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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 17TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A. Nos. 2794, 3647 & 3648 of 2021

in

Tr.C.S. Nos.105 & 106 of 2020

Tr.C.S.No. 105 of 2020 :-

M/s. Sri Narasu's Coffee Company Private Limited.,
Rep.by its Managing Director
P. Sivanantham.

... Plaintiff

-Vs-

1. Narasu's Saarathy Enterprises Private Limited.,
Rep.by its Managing Director
M.V. Balasubramaniam.
16-A, Court Road, Johnsonpet,
Hasthampatty P.O.,
Salem – 636 007.
2. R.P. Sarathy,
Son of K.V.Radhakrishnan Chettiar,
21, Gandhi Road,
Hasthampatty P.O.,
Salem – 636 007.
3. B. Latha,
Wife of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands,
Salem – 636 016.



4. M.V. Balasubramaniam,
Son of Rajasekaran,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
5. B. Janavi,
Daughter of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
6. B. Dhiraj,
Son of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
7. M.V. Srinivas,
Son of M.V. Rajasekaran,
P.B.No. 47/A3, Itteri Road,
Salem – 636 007.
8. S. Sudha,
Daughter of Srinivas Guptha,
47/A-3, Itteri Road,
Salem – 636 007.
- *9. R Andal (Died),**
Wife of M.V. Rajasekaran,
22 A/4, New No.23,
Subramaniam Koil Street,
Fairlands, Salem – 636 016.
10. V. Gunasekaran,
Son of Venkatadas Guptha,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 18.
11. Maheswari Sekar,
Daughter of M.V. Rajasekar,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.

... Defendants

***(Amended as per ordered in I.A.98/18 dated 12.9.18)**



Tr.C.S.No. 106 of 2020 :-

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M/s. Sri Narasu's Coffee Company Private Limited.,
Rep.by its Managing Director
P. Sivanantham.

... Plaintiff

-Vs-

1. Narasu's Saarathy Enterprises Private Limited.,
Rep.by its Managing Director
M.V. Balasubramaniam.
16-A, Court Road, Johnsonpet,
Hasthampatty P.O.,
Salem – 636 007.

***2. R.P. Sarathy, (Died)**
Son of K.V.Radhakrishnan Chettiar,
21, Gandhi Road,
Hasthampatty P.O.,
Salem – 636 007.

3. B. Latha,
Wife of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands,
Salem – 636 016.

4. M.V. Balasubramaniam,
Son of Rajasekaran,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.

5. B. Janavi,
Daughter of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.

6. B. Dhiraj,
Son of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.



7. M.V. Srinivas,
Son of M.V. Rajasekaran,
P.B.No. 47/A3, Itteri Road,
Salem – 636 007.

8. S. Sudha,
Daughter of Srinivas Guptha,
47/A-3, Itteri Road,
Salem – 636 007.

***9. R Andal (Died),**
Wife of M.V. Rajasekaran,
22 A/4, New No.23,
Subramaniam Koil Street,
Fairlands, Salem – 636 016.

10. V. Gunasekaran,
Son of Venkatadas Guptha,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 18.

11. Maheswari Sekar,
Daughter of M.V. Rajasekar,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.

... Defendants

***(Amended as per order in I.A.No.1/2019 ; dt 06-07-2019)**

A.No. 2794 of 2021 :-

M/s. Sri Narasu's Coffee Company Private Limited.,
Rep.by its Managing Director
P. Sivanantham.

... Applicant/Plaintiff

-Vs-

1. Narasu's Saarathy Enterprises Private Limited.,
Rep.by its Managing Director
M.V. Balasubramaniam.
16-A, Court Road, Johnsonpet,
Hasthampatty P.O.,
Salem – 636 007.



2. B. Latha,
Wife of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands,
Salem – 636 016.
3. M.V. Balasubramaniam,
Son of Rajasekaran,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
4. B. Janavi,
Daughter of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
5. B. Dhiraj,
Son of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
6. M.V. Srinivas,
Son of M.V. Rajasekaran,
P.B.No. 47/A3, Itteri Road,
Salem – 636 007.
7. S. Sudha,
Daughter of Srinivas Guptha,
47/A-3, Itteri Road,
Salem – 636 007.
8. V. Gunasekaran,
Son of Venkatadas Guptha,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.
9. Maheswari Sekar,
Daughter of M.V. Rajasekar,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.



Application praying that this Hon'ble Court be pleased to detain the respondents 2 to 9 in civil prison for a term not exceeding three months.

A.No. 3647 of 2021 :-

M/s. Sri Narasu's Coffee Company Private Limited.,
Rep.by its Managing Director
P. Sivanantham.

... Applicant/Plaintiff

-Vs-

1. Narasu's Saaraty Enterprises Private Limited.,
Rep.by its Managing Director
M.V. Balasubramaniam.
16-A, Court Road, Johnsonpet,
Hasthampatty P.O.,
Salem – 636 007.
2. R.P. Sarathy,
Son of K.V.Radhakrishnan Chettiar,
21, Gandhi Road,
Hasthampatty P.O.,
Salem – 636 007.
3. B. Latha,
Wife of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands,
Salem – 636 016.
4. M.V. Balasubramaniam,
Son of Rajasekaran,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
5. B. Janavi,
Daughter of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.



6. B. Dhiraj,
Son of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
7. M.V. Srinivas,
Son of M.V. Rajasekaran,
P.B.No. 47/A3, Itteri Road,
Salem – 636 007.
8. S. Sudha,
Daughter of Srinivas Guptha,
47/A-3, Itteri Road,
Salem – 636 007.
- *9. R Andal (Died),**
Wife of M.V. Rajasekaran,
22 A/4, New No.23,
Subramaniam Koil Street,
Fairlands, Salem – 636 016.
10. V. Gunasekaran,
Son of Venkatadas Guptha,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.
11. Maheswari Sekar,
Daughter of M.V. Rajasekar,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018. ... RespondentsDefendants
- *(Amended as per ordered in I.A.97/18 dated 12.9.18)**

Application praying that this Hon'ble Court be pleased to order
attachment of the property belonging to the third and fourth respondents
detailed in the petition for a period of one year from the date of attachment



and also detain the third and fourth respondents in civil prison being a director and Managing Director respectively of the first respondent for a term not exceeding three months and if the disobedience continues even after the attachment, then the property attached may be sold by the Court and out of the sale proceed the amount for which the property is sold by the Court may be directed to be given to the petitioner as compensation.

A.No. 3648 of 2021 :-

M/s. Sri Narasu's Coffee Company Private Limited.,
Rep.by its Managing Director
P. Sivanantham.

... Applicant/Plaintiff

-Vs-

1. Narasu's Saarathy Enterprises Private Limited.,
Rep.by its Managing Director
M.V. Balasubramaniam.
16-A, Court Road, Johnsonpet,
Hasthampatty P.O.,
Salem – 636 007.
2. R.P. Sarathy,
Son of K.V.Radhakrishnan Chettiar,
21, Gandhi Road,
Hasthampatty P.O.,
Salem – 636 007.
3. B. Latha,
Wife of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands,
Salem – 636 016.



4. M.V. Balasubramaniam,
Son of Rajasekaran,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
5. B. Janavi,
Daughter of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
6. B. Dhiraj,
Son of M.V. Balasubramaniam,
23, Subramaniya Koil Street,
Fairlands, Salem – 636 016.
7. M.V. Srinivas,
Son of M.V. Rajasekaran,
P.B.No. 47/A3, Itteri Road,
Salem – 636 007.
8. S. Sudha,
Daughter of Srinivas Guptha,
47/A-3, Itteri Road,
Salem – 636 007.
9. V. Gunasekaran,
Son of Venkatadas Guptha,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.
10. Maheswari Sekar,
Daughter of M.V. Rajasekar,
11, Mullai Street, Annamalai Nagar,
Trichy – 620 018.

... RespondentsDefendants

Application praying that this Hon'ble Court be pleased to order
attachment of the property belonging to the third and fourth respondents
detailed in the petition for a period of one year from the date of attachment



and also detain the third and fourth respondents in civil prison being a director and Managing Director respectively of the first respondent for a term not exceeding three months and if the disobedience continues even after the attachment, then the property attached may be sold by the Court and out of the sale proceed the amount for which the property is sold by the Court may be directed to be given to the petitioner as compensation.

These applications coming on this day before this court for hearing in the presence of Mr.P.H.Aravindh Pandian, Senior Counsel for M/s. Suba Shiny, Advocates for the applicant in all the applications and Mr.K.Sukumaran, For M/s. M.R. Gokul Krishnan, Advocate for the respondent in all the applications and upon reading the Judges Summons and the affidavit of P.Sivanantham, filed in A.Nos. 2794, 3647 and 3648 of 2021 and this Court having observed that the burden of proof on the Applicant is heavy in contempt jurisdiction, it cannot be concluded that the Respondents committed wilful disobedience of the two orders in question, on the contrary, the Respondents adopted an interpretation of the order of 07.11.2007, which cannot be disregarded or construed as intended to evade liability for disobeying orders of Court, it is another matter that the findings recorded in the 07.11.2007 order are tentative and only for purposes of



possible that the Applicant's contention may be accepted, however, this remains to be seen, **It is ordered as follows:**

That these A.Nos. 2794, 3647 & 3648 of 2021, be and are hereby dismissed.

2. That there shall be no order as to costs.

3. That the several years have passed without these suits being carried to trial, both parties hereto, be and are hereby directed to submit draft issues, if not already submitted, and agree upon and submit a common proposed case management schedule for the expedited conclusion of the trial at least as regards the suits in which pleadings are complete.

4. That these suits Nos. Tr.C.S.No. 105 & 106 of 2020 be posted on 23.03.2022 for the above purpose.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 17TH DAY OF MARCH 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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11.04.2022

A.Nos. 2794, 3647 & 3648 of 2021
in
Tr.C.S.Nos. 105 & 106 of 2020

ORDER

DATED : 17.03.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 11.04.2022

APPROVED ON : 12.04.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Application Nos.2794, 3647 & 3648 of 2021
in
Tr.C.S.No.106 of 2020 and Tr.C.S.No.105 of 2020

M/s.Sri Narasu's Coffee Company Private Limited,
rep. by its Managing Director
P.Sivanantham

... Applicant / Plaintiff
(in all Applications)

vs.

1.Narasu's Saarathy Enterprises Private Limited,
Rep. by its Managing Director
M.V.Balasubramaniam

2.B.Latha

3.M.V.Balasubramaniam

4.B.Janavi

5.B.Dhiraj

6.M.V.Srinivas

7.S.Sudha

8.V.Gunasekaran

9.Maheswari Sekar

... Respondents/Defendants
(in A.No.2794 of 2021)

1.Narasu's Saarathy Enterprises Private Limited,
Rep. by its Managing Director
M.V.Balasubramaniam



3.B.Latha
4.M.V.Balasubramaniam
5.B.Janavi
6.B.Dhiraj
7.M.V.Srinivas
8.S.Sudha
9.R.Andal(dies)
10.V.Gunasekaran
11.Maheswari Sekar

... Respondents/Defendants
(in A.No.3647 of 2021)

1.Narasu's Saarathy Enterprises Private Limited,
Rep. by its Managing Director
M.V.Balasubramaniam

2.R.P.Sarathy
3.B.Latha
4.M.V.Balasubramaniam
5.B.Janavi
6.B.Dhiraj
7.M.V.Srinivas
8.S.Sudha
9.V.Gunasekaran
10.Maheswari Sekar

... Respondents/Defendants
(in A.No.3648 of 2021)

PRAYER IN A.NO.2794 OF 2021 This Application is filed under Order XXXIX Rule 2A and Section 151 C.P.C praying to order to detain the Respondents 2 to 9 in civil prison for term not exceeding three months.

PRAYER IN A.NO.3647 OF 2021 This Application is filed under Order XXXIX Rule 2A and Section 151 C.P.C praying to order attachment of the property belonging to the third and fourth Respondents detailed in the Petition for a period of one year from the date of attachment and also detain the third and fourth Respondents in civil prison being a Director and



Managing Director respectively of the first Respondent for a term not exceeding three months and if the disobedience continues even after the attachment, then the property attached may be sold by the Court and out of the sale proceed the amount for which the property is sold by the Court may be directed to be given to the Petitioner as compensation.

PRAYER IN A.NO.3648 OF 2021 This Application is filed under Order XXXIX Rule 2A and Section 151 C.P.C praying to order attachment of the property belonging to the third and fourth Respondents detailed in the Petition for a period of one year from the date of attachment and also detain the third and fourth Respondents in civil prison being a Director and Managing Director respectively of the first Respondent for a term not exceeding three months and if the disobedience continues even after the attachment, then the property attached may be sold by the Court and out of the sale proceed the amount for which the property is sold by the Court may be directed to be given to the Petitioner as compensation.

For Applicant : Mr.P.H.Aravindh Pandian
Senior Counsel, for
M/s.Subashiny
(in all Applications)

For Respondents : Mr.K.Sukumaran
for M/s.M.R.Gokul Krishnan

COMMON ORDER

Application No.2794 of 2021 is filed alleging wilful disobedience of

an order dated 19.01.2018 in I.A.No.538 of 2017 in O.S.No.290 of 2017,

<https://hcservices.ecourts.gov.in/hcservices/>

which corresponds to Tr.C.S.No.106 of 2020. Application Nos.3647 &



3648 of 2021 are in respect of alleged wilful disobedience of the order dated 17.04.2018 in I.A.No.119 of 2018 in O.S.No.111 of 2018, which corresponds to Tr.C.S.No.105 of 2020. The Applicant in all the applications is Sri Narasu's Coffee Company Private Limited.

2. The Applicant contends that the Respondents wilfully disobeyed the above mentioned orders by using the word mark “Narasu's” and the device of a lady sipping coffee from a cup held in her hand enclosed within a circle (the Alleged Device Mark of the Applicant). In support of this contention, the Applicant refers to the order passed by this Court in O.A.Nos.424 to 427 of 2007 in C.S.No.291 of 2007 and O.A.Nos.491 and 492 of 2007 in C.S.No.360 of 2007 on 07.11.2007 (the 07.11.2007 Order). In particular, the Applicant relies upon paragraphs 13 to 15 of the 07.11.2007 Order. According to the Applicant, the Court concluded that the partners trading as Narasu's Coffee Company have proprietorship over the word mark “Narasu's”, written in English, and the Alleged Device Mark of the Applicant. The Applicant asserts that the Court permitted the defendants therein to use the device marks “Narasu's power”, “Narasu's Vetri”, “Narasu's Wheel” and Narasu's written in Tamil with the device of a lady sipping coffee from a cup held in her hand enclosed within a circle and found within a dotted oval shaped outline (the Alleged Device Mark of the



Respondents). Thus, according to the Applicant, the Respondents were restrained from using the word mark “Narasu's” and the Alleged Device Mark of the Applicant not only in relation to coffee and coffee products but in relation to all products.

3. The Applicant next referred to the order dated 15.03.2018 in I.A.No.538 of 2017 in O.S.No.290 of 2017. By drawing reference to paragraph 12 of the said order, it was submitted that the Court took note of the fact that the Applicant herein/petitioner therein was permitted to use the word mark “Narasu's” in English, whereas the first respondent therein was permitted to use the word mark “Narasu's” in Tamil. The Applicant pointed out that the Court recorded that the word mark in Tamil was not permitted to be used by the petitioner and the first respondent was not permitted to use the word mark “Narasu's” in English. On such basis, the petition was allowed by restraining the respondents from using the trade mark/word mark “Narasu's” in any manner. This order was carried in appeal by filing C.M.A.No.2700 of 2018. The said CMA was withdrawn by the appellants therein/Respondents herein. The Applicant next referred to the *ex parte* order by which the Respondents were restrained from using the word mark “Narasu's” and the Alleged Device Mark of the Applicant in relation to the sale of wheat products including vermicelli. The Applicant thus pointed out



that the Respondents were categorically prohibited from using the above mentioned word and device mark even with regard to wheat products and vermicelli. This order was assailed by filing C.M.A.No.1067 of 2018. A specific request for suspension of the order was made but the Court refused to do so as reflected in paragraph 14.1 thereof. The Applicant pointed out that the Court thereby refused to interfere with the *ex parte* order. It was further pointed out that the Respondents did not file an application to vacate this order and that the order remains in force as on date.

4. By way of background, the Applicant also pointed out that the Respondents exited from the partnership firms, which are the registered proprietors of the word mark and device mark adverted to above, and that such exit was after receiving a sum of about Rs.26 crore as consideration. In the aforesaid facts and circumstances, the Applicant contended that there is no doubt that the Respondents have not only disobeyed the two orders referred to above but have done so wilfully. Indeed, the Applicant asserts that the Respondents continue to violate the said orders with impunity as on date. In support of this submission, the Applicant relies upon the judgment of the Hon'ble Supreme Court in *Prithawi Nath Ram v. State of Jharkhand and others* (2004) 7 SCC 26 and, in particular, paragraphs 5 to 8 thereof,



in exercise of contempt jurisdiction to examine the correctness of the order in respect of which disobedience is alleged. Whether such order is right or wrong cannot be urged in contempt proceedings and that unless the relevant order is modified or set aside in a manner known to law, the order is required to be complied with. In the event of non compliance, contempt jurisdiction is liable to be exercised.

5. These contentions were strongly refuted by the Respondents. For such purpose, the Respondents relied extensively on the 07.11.2007 Order. The Respondents point out that the applications were disposed of with three directions which are set out at paragraph 15 thereof. As regards the direction in clause (a) of paragraph 15, the Respondents state that the only restriction imposed on the defendants therein/Respondents herein was from using the word mark “Narasu's” and the Alleged Device Mark of the Applicant in respect of coffee and coffee products. Consequently, it is contended that the restriction cannot be extended to any product which is unrelated to coffee. The Respondents assert that they have not sold any product which is related in any manner to coffee. Hence, it is contended that the Respondents have acted in conformity with the 07.11.2007 Order of this Court. With regard to the two specific orders which are said to be



2017 in O.S.No.290 of 2017 is entirely based on the earlier order of this

Court. By drawing the attention of the Court to paragraph 13 of the order, it is submitted that the respondents therein were restrained from using the trade mark/word mark “Narasu's” in any manner other than the manner mentioned in clauses (a) and (b) of the relief portion in the 07.11.2007 Order of this Court. Thus, it is contended that the Respondents did not violate the 07.11.2007 Order and, consequently, did not violate the order dated 15.03.2018. The breadth and scope of both orders are identical as per the contention of the Respondents. Turning to the *ex parte* order, the Respondents point out that the said order also relies heavily upon the 07.11.2007 Order and the subsequent order in O.A.Nos.858 to 860 of 2011 in C.S.No.698 of 2011. Therefore, it is contended that the *ex parte* order also cannot be looked out in isolation and should be examined in the context of the 07.11.2007 Order. The Respondents refer to the counter affidavit filed in this application and point out that the position adopted by these Respondents are set out in paragraphs 9 and 10 thereof. According to the Respondents, both the earlier orders are entirely based on the 07.11.2007 Order. As set out above, according to the Respondents, the said order only restrained the Respondents from using the word mark “Narasu's” and the Alleged Device Mark of the Applicant in relation to coffee and products

ancillary thereto. As such, the Respondents state that they have not violated



the two orders of this Court and have certainly not committed wilful disobedience thereof.

6. In support of these submissions, the Respondents refer to and rely upon the following judgments:

(i) *U.C.Surendranath v. Mambally's Bakery (2019) 20 SCC 666*, and, in particular, paragraph 7 thereof wherein the Hon'ble Supreme Court held that an inference of wilful disobedience should not be drawn unless it is established to the satisfaction of the Court that the disobedience was not mere disobedience but wilful disobedience.

(ii) *Ram Kishan v. Tarun Bajaj and others, (2014) 16 SCC 204*, wherein at paragraphs 11, 12 and 15, the Hon'ble Supreme Court dilated upon the meaning of the expression “wilful” and concluded that if two interpretations are possible contempt proceedings would not be maintainable.

(iii) *Zeenath Bivi, Proprietor, M/s.M.V.K.M. Traders, Chennai v. M.Khader Ibrahim and others, (2003) SCC Online Mad 905*, wherein, at paragraphs 86 to 88, a Division Bench of this Court considered the scope of Section 24 of the Trade Marks Act, 1999 and held that the disability enshrined therein would apply to both sets of registered proprietors.



(iv) *Sri M.D.Nanaiah v. K.Nagaraju and others*, 1995 SCC Online

Kar 162, wherein, at paragraphs 28 to 29, the Karnataka High Court concluded that an order under Rule 2A of Order 39 should not be passed unless there is clear proof that the order which is said to be disobeyed was clear and unambiguous. The Karnataka High Court also indicated that the above requirement is even more important when it is an *ex parte* order.

(v) *Food Corporation of India v. Sukh Deo Prasad*, (2009) 5 SCC

665, wherein, at paragraph 38, the Hon'ble Supreme Court held that the burden of proof is on the person who complains of disobedience or breach, and such person has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. The Hon'ble Supreme Court also held that the obligations imposed by the order should be explicit and cannot be inferred on the basis of surmises and suspicions.

(vi) *M/s.Power Control Appliances and others v. Sumeet Machines*

Pvt. Ltd., (1994) 2 SCC 448, wherein at paragraph 41, the Hon'ble Supreme Court held that joint proprietors must use the trade mark jointly for the benefit of all and the same cannot be used in rivalry and in competition with each other.



(vii) *Future Coupons Private Limited and Others v. Amazon. Com NV*

Investment Holdings LLC and others, 2022 SCC Online SC 126, wherein at paragraphs 45 and 46, the Hon'ble Supreme Court examined the scope of Order XXXIX Rule 2-A CPC and concluded that wilful disobedience is in the nature of criminal liability and therefore should be proved to the satisfaction of the court to be both wilful and conscious.

7. The Respondents also point out that the representations of the marks of the Petitioner and the Respondents, as set out in Page 37 of the typed set of papers filed by the Petitioners, was not placed before the Court when orders of interim injunctions were granted as also when the applications for disobedience were originally filed. By drawing reference to the affidavit in support of the application, the Respondents assert that only bills were filed and that such bills do not indicate the nature of the product which was sold. The Respondents also point out that the labels which have been enclosed at pages 189 to 194 of the typed set of papers were not before the Court at the relevant point of time. However, the Applicant pointed out that these labels were brought on record before this Court by filing an additional typed set.



8. The present applications are applications under Order XXXIX Rule 2-A CPC. Therefore, the principal considerations before the Court are whether there was disobedience of the relevant orders and, if so, whether such disobedience was wilful. The scrutiny has to be carried out by keeping the above mentioned aspects in mind. The logical starting point of the inquiry is the 07.11.2007 Order. By such Order, at paragraph 13, this Court held that the family members were registered as joint proprietors of the relevant trade marks. The Court also noticed that the Respondents herein had retired from the partnership firms functioning as Narasu's Coffee Company. After noticing the aforesaid, at paragraph 15, this Court formulated an interim arrangement. Since paragraph 15 is central to this case, the said paragraph is set out in entirety:

"15. In view of the above, a journey into the law relating to infringement or passing off, of a trade mark or copy right, is wholly unnecessary for deciding the dispute on hand. Prima facie, the partnership firms own these trade marks and hence the partners who now constitute these firms will have exclusive right over the marks owned by them. Hence, all the applications are disposed of with the following directions:-

(a) The word marks Narasu's, Narasu's Coffee, Narasu's Delite, Narasu's Udhayam as well as the device mark with a lady sipping coffee from a cup held in her hand enclosed



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within a circle, can be used by the plaintiff in C.S.No.291 of 2007 viz., Narasu's Coffee Company, to the exclusion of the defendants, in respect of coffee beans, coffee powder, chicory powder, roasted coffee, instant coffee and liquid coffee included in Clause 30, subject to any restriction (including disclaimer, if any) that had been imposed under the Certificates of Registration bearing trade mark Nos.337509, 337510, 73371 and 73369. The defendants in C.S.No.291 of 2007 are restrained from using the same word mark and device mark in respect of these goods such as coffee and coffee products.

(b) The word marks Narasu's Power, Narasu's Vetri, Narasu's Wheel and நரசுஸ் with the device of a lady sipping coffee from a cup held in her hand enclosed within a circle and found within a dotted oval shaped outline, may be used by Narasu's Roller Flour Mills in relation to all types of Wheat products including Atta, Maida, Suji, Rough Bran, Bran Flakes, Wheat Atta to the exclusion of Narasu's Coffee Company.

(c) If Narasu's Coffee Company, carries on business in Wheat products, it shall not use the above same or similar word mark and the device mark for those products. Similarly, if

Narasu's Roller Flour Mills carries on business in coffee products, it shall not use the same or similar word mark or device mark in relation to such products."

The Applicant and the Respondents interpret paragraph 15 differently. While the Applicant asserts that paragraph 15(a) recognizes that the Applicant is the registered proprietor of the word marks "Narasu's", "Narasu's Coffee", "Narasu's Delite" and "Narasu's Udhayam" and the Alleged Device Mark of the Applicant, whether used in relation to coffee and coffee products or otherwise, the Respondents interpret the same paragraph 15(a) as restraining them only from using the above mentioned word marks and Alleged Device Mark of the Applicant only in relation to coffee and related products. Therefore, it should be examined whether the interpretation placed on paragraph 15(a) by the Respondents lacks credibility and has been set up only to justify its disobedience of the relevant orders.

9. The last sentence of paragraph 15(a) assumes importance in this context. This Court held that "the defendants in C.S.No.291 of 2007 are restrained from using the same word mark and device mark in respect of these goods such as coffee and coffee products." Further, at paragraph



15(b), the Court held that the Respondents are entitled to use the marks “Narasu's Power”, “Narasu's Vetri”, “Narasi's Wheel” and நரசு with the Alleged Device of the Respondents in relation to all types of wheat products including atta, maida, sooji, rough bran, bran flakes, wheat atta to the exclusion of Narasu's Coffee Company. By paragraph 15(c), Narasu's Coffee Company was restrained from using the word mark and device mark in respect of wheat products. Similarly, Narasu's Roller Flour Mills was restrained from using the word mark and device mark in relation to coffee products. When the three sub-paragraphs of paragraph 15 are read together, it cannot be concluded with any degree of conviction that the interpretation placed on this paragraph by the Respondents lacks credibility. Once it is concluded that the interpretation placed on this paragraph by the Respondents does not lack credibility and is a plausible interpretation, in exercise of jurisdiction under Order XXXIX Rule 2-A CPC, the Respondents are entitled to the benefit of doubt. It remains to be considered whether this constitutes a justifiable defence in respect of the two orders in question.

10. The detailed order passed after inquiry on 15.03.2018 is examined

first. In paragraph 12 of this order, the Court drew reference to the



C.S.No.698 of 2011. Based on these orders, the Court recorded the conclusion that the Respondents were not permitted to use the word mark “Narasu's” in English and the Applicant was not permitted to use the word mark Narasu's in Tamil. Thereafter, the Court proceeded to hold as under:

"In the result, this petition is allowed to the effect that the respondents are hereby restrained by means of an order of temporary injunction from in any manner using the trade mark/word mark "NARASU'S" in any manner other than the manner mentioned in clause (a) and clause (b) of the relief portion in the order dated 07.11.2007 by the Hon'ble High Court, Madras till the disposal of the suit. The parties are directed to bear their respective costs."

On perusal of paragraph 13, it is clear that the Respondents were restrained from using the trade mark/word mark “Narasu's” in any manner other than the manner mentioned in clause (a) and (b) of the relief portion in the 07.11.2007 Order. The said relief portion refers to paragraph 15 of the 07.11.2007 Order. As discussed above, the Respondents construed paragraph 15 as only restraining them from using the word mark and the Alleged Device Mark of the Applicant in relation to coffee and related products. It was previously concluded that the said interpretation is credible and cannot be construed as a device to justify contumacious conduct. As a



the order dated 07.11.2007 and, in fact, expressly limits the relief to what is stated in paragraph 15 (a) and (b) of the 07.11.2007 Order, it cannot be said that the Respondents wilfully disobeyed the order dated 15.03.2018. The *ex parte* order remains to be considered.

11. The *ex parte* order was issued in an application by the Applicant herein to restrain the Respondents from using the word mark / trade mark Narasu's and the Alleged Device Mark of the Applicant in relation to wheat products including vermicilli. After setting out the relief prayed for, the Court drew reference to the 07.11.2007 Order. On such basis, the Court drew the inference that the Respondents were permitted to use the work mark Narasu's in Tamil along with the Alleged Device Mark of the Respondents. The Court also noticed that the petitioner therein was permitted to use the word mark Narasu's in English with the Alleged Device Mark of the Applicant. On such basis, an order of interim injunction as prayed for was granted *ex parte*.

12. The Applicant relies on the fact that the appeal filed against this order was disposed of by refusing to suspend the order. Consequently, the Applicant asserts that this order is liable to be followed, whether right or



wrong, and that the Court cannot examine the correctness of or otherwise of the order in exercise of jurisdiction under Order XXXIX Rule 2-A CPC.

13. If the order dated 17.04.2018 had not referred to the 07.11.2007 Order, the contention of the Applicant would be liable to be accepted. However, it appears that the 07.11.2007 Order was the basis of the order dated 17.04.2018 just as the order dated 15.03.2018 was founded on the 07.11.2007 Order. In effect, all these orders are entirely based on the 07.11.2007 Order.

14. As a corollary, especially bearing in mind the fact that the burden of proof on the Applicant is heavy in contempt jurisdiction, it cannot be concluded that the Respondents committed wilful disobedience of the two orders in question. On the contrary, the Respondents adopted an interpretation of the order of 07.11.2007, which cannot be disregarded or construed as intended to evade liability for disobeying orders of Court. It is another matter that the findings recorded in the 07.11.2007 Order are tentative and only for purposes of interlocutory proceedings. Consequently, upon conclusion of the trial, it is possible that the Applicant's contention may be accepted. However, this remains to be seen.



15. For the reasons set out above, Application Nos.2794, 3647 & 3648 of 2021 are dismissed without any order as to costs. Keeping in mind that several years have passed without these suits being carried to trial, both parties are directed to submit draft issues, if not already submitted, and agree upon and submit a common proposed case management schedule for the expedited conclusion of the trial at least as regards the suits in which pleadings are complete.

16. List the matter on 23.03.2022 for the above purpose.

Sd./- S.K.R.J.,
17/03/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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