



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 06TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.S.No. 358 of 2001

Shree Vari Multiplast India Pvt. Ltd.,
SF No.101/3, Mantham Palayam Pirivu,
Kanjikoil Road,
Perundurai – 638 052.
Erode District.

... Plaintiff

-Vs-

Nilkamal Plastics Limited,
54/55, Harris Road,
Chennai – 600 002.

... Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a
Permanent Injunction :

a) restraining the defendants, their men, agents, stockist and dealers
from issuing threat of any nature in the form of circular, advertisement or
notice or otherwise threatening the plaintiff with legal action on account of
infringement of Design No.176931 by any means, either directly or
indirectly, or any circular with reference to the plaintiff's Plastic Moulded
Chairs or interfering in the course of the plaintiff's business of Plastic



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b) declaring that the Cease and Desist Notice letter dated 04.04.2001, issued by the defendant is unjustifiable and groundless.

c) directing the defendant to-pay costs of the suit.

This Civil Suit coming on this day before this Court for hearing in the presence of Mrs.Gladys Daniel, Advocate for the Plaintiff herein and the defendant herein not appearing in person or by advocate and the said defendant herein having been set ex-parte and upon reading the plaint filed herein and this Court having observed that the reason for complaining passing off under Trade & Merchandise Marks Act, 1958 in the notice is that the plaintiffs product Code No.2036 is displayed on the stickers when selling, it is also seen that the aforesaid registration, copy right in the registered design for a period of 5 years with effect from July 16, 1998 further extendable upto July 16, 2013, therefore, this Court is of the view that the prayer sought for in this suit has now become infructuous, and

It is ordered as follows :-

That the Suit in C.S.No. 358 of 2001 be and is hereby dismissed as infructuous.



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

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 06TH DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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09.05.2022

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C.S.No. 358 of 2001

ORDER

DATED : 06.04.2022

THE HON'BLE MRS. JUSTICE
V. BHAVANI SUBBAROYAN

FOR APPROVAL : 10.05.2022

APPROVED ON : 12.05.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.No.358 of 2001

Shree Vari Multiplast India Pvt. Ltd.,
SF No.101/3, Mantham Palayam Pirivu,
Kanjakoil Road, Perundurai – 638 052.
Erode District.

...Plaintiff

Vs.

Nilkamal Plastics Limited,
54/55, Harris Road,
Chennai – 600 002.

... Defendant

Prayer: Complaint filed under Order IV Rule 1 of O.S. Rules under Order VII Rule 1 C.P.C under Section 54 of the Designs Act, 1911 read with Sections 104 & 106 of Patent Act, 1970, prays for permanent injunction:

a) restraining the defendants, their men, agents, stockist and dealers from issuing threat of any nature in the form of circular, advertisement or notice or otherwise threatening the plaintiff with legal action on account of infringement of Design No.176931 by any means, either directly or indirectly, or any circular with reference to the plaintiff's Plastic Moulded

Chairs or interfering in the course of the plaintiff's business of Plastic Moulded Chairs in any manner;



b) declaring that the Cease and Desist Notice letter dated 04.04.2001, issued by the defendant is unjustifiable and groundless;

c) directing the defendant to-pay costs of the suit;

d) pass such further or other orders as this Court may deem fit and proper and to thus render justice.

For Plaintiff : Mrs.Gladys Daniel

For Defendant : Exparte

J U D G M E N T

The suit was filed by the plaintiff for the following reliefs:

a) restraining the defendants, their men, agents, stockist and dealers from issuing threat of any nature in the form of circular, advertisement or notice or otherwise threatening the plaintiff with legal action on account of infringement of Design No.176931 by any means, either directly or indirectly, or any circular with reference to the plaintiff's Plastic Moulded Chairs or interfering in the course of the plaintiff's business of Plastic Moulded Chairs in any manner;

b) declaring that the Cease and Desist Notice letter dated 04.04.2001, issued by the defendant is unjustifiable and groundless;

c) directing the defendant to-pay costs of the suit;

d) pass such further or other orders as this Court may deem fit and proper and to thus render justice.



2. The case of the plaintiff is that the plaintiff is engaged in the business of manufacturing and marketing plastic moulded articles since 1993 and in relation to plastic moulded chairs, they commenced their business in the year 2000. The plaintiff in the course of their manufacturing plastic moulded chairs adapted a very common shape and design used by others in the same trade as shown in Document No.1. The plaintiff adapted this mould to manufacture this shape of this furniture as shown in Document No.1 which is in common use since the introduction of the plastic moulded furniture in India in the year 1992. The design embossed on the back to have grip, the plaintiff adapted the chair netting work design which is known all over India in industry. Few other manufacturers adapted wire chair design at the back as shown in Document No.2, which is also common use in India.

3. It is also the case of the plaintiff that they have been manufacturing and marketing this plastic moulded chair as shown in Document No.1 extensively and substantially all over India. The plaintiff was able to reach all over India in short time because of its superior quality and for its reasonable price. In view of business rivalry, the defendant through their attorney sent a Cease and Desist Notice on 04.04.2001 complaining



Trademark right. The reason for complaining passing off under Trade & Merchandise Marks Act, 1958 in the notice is that the plaintiffs product Code No.2036 is displayed on the stickers when selling.

4. The plaintiff submits that through their advocate denied both infringement of design and passing off. Subsequently, on verification it was found that some of the sellers of plaintiffs product used the number 2036 in removable stickers without the knowledge and approval of the plaintiff. Hence, the plaintiff through their advocates on 20.04.2001 agreed to comply with the demand contained in para 9 (b) of the aforesaid Cease & Desist Notice dated 04.04.2001 in relation to their demand under the Trade & Merchandise Marks Act, 1958 despite use of the numerals are common trade practice in the manufacture and sale of plastic moulded chairs. However, the plaintiff stoutly challenge the defendant's claim of statutory right under the Designs Act in respect of shape and configuration. The plaintiff in their notice dated 20.03.2001 called upon the defendant to withdraw their groundless/illegal demand contained in their notice dated 04.04.2001. But, the defendant did not withdrew their illegal demand hence petition for rectification is also initiated as an aggrieved person apart from this suit for groundless threat of legal action.



5. The plaintiff further submits that in early 1990, the use of plastic moulded furniture was introduced in India. On introduction of this plastic moulded chairs it became very popular because of its price and for its easy transportation and for its attractive colour schemes. Number of manufacturers started manufacturing this plastic moulded furniture. The plaintiff write hereunder some of the leading manufacturers of plastic moulded furniture in India:

- a) National Gujarat India
- b) Crest Moulded Furniture
- c) National Plastic Industrial Limited
- d) Milan India
- e) Supreme India Limited
- f) Maniyar Plastic Limited
- g) MFS Industries
- h) Regal Moulded Furniture
- i) Prince Plastic Industrial Limited
- j) Polyset Plastics Limited
- k) Prima Plastics Limited
- l) Nilkamal Limited

6. According to the plaintiff, the catalogue shows that the shape and the configuration, the defendant claim exclusive right under the Designs Act is not new and novel in India but manufactured already by all the leading companies in India.



7. The plaintiff submits that registration under the Design Act of 1911

is granted on the basis of the defendants declaration that design applied for registration is new and novel. Unlike trademark, the subject matter of design applied for registration is not liable to be scrutinized by the Controller under the Act. Hence any aggrieved persons are entitled to rectify the registration of the design if the design claimed under registration is already published or known in India. On this score alone the registration secured by the defendant is liable to be rectified. The display of this model chair No.2036 subject matter of the design Registration No.176931 dated 16.07.1999 is advertised in the Corporate View of 1998-99 at page No.104 before the date of design registration.

8. The plaintiff further submits that the claim of the defendant before the Controller that shape and configuration is new and novel is false and registration thus acquired is liable to be rectified. The chair and wire chair net design is also commonly used long prior to the defendants use. On this score also this design is liable to be rectified.

9. According to the plaintiff, the defendant already in the identical shaped model No.2036 has got Model Nos.2012, 2013, 2026, 2027, 2028, 2030 and 2031 registered/published already. Hence subsequently



registered design under No.176931 in respect of Model No.2036 is liable to be rectified. The Controller mechanically without applying his mind accepting their declaration as new and novel and granted registrations for the shape of the identical chairs which are already known to the public already by other leading manufacturers and by the defendants.

10. The plaintiff submits that in the Design Act also introduced in the year 1970 a provision to file a suit for injunction on the ground of groundless threat of legal action and for a declaration that such threats are groundless apart from action for infringement. The plaintiff on the strength of the above provision filed this suit for declaration under Section 54 of the Designs Act, 1911 read with Sections 104 & 106 of Patent Act, 1970 seeking a declaration that Cease and Desist Notice dated 04.04.2001 is groundless and unjustifiable and for permanent injunction.

11. Common Counter Affidavit filed by the respondent in O.A.Nos.435 and 436 of 2001 stating that the respondent is the proprietor of a new and novel design applied to a chair registered under Design Registration No.176931. The applicant has admitted that the respondent is the proprietor of the said design. The case of the applicant is that firstly, all plastic moulded chairs have a common design and shape and there is nothing new or novel in the registration of the respondent. Secondly, the



respondent has obtained registration under false means. It is further submitted that the applicant's contentions are without any merit. Various manufacturers of plastic moulded chairs have registered their under the Designs Act, 1911, which would go to show that the design and shapes are not common to the trade. Secondly, the Registrar had scrutinised the registration application submitted by the respondent and being satisfied that it was new and novel, had granted registration to the respondent.

12. The respondent/defendant submitted that the applicant having pirated the respondent's Registered design, has not come to Court with clean hands. To thwart the respondent from taking any action, the applicant has cleverly come forward with the above applications under the guise that the respondent had issued a groundless threat.

13. The respondent/defendant further submitted that the respondent as the registered proprietor is lawfully entitled to issue a notice to the applicant, calling upon them to stop manufacturing and marketing chairs of the design of the respondent and also to bring a suit, inter alia, for an injunction against the applicant under Section 53 of the Act. The prayers sought for by the applicant in the above two applications are not



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14. According to the respondent/defendant, the applicant in their reply dated 20.04.2001 has confirmed that the applicant will comply with condition No.(b) of paragraph 9 of the respondent's notice dated 04.04.2001. In other words, the applicant has agreed that they will not use the Trade Mark 2036 on any of the chairs manufactured by them as the said trade mark belongs to the respondent.

15. The respondent/defendant submitted that the very fact after receipt of the Cease and Desist Notice dated 04.04.2001 issued by the respondent's Trade Mark and Patent Attorneys, the applicant had stopped using the numerical 2036 on their chairs would go to show that the respondent's claim for registration of the design, being new and novel, is correct. The Controller of the Patent and Designs, had granted registration to the respondent after scrutiny and therefore, it is incorrect to state that the respondent had obtained the registration number under false declaration.

16. The respondent/defendant further submitted that the allegations in paragraph 7 of the Affidavit are denied as being baseless and without any merit. The respondent as registered proprietor of a novel design to be



applied to a chair, had obtained Registration No.176931. The applicant had pirated the respondent's registered design and falsified their trade mark with a view to trade upon the goodwill and reputation that had accrued to the respondent's goods. The respondent is accrued to the respondent's goods and therefore within its legal rights to issue a notice to Cease and Desist from manufacturing and selling chairs with a design identical with or deceptively similar to the respondent's registered design No.176931.

17. Reply affidavit filed by the applicant/plaintiff stating that the Registrars of Trade Marks are not granting registration without examining the pre existing mark but the Controller grant registration without examining pre existing design but solely on the basis of declaration by the applicant in the application as new and novel.

18. The applicant/plaintiff further submitted that the plaintiff has invested huge sums of money for manufacturing this plastic moulded chairs. The mould imported from foreign countries will become a waste. The defendant chose to threaten the plaintiff only because of business rivalry not on any other valid ground. If the defendants submission is true, all the plastic moulded chair manufacturers are infringers and they have to stop



1911. The plaintiff has simultaneously initiated proceeding to revoke the design registered under the Designs Act, 1911 on the ground that the design is not new and novel. Admittedly most of the moulded plastic chairs manufacturers are using identical chairs. In view of the above, the design registered under the Design Act of 1911 is liable to be revoked.

19. Heard Mr.Gladys Daniel, learned counsel appearing for the plaintiff and perused the materials available on record.

20. Mr.V.Nataraj, T.Suresh and P.Neelakantan have filed Vakalat on behalf of the defendant on 11.06.2001 but they have not chosen to file Written Statement and hence the defendant is set exparte.

21. On perusal of records, it is seen that the reason for complaining passing off under Trade & Merchandise Marks Act, 1958 in the notice is that the plaintiffs product Code No.2036 is displayed on the stickers when selling. It is also seen that the aforesaid registration, copy right in the registered design for a period of 5 years with effect from July 16, 1998 further extendable upto July 16, 2013. Therefore, this Court is of the view that the prayer sought for in this suit has now become infructuous.



22. In view of the above facts and circumstances of the case and considering the submission made by the learned counsel for the plaintiff, this Court is of the view that since the prayer has become infructuous and the suit may be dismissed as infructuous. Accordingly, this suit is dismissed as infructuous. There shall be no order as to costs.

List of documents marked on the side of the plaintiff

Nil

List of witnesses examined on the side of the plaintiff

Nil

List of documents marked on the side of the defendant

Nil

List of witnesses examined on the side of the defendant

Nil

Sd./- V.B.S.J.,
06.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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