

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAIWAMY
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1213 & 1214 of 2022
and
C.M.P.Nos.8635 & 8638 of 2022

G.Saravanan ..Appellant/Defendant in both CMAs

Vs.

M/s.R.K.Ganapathy Chettiar,
rep by its Partner S.Bhasker
138, Muthur Road, Kangeyam,
Tiruppur District - 638 701,
Tamil Nadu.

..Respondent/Plaintiff in both CMAs

Appeals filed under Section 13 (1-A) of the Commercial Courts Act read with Order 43 Rule 1(a) of the Code of Civil Procedure against the order dated 29.04.2022 passed in I.A.Nos.320 & 321 of 2021 in C.O.S.No.17 of 2021 on the file of the Principal District Judge, Tirupur.

For Appellant : Mr.Satish Parasaran, Senior Counsel
(in both CMAs) for Mr.S.Diwakar

For Respondent : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.Ramesh Ganapathy

C O M M O N J U D G M E N T
(JUDGMENT WAS MADE BY M.DURAIWAMY, J.)

Challenging the order passed in I.A.Nos.320 & 321 of 2021 in C.O.S.No.17 of 2021 on the file of the Principal District Court, Tiruppur, the defendant has filed the above appeals.

2.The respondent/plaintiff filed the suit in C.O.S.No.17 of 2021 seeking for permanent injunction restraining the defendant from passing off his/their goods by using the artistic work,

trade dress and color combination of yellow and brown used by the plaintiff having the trademark registration products that are identical or deceptively similar to that of the plaintiff's trademark, artistic work, product and trade dress in respect of ghee and thereby restraining the defendant in any manner from passing off.

3. In the said suit, the respondent/plaintiff filed an application in I.A.No.320 of 2021 seeking for temporary injunction restraining the respondent from passing off his goods by using the artistic work, trade dress and color combination of yellow and brown used by the plaintiff having the trademark registration No.4531234 for the logo "RKG" and the packing style and over all get up of the product with any other word which are identical or deceptively similar to that of the plaintiff's trademark, artistic work, product and trade dress and restrained the defendant from passing off till disposal of the suit. The respondent/plaintiff also filed another application in I.A.No.321 of 2021 seeking for temporary injunction restraining the respondent from infringing the copyright of the plaintiff by using the artistic work, trade dress and color combination of yellow and brown "GVG" ghee which are identical and deceptively similar to that of the plaintiff's artistic work, color combination and trade dress and thereby restraining the defendant from infringing the copyright of the plaintiff till disposal of the suit.

4. It is not in dispute that the respondent/plaintiff filed the suit in April 2021 along with the applications seeking for interim injunction. Though the trial Court has not granted any interim order in favour of the respondent/plaintiff till 28.04.2022, on 29.04.2022, the trial Court allowed both the applications and granted orders of injunction as prayed for in favour of the respondent/plaintiff. Immediately on obtaining the certified copy of the order passed in I.A.Nos.320 & 321 of 2021 on 06.05.2022, the defendant filed the above appeals on 09.05.2022 and obtained an order of interim stay on 11.05.2022. Therefore, it is evident that the respondent/ plaintiff had the benefit of interim injunction granted by the trial Court on 29.04.2022 only for a brief period of about 12 days (i.e.) upto 11.05.2022.

5. Mr. Satish Parasaran, learned senior counsel appearing for the appellant vehemently contended that though the trial Court refused to grant an interim order in favour of the respondent/plaintiff for more than a year, only on 29.04.2022, the applications filed by the respondent, seeking for interim injunction, were allowed. Further, the learned senior counsel submitted that the said orders of injunction granted by the trial Court has been stayed by the Division Bench of this Court

on 11.05.2022 itself. The learned senior counsel also submitted that the suit itself is ripe for trial, hence, the order of stay granted by the Division Bench of this Court may continue and the trial Court maybe directed to dispose of the suit within a time frame.

6.Mr.AR.L.Sundaresan, learned senior counsel appearing for the respondent/plaintiff submitted that the trial Court, after taking into consideration the merits in the case of the respondent/plaintiff, had granted injunction in their favour on 29.04.2022 and that the findings rendered by the trial Court would make it clear that the respondent/plaintiff had established their case.

7.Having regard to the submissions made by the learned senior counsel on either side, it cannot be disputed that the respondent/plaintiff though did not have the benefit of injunction for a period of more than a year, they obtained the order of injunction on 29.04.2022 and enjoyed the order of injunction only for a period of 12 says (i.e.) upto the grant of interim stay by the Division Bench of this Court on 11.05.2022.

8.The learned senior counsel appearing for the respondent also admitted that the suit is ripe for trial, hence, the trial Court may be directed to dispose of the suit within a time frame.

9.Since the suit is still pending before the trial Court, we are not giving any finding as to the correctness of the order passed in the applications for the reason that any finding given by this Court would prejudice the mind of the trial Court. In these circumstances, without expressing any opinion with regard to the correctness of the findings rendered by the trial Court, we are of the view that the trial Court should be directed to dispose of the suit within a time frame. Since the respondent/plaintiff had the benefit of interim injunction only for a brief period of about 12 days, the same cannot be allowed to continue till the disposal of the suit. Accordingly, we direct the Principal District Judge, Tiruppur to dispose of the suit in C.O.S.No.17 of 2021, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this judgment. Till the disposal of the suit, the order passed in I.A.Nos.320 & 321 of 2021 in C.O.S.No.17 of 2021 shall remain suspended.

10.With these observations, both the Civil Miscellaneous Appeals are disposed of.

11.Mr.Satish Parasaran, learned Senior Counsel appearing for the appellant and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the respondent, on instructions, submitted that

the appellant and the respondent would co-operate for the disposal of the suit within a period of two months without seeking for any unnecessary adjournments. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

va

To

The Principal District Judge,
Tirupur.

+2cc to Mr.Rajesh Ramanathan, Advocate, S.R.No.39799

+1cc to Mr.Ramesh Ganapathy, Advocate, S.R.No.40607

C.M.A.Nos.1213 & 1214 of 2022
and
C.M.P.Nos.8635 & 8638 of 2022

EV(CO)
RGA(14/07/2022)