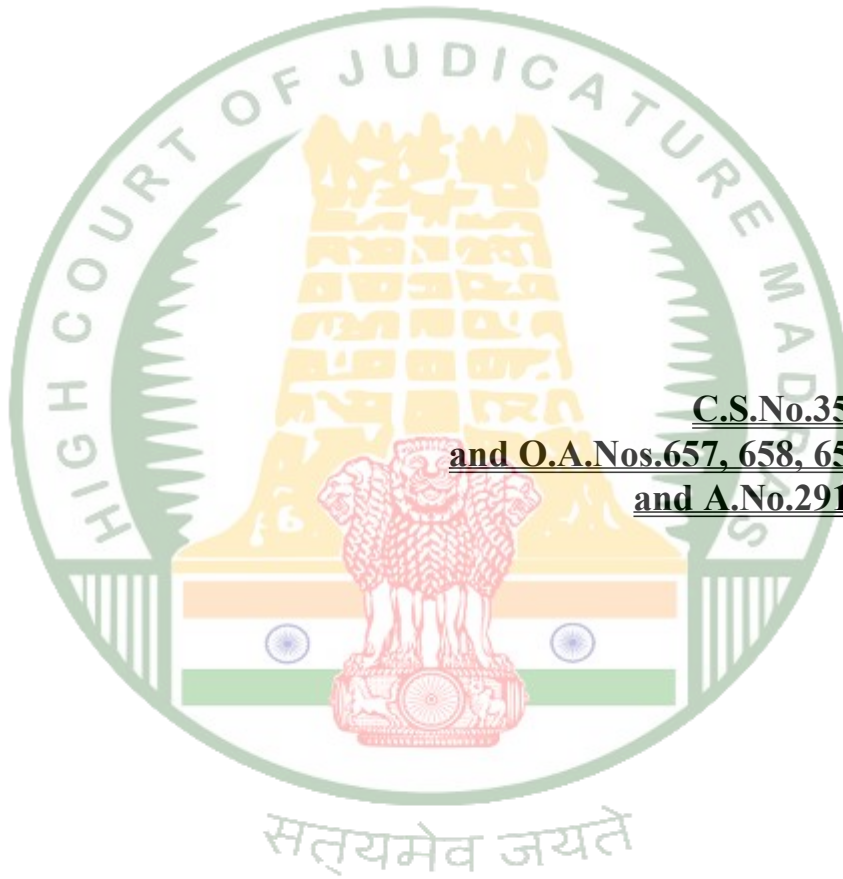


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C.V.KARTHIKEYAN, J

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