



C.S. No.993 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

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M/s.Langro-Chemie Theo Lang GmbH,
Strohgaustrasse 14,
D-70435 Stuttgart, Germany
Rep. by its Power of Attorney,
Mr.K.V.Bhashyam Chari

... Plaintiff

vs.

1. Mr.N.Balaji,
H-63, 99th Street, 15th Sector,
K.K.Nagar, Chennai-600 078.
2. Mrs.Mythili Balaji,
H-63, 99th Street, 15th Sector,
K.K.Nagar, Chennai-600 078.
3. M/s.Langro-Chemie India(P) Ltd,
H-63, 99th Street, 15th Sector,
K.K.Nagar, Chennai-600 078

... Defendants



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PRAYER: Complaint filed under Order VII Rule 1 of CPC R/w Order IV Rules

1 of O.S Rules 106 & 107 of Trademark Act, prayed for Judgment and

Decree:-

(a) Directing the defendants to pay to the plaintiff a sum of Rs.1,93,00,000/- together with interest @ 18% from the date of the suit till the date of realization;

(b) Permanent Injunction restraining the defendant from in any manner using or infringing the trade name, trademark and logo of the plaintiff more specifically described in Schedule hereunder; and

(c) Cost of the suit

For Plaintiff : M/s.P.R.Vandana
for M/s/Surana & Surana

J U D G M E N T

The suit was filed for recovery of a sum of Rs.1,93,00,000/- along with the interest thereon at 18% per annum from the date of suit till the date of realization and also for a permanent injunction to restrain the defendants from infringing the trade name, trademark and logo described in the schedule to the plaint.

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2. In spite of service of suit summons on the defendants, the defendants did not enter appearance. By order dated 07.02.2020, the registry was directed to print the name of the defendants in the cause list and list the matter on 11.02.2020. Since the defendants failed to appear at the hearing on 11.02.2020 also, the defendants were set *ex parte*. Consequently, the matter was listed before the learned Additional Master II for recording the *ex parte* evidence of the plaintiff.

3. The plaintiff adduced oral evidence by examining Mrs.Akila, its authorized representative, as P.W.1. In course of the examination-in-chief of P.W.1, 27 documents were exhibited as Ex. P.1 to Ex.P.27. These documents include the annual returns of the third defendant made up to 29.09.2000 and 30.09.2000, which were exhibited as Ex.P.2 and Ex.P.3, respectively. By drawing reference to the said exhibits, learned counsel for the plaintiff submits that the third defendant was incorporated on the understanding that it would be a joint venture between the plaintiff and the first and second defendants, with the plaintiff holding 80% of the paid up share capital of the third defendant. In this regard, Ex.P.7, which is the



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certificate issued by the third defendant confirming the transfer of 80% of the shares of the third defendant to the plaintiff is also relied upon.

However, it is stated that shares were not issued or allotted to the plaintiff as evidenced by the annual returns referred to earlier. Nevertheless, it is stated that the plaintiff was called upon to make remittances towards the establishment of an office for the third defendant. For this purpose, a sum equivalent to INR 26,00,000/- was remitted by the plaintiff. Learned counsel relies upon Ex.P.5 and Ex.P.6 for such purpose.

4. In addition, it is submitted that the plaintiff supplied chemicals (goods) to the third defendant and issued invoices in respect thereof. By drawing reference to Ex.P.10, learned counsel points out that a draft agency agreement was prepared for execution by the plaintiff and the third respondent. The invoices issued to the third defendant, which were exhibited as Ex.P11, were also relied upon. In terms thereof, it is submitted that the third defendant is liable to pay the plaintiff a sum of 288,338.50 Euros, which is equivalent to INR 1,67,00,000/-. The plaintiff also relies upon the lawyer's notice dated 03.08.2004 from the plaintiff to the



defendants, which was exhibited as Ex.P.24 and the reply thereto from the defendant's lawyer which was exhibited as Ex.P.25. With specific reference to Ex.P.25, it is pointed out that the defendants admitted at paragraph 13 thereof that the plaintiff had supplied chemicals for an aggregate value of 288,338.30 Euros to the third defendant. With reference to paragraph 12 thereof, learned counsel pointed out that the defendants admitted that INR 24,07,854/- was received by the third defendant towards expenses in relation to the purchase of furniture, fixtures etc. for the third defendant.

5. Learned counsel for the plaintiff also draws reference to the registered trademark of the plaintiff along with the English language translation thereof (Ex.P.26 and Ex.P.27) and states that the defendants should be restrained from infringing the said trademark.

6. Upon considering the evidence recorded in the suit, it is clear from Ex.P.11 and Ex.P.25 that goods of an aggregate value of 288,338.50 Euros were supplied by the plaintiff to the third defendant, and that the third defendant did not remit payments in respect thereof. Similarly,



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from Ex.P-5, Ex.P-6 and Ex.P.26, it is clear that the plaintiff incurred expenditure with regard to the establishment of the third defendant's office.

While the plaintiff made a claim for a sum of INR 26,00,000/-, the defendants have admitted liability to the extent of INR 24,07,854/-. As such, the plaintiff is entitled to succeed to that extent.

7. Since the goods were supplied to the third defendant, which is a limited liability company, and the investments were also made towards purchase of furniture, fixtures, etc. by the third defendant, only the third defendant is liable. In the aggregate, the plaintiff is entitled to a sum of INR 1,91,07,854/- (INR 1,67,00,000/- towards goods + INR 24,07,854/- towards expenditure incurred) from the third defendant towards principal liability. Considering the following: there was no agreement on rate of interest; the transaction is commercial; and the interest rates prevailing at the relevant time, the third defendant is entitled to interest at 9% per annum from the date of plaint until realisation. Since the joint venture did not fructify, on the basis of Exs.P25 and P26, the plaintiff is entitled to injunctive relief to restrain infringement of trademark by the defendants. On the basis of the



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loser pays principle, the third defendant is also liable to pay costs. The plaintiff paid a sum of INR 1,96,600.50/- as court fee, and is entitled to this entire sum. In addition, the plaintiff is entitled to about INR 2,00,000/- towards reasonable lawyer's fee and expenses. In the aggregate, the costs are rounded off as INR 4,00,000/-.

8. In the result, the suit is decreed as follows:

(i) The third defendant is directed to pay a sum of INR 1,91,07,854/- to the plaintiff. The said amount shall carry interest at the rate of 9% per annum from the date of plaint till the date of realization.

(ii) The suit is decreed in terms of prayer (b) of paragraph 33 of the plaint against all the defendants.

(iii) The third defendant is directed to pay an aggregate sum of INR 4,00,000/- as costs to the plaintiff.

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Index : Yes / No

Internet : Yes / No



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Plaintiff's witness:

1.Mrs.Akila : P.W.1

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Defendant's witness : Nil

Documents exhibited by the Plaintiff:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	-	Original Authorization letter
2.	Ex.P2	29.09.2000	Photocopy of Annual Return filed by the third defendant in respect of AGM issued by ROC, Chennai.
3.	Ex.P3	30.09.2000	Photocopy of Annual Return filed by the third defendant in respect of AGM issued by ROC, Chennai.
4.	Ex.P4	-	Photocopy of Form 32 filed by the third defendant issued by ROC, Chennai.
5.	Ex.P5	-	Photocopy of vouchers of the plaintiff for payment of various monies to the defendants for establishment, running and maintenance of third defendant.
6.	Ex.P6	26.07.1999	Letter of the third defendant along with Account Statement of the third defendant sent to the plaintiff for the period May, 1998 to July, 1999 and the relevant bills, payments vouchers towards purchase of office equipment, payment of salaries and rent, traveling expenses etc.
7.	Ex.P7	11.03.1999	Certificate issued by third defendant confirming transferring of 80% of its shares to the nominees of the plaintiff.
8.	Ex.P8	27.09.1999	Letter of third defendant sent to the plaintiff



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Sl.No	Exhibits	Date	Particulars of Documents
			requesting the nominee directors of the plaintiff to send their resignation from the Directorship to the third defendant.
9.	Ex.P9	28.09.1999	Resignation letters issued by the nominees of the plaintiff as per the request of the defendants.
10.	Ex.P10	20.09.2000	Draft agency agreement between plaintiff and the third defendant.
11.	Ex.P11	12.12.2002	Reminder letter along with copies of invoices sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
12.	Ex.P12	05.02.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
13.	Ex.13	04.04.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
14.	Ex.14	16.05.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
15.	Ex.15	01.07.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.



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Sl.No	Exhibits	Date	Particulars of Documents
16.	Ex.16	21.07.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
17.	Ex.17	20.08.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
18.	Ex.18	11.12.2003	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
19.	Ex.19	23.01.2004	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
20.	Ex.20	19.03.2004	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
21.	Ex.21	19.05.2004	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
22.	Ex.22	03.06.2004	Reminder letter sent to the third defendant by the plaintiff containing details of invoices amounts due and due dates for payment of the invoices by the defendants.
23.	Ex.23	01.07.2004	Extract of the email sent by the first defendant to the plaintiff.



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Sl.No	Exhibits	Date	Particulars of Documents
24.	Ex.24	03.08.2004	Notice issued by the plaintiff through its counsel to the defendants.
25.	Ex.25	23.08.2004	Reply notice of the defendant issued through their counsel to the notice of the plaintiff.
26.	Ex.26	-	Certified English transmission of certification issued by the German patent office for registration of the trademark in respect of the trade name "Langro" in favour of the plaintiff.
27.	Ex.27	-	Certified English transmission of certification issued by the German patent office for registration of the trademark in respect of the trade name "Logo" in favour of the plaintiff.

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