

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2021

Pronounced on : 26.04.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.448 of 2019
& O.A.Nos.713 & 714 of 2019

Film and Television Producers' Guild of South India,
B1, Rams Flat, New No.19 (Old No.5),
Jagatheeswaran Street, T.Nagar,
Chennai – 600 017.

Rep. by its President, Dr.S.P.Jaguar Thangam

... Plaintiff

/versus/

1. Film and Television Producers Guild of South India,
No.2/38, Kavarai Street, Vadapalani,
Chennai – 600 026,
Rep. by its President, G.Balasubramanian.

2. G.Balasubramanian,
No.2/38, Kavarai Street, Vadapalani,
Chennai – 600 026.

... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of O.S.Rules and Order VII Rule 1 of C.P.C r/w Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 and (Section 7 of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016.

For Plaintiff : Dr.R.Maheswari

For D1 & D2 : No appearance

J U D G M E N T

The suit is filed by the President of Film and Television Producers Guild of South India against the defendants for injunction restraining them from using the Trade mark of the plaintiff Guild.

2. The brief facts of the case as found in the plaint is that, Film and Television Producers Guild of South India was established and registered under Societies Registration Act in the year 1965. The name of the Guild was changed as “Film and Television Producers Guild of South India” from 11.04.2003. To protect the goodwill of the Society, the plaintiff applied for registration of its name and Trade mark along with its logo and got registered on 04.11.2017 in respect of goods and service in class – 35. The plaintiff and its trade name “Film and Television Producers Guild of South India” enjoy good reputation and have exclusive right over it. While so, the 2nd defendant and few others have surreptitiously started an Office at the residence of the 2nd defendant in the name

and style of “Film and Television Producers Guild of South India” and using the registered Trade mark and logo of the plaintiff. The defendants are collecting money from the members of the plaintiff Guild. By misrepresentation, the registered trade mark and logo of the plaintiff is misused by the defendants in the letter pad and bills. A circular has been issued by the defendants to the members of the plaintiff guild to remit subscription in the new account opened by the defendants.

3. The defendants misleading the members of the plaintiff Guild by falsely alleging that the plaintiff Guild has been struck off from the Register of Societies and therefore, they have started a new Society in the name of the plaintiff. The Annual General Body meeting of the plaintiff Guild was in fact could not be convened due to pendency of litigation. Taking advantage of the same, the 2nd defendant had adopted a similar and deceptive trade name and mark as that of the plaintiff registered trade mark. Deceptively infringing the plaintiff registered trade mark and logo to exploit the goodwill and therefore, the suit for following reliefs filed by the plaintiff.

a. Granting a permanent injunction restraining the defendants, his men, agent, servant or anyone claiming under them from infringing the plaintiff's trade mark and name "Film and Television Producers Guild of South India" with or without peacock logo by using it as their trade mark, web address, email ID or service mark, on letter heads, exhibits or any other material containing the trade mark "Film and Television Producers Guild of South India" with or without peacock logo or by using any other trade mark which is in any manner visually, phonetically or deceptively similar to the plaintiff's registered trade mark in the course of their trade, business or service.

b. Granting a permanent injunction restraining the defendants, his men, agent, servant or anybody claiming under him from in any manner passing off the defendant's services using the trade mark "Film and Television Producers Guild of South India" with or without any suffix or prefix and with or without peacock logo, as and for the plaintiff's goods or do any act or deed calculated to deceive the existing or prospective members or use any trade name, business name which is identical or deceptively and phonetically similar to that of the trade name of the plaintiff "Film and Television Producers Guild of South India" and pass off their business/services as that of the plaintiff.

c. To surrender on oath and deliver up the defendant's labels, marks, letter heads, stationary, bill boards and such other documents and articles with the trade mark "Film and Television Producers Guild of South India" with or without peacock logo used by the defendants for the purpose of their business and ancillary purposes for destruction.

d. Preliminary decree in favour of the plaintiff to render true account of profits made by the defendants using the plaintiff's trade mark/name, "Film and Television Producers Guild of South India" with or without peacock logo and a final decree for the amount of profits found to have been made by the defendants.

e. To pay costs of the suit to the plaintiff.

4. The defendants, after notice have not filed the written statement within the time prescribed. Hence, his right to file written statement is forfeited. Thereafter, evidence of P.W.1 was recorded. 19 Exhibits were marked on the side of the plaintiff. The defendants counsel extensively cross examined the plaintiff. Written arguments by the plaintiff as well as defendant filed.

5. According to the plaintiff, "Film and Television Producers Guild of

South India” was registered under the Societies Act in the year 1965 and renewed periodically. The trade mark and logo was duly registered in the year 2017. Dr.S.P.Jaguar Thangam, is the President of the plaintiff Guild. Taking advantage of the Gazette notification issued by the Government of Tamil Nadu dated 28.11.2018 intimating that if no due cause shown the failure to for submission of accounts within the time as per Section 16(3) of the Tamil Nadu Societies Act, the Society will be declared defunct under Section 44(3)(b) of the Act. The defendants have circulated notice to the members of the plaintiff, as if, the Society has been declared defunct and started collecting money from the members.

6. Ex.P.11, is the Gazette Notification of the show cause notice issued under Section 44(3)(b) of the Societies Act and Ex.P.10 is the notice issued by the defendants to the members of the plaintiff Society misinforming them the plaintiff Society is already declared defunct. According to the learned counsel for the plaintiff, the plaintiff Society was never declared as defunct society. On receipt of the show cause issued under 44(3)(b) of the Tamil Nadu Societies Registration Act, the same was sought to be quashed by a writ petition filed by the plaintiff. In the said writ petition W.P.No.7347 of 2019, the Hon'ble High Court has restrained

the Registrar of Society from issuing any final order pursuant to the showcase notice. Along with the written argument a communication from the District Registrar to the plaintiff Guild dated 24.10.2019 is annexed. This letter intimate that the plaintiff Guild Registration No.45/1965 is still live in the Register and not removed as on date.

7. Emphasising that the plaintiff Guild is very well functioning and the trade mark and logo are registered under the law, it was submitted that the defendants cannot imitate the same name, logo and misrepresent the members, as if, the plaintiff Society has become defunct and removed from the rolls of the Register, therefore, the members shall pay subscription to the newly formed society in the same name.

8. The Learned Counsel for the plaintiff submitted that the defendants had opened the bank account and had collected money from the gullible members. It is also contended by the learned Counsel that pursuant to the application filed by the plaintiff herein in O.S.A.No.371 of 2018, the division bench of this Court has appointed Retired Justice Rajasuriya to mediate between the parties and convene

the meeting of the Association. As of now, more than 9 meetings have been convened by the Court appointed Commissioner.

9. Per contra, in the written statement filed by the defendant, it is contended that the plaintiff Guild was not properly functioning due to misunderstanding between the Managing Committee members of the plaintiff Guild. In such circumstances, the member of the plaintiff Guild was not able to carry out the functions and business of the Society. In the absence of valid committee and due to its failure to convene the General Body Meeting, it is believed that Registrar of Society has struck off the plaintiff Guild name from the Register and published in the Gazette dated 28.11.2018. Thereafter, to protect the interest of the members, the defendants decided to start Society in the same name and accordingly on 08.03.2019, the 1st defendant Society was established at the residence of the 2nd defendant. Majority of the plaintiff members have joined the defendant Society. The allegation that the logo of the plaintiff is infringed by the defendant is false. The application of the defendant to register the Society is pending before Registrar General of Society. In view of the objection made by Dr.S.P.Jaguar Thangam, who claims to be President of the plaintiff Society the

application not considered. The said S.P.Jaguar Thangam has no locus to maintain the suit since, there is no evidence to show that he is the President of the Guild. In view of the dispute between the members of the plaintiff Guild and the Management Committee, the suits filed before the High Court and they are pending. Suppressing those facts, the plaintiff has filed the present suit, hence liable to be dismissed. In view of the Gazette Notification dated 28.11.2018 by the Registration Department the plaintiff Society is dissolved and name of the society has been struck off from the Register, therefore, the suit as such is filed by a defunct Society and so not maintainable and Dr.S.P.Jaguar Thangam, is not the actual representative of the plaintiff Guild. He cannot seek for rendition of accounts or restrain the defendants from using the name “Film and Television Procedures Guild of South India”. When there is no material to show that the defendant has infringed the trade mark of the plaintiff or passing off the trade mark, the suit is liable to be dismissed.

10. From the evidence before this Court, the contention of the defendant that the plaintiff Society was declared defunct by the Registrar of Society vide gazette notification dated 28.11.2018 itself is misleading assertion.

The reading of gazette notification clearly indicates that it is only a show cause notice calling upon the Society to show cause within three months from the date of notification to explain why accounts were not submitted for the past three years and if no sufficient cause shown, then the society will be dissolved. This gazette notification has been challenged by the plaintiff herein before the High Court in W.P.No.7347 of 2019 and this Court has stayed the passing of any final order. It is also now brought to the notice of this Court that the Registrar of Society has not dissolved the plaintiff Society and it is still in the live register maintained by the plaintiff. Furthermore, the entire affairs of the Society is now been monitored by a Retired High Court Judge pursuant to the order passed by the Division Bench of this Court in O.S.A.No.371 of 2018 dated 18.12.2018. Thus, the plaintiff has proved that the Society by name “Film and Television Producers Guild of South India” registered in the year 1965 with Registration No.45/1965 is still active and presently monitored by the Court appointed mediator.

11. Therefore, there cannot be a parallel Society in the same name, which will definitely mislead the members and general public. If any account opened by the defendants and money collected in the name of the plaintiff Guild.

The defendants are liable to render the accounts and remit the entire money into the account of the plaintiff Guild.

12. In the cross examination of Dr.S.P.Jaguar Thangam admits that, he has filed the suit on the representative capacity and he is still the President of plaintiff Guild. However, there is no authorisation or resolution filed to support the said contention. Even if the said fact is not proved, it will not give any handle to the 2nd defendant to float a parallel Society in the same name and mislead the members of the plaintiff Guild saying the plaintiff Society has become defunct and dissolved. If at all, the defendants and others wants to start a society of their own, it can be only in a different name and not in the same name of the plaintiff.

13. Therefore, this Court holds that the plaintiff is entitled for the injunction restraining the defendants men and agents from using the name “Film and Television Producers Guild of South India” with or without peacock logo of the plaintiff. The 2nd defendant is directed to deliver the labels, marks, letter heads, stationary, bill books and other documents and articles carrying the trade mark “Film and Television Producers Guild of South India” with or without

peacock logo. The defendants, his men and agents are restrained from any manner passing of the defendants service using the trade mark Film and Television Producers Guild of South India, any act or deed calculated to deceive the existing or prospective members by use of plaintiff Trade mark name and logo is restrained.

14. Preliminary decree directing the 2nd defendant to render accounts of profit made by the defendants using the plaintiff Trade mark/name Film and Television Producers Guild of South India is ordered. The plaintiff is entitled to file the final decree proceedings, after reduction of accounts. In the result, the Suit is decreed as prayed for with costs.

26.04.2021

Index : Yes/No.
Internet : Yes/No.

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Dr.G.Jayachandran,J.

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Pre-delivery Judgment in
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