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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.08.2022

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

C.S. (Comm. Div) No.132 of 2022 &
O.A Nos.391 & 392 of 2022

M/s.Thalappakatti Naidu Anandha Vilas Biriyan Hotel,
Represented by its authorized signatory,
V.Kamesh (M-42 years)
Having its branch office at Flat No.B3,
New No.17, Old No.18A,
11th Street, Nandanam Extension,
Chennai-600 035.

... Plaintiff

versus

Ummachi Tharavadu Thalappakkatti Biriyan
Elipodu Valiyavilla Road,
Vettamukku, PTP Nagar, Arappuramkku,
Thiruvananthapuram, Kerala-695 006.

... Defendant

Civil Suit is filed under Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Order IV Rule 1 of High Court Original Side Rules, 1956 and Section 134 and 135 of the Trade Marks Act, 1999 seeking judgment and decree on the following terms: (A) Granting a permanent injunction restraining the Defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the Plaintiff Trade Mark and Trading style "Thalappakatti Biriyan Hotel" by using the offending Trade Mark and Trading style "Ummachi Tharavadu Thalappakkatti Biriyan" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiff's Trade Mark "Thalappakatti Biriyan Hotel"; (B) Granting a permanent injunction restraining the Defendant, their men, servants, agents or any one claiming through or under



them from in any manner Passing-off the Plaintiff Trade Mark and Trading style "Thalappakatti Biriyan Hotel" by using the offending Trade Mark and Trading Style "Ummachi Tharavadu Thalapakatti Biriyan" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiff's Trade Mark "Thalappakatti Biriyan Hotel"; (C) Directing the Defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "THALAPPAKATTI" and directing payment of such profits to the Plaintiff by way of damages for Infringement committed by the Defendant; (D) Directing the defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade mark "THALAPPAKATTI" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending Trademark for destruction; and (E) Directing to the Defendant to pay the Plaintiff the costs of the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.Vijayan Subramanian

JUDGMENT

The plaintiff has filed an affidavit of service evidencing receipt of notice by the defendant on 23.07.2022. In addition, the plaintiff has placed on record an affidavit received from the defendant. The said affidavit has been affirmed on behalf of the defendant by Mr.K.A.Abbas. The affidavit discloses that it was affirmed in the presence of a Notary Public at Tiruvananthapuram. In the affidavit, the defendant has stated *inter alia* as under:



“(1) I am the Defendant herein and I am well acquainted with the facts and circumstances of the case. The Defendant hereby confirms that he had already removed the name “Thalappakatti” from his Restaurant Board, Menu Cards and all the Advertisements made through online including Zomato, Swiggy and from all the other online platforms.

(2) The Defendant hereby undertakes not to use the Trademark of the Plaintiff, “Thalapakkati” or any other mark which is similar or Identical to the Plaintiff's Trademark in future.

(3) The Defendant undertakes not to infringe the Plaintiff's Trademark and Trading style “Thalappakatti” by using the offending mark and trading style “Thalapakkati” or any other mark or marks which are similar or deceptively similar to or a colourable imitation.

(4) The Defendant undertakes not to Pass-off the Plaintiff's Trademark and Trading style “Thalappakatti Biriyani Hotel” by using the offending mark and trading style “Thalapakkati Biriyani” or any other mark or marks which are similar or deceptively similar to or a colourable imitation.

(5) The Defendant undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.”



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2. On instructions, learned counsel for the plaintiff states that the plaintiff relinquishes claims made under prayers (C), (D) and (E) of paragraph 37 of the plaint in view of the affidavit submitted by the defendant.

3. In these circumstances, the suit may be decreed in terms of prayers (A) and (B) of paragraph 37 of the plaint by making the affidavit as an integral part of the decree.

4. Accordingly, C.S.(Comm. Div) No.132 of 2022 is decreed in terms of prayers (A) and (B) of paragraph 37 of the plaint by treating the affidavit dated 02.08.2022 as an integral part of the decree. There shall be no order as to costs. Consequently, connected applications are closed.

12.08.2022

Index : Yes/No

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SENTHILKUMAR RAMAMOORTHY, J

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