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C.S.No.219 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.04.2022

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.[Commercial Div] No.219 of 2008

1. M.M.Sheik Dawood

2. M/s AL -Adil Exports,
Partnership firm, rep. By its
Partner, Mohamad Riza
15, Lake Area, 6th Cross Street,
Nungambakkam,
Chennai – 600 0034

... Plaintiffs

Vs.

1. Sivakumar

2. M/s V.G.Keshwala & Sons
P.O.Box No.17, Kampala,
Uganda

...Defendants

Civil Suit filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of High Court O.S.Rules and Sections 134 and 135 of the Trade Marks Act, 1999, Section 55 & 62 of the Copy Right Act, 1957 for the following prayers

(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 Trade Mark 'BABY' by using the



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offending the Trade Mark label TOTO with the device of 'Baby' or any other Trade Mark or device which is identical or deceptively similar to or a colourable imitation to that of the plaintiff's registered trade mark and Trade Mark Label 'BABY'

(b) For a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off the goods of the defendants as that of the plaintiff's by using the offending Trade mark label TOTO with the device of Baby as and for the trade mark of the plaintiff 'BABY' or any other Trade mark Label / device which is similar / deceptively similar to that of the plaintiff's registered trade mark 'BABY'.

(c) 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 copyright over the artistic work in the trade mark label 'BABY' by using the offending Trade Mark label TOTO with the device of Baby or any other trade mark label which is identical or colourable reproduction of the plaintiff's artistic work in the trade mark label 'BABY'

(d) To Direct the defendants to surrender to the plaintiff the entire stocks, boxes with the infringing trademark and unused infringing Trade Mark label together with blocks and dies for destruction.



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(e) To direct the defendants to render a true and faithful accounts of the profits earned by them through the sale of their products bearing the infringing trademark label which is similar or deceptively similar to the plaintiff's trade mark and copyrighted label 'BABY' and directing the payment of such profits to the plaintiff.

(f) To direct the defendants to pay the costs of the suit to the plaintiff.

(g) To grant such further or other relief.

For Plaintiff : No appearance

For Defendants : Set Exparte on 04.08.2021
Name printed – No appearance

J U D G M E N T

On an earlier occasion, viz., 04.08.2021, since the suit is for infringement of a trademark, this Court took cognizance of the suit. Though the defendants were served, they have not entered appearance, therefore, the defendants were set exparte and directed the matter to be listed before learned Additional Master III for recording exparte evidence on 06.09.2021.

2. Subsequently, before the learned Master for recording exparte evidence, on 06.09.2021, the plaintiff counsel as well as witness were not present, hence the suit was adjourned to 01.10.2021, 02.11.2021, 02.12.2021, 11.01.2022, 11.02.2022 again, the plaintiff as well as witness



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were not present, hence the matter was adjourned to 03.03.2022. On 03.03.2022, before the learned Master, the learned counsel for the plaintiff represented that he is not appearing for the plaintiff and there is other counsel, in Ms.4512/18 for plaintiff, therefore, sought to delete his name and hence the learned master directed the Registry to post the case before this Court.

3. When the matter was taken up for hearing on 04.04.2022, there is no representation for the plaintiff and hence this Court directed to post the case under the caption 'for dismissal' on 11.04.2022. Today, on 11.04.2022, the learned counsel submitted that he is not the counsel for the plaintiff and seeks time to file vakalath. After giving numerous opportunities, the learned counsel has not chosen to file vakalath to represent the plaintiff and though the name of the defendants were printed in the cause list, there is no appearance by the defendants also, hence the present suit is dismissed for non-prosecution.

16.03.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment
ssd



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V.BHAVANI SUBBAROYAN, J.,

ssd

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