



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

C.S.(Comm. Div) No.139 of 2022
and
O.A.Nos.411 & 412 of 2022
&
A.Nos.2863 & 2864 of 2022

M/s.Haritha Automation Private Ltd.,
No.10, Gowda Mutt Road
Royapettah, Chennai – 600 014
Rep. by its Director Mr.Anandh Jain

... Plaintiff

vs.

Mr.Mahaveer D Patil
Proprietor M/s.Tushar Enterprises
Gala No.3, 37, Digamber Jain Boarding
Mahavir Nagar, Sangli
Maharashtra 416 416

... Defendant

Civil Suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 CPC Sections 27,28,29, 134 and 135 of the Trade Marks Act, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, No.4 of 2016 to grant judgment and decree of permanent injunction restraining the Defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

claiming through or under them from infringing the registered trademark MAXSELL of the Plaintiff by manufacturing selling and/or distributing money counting machines, UV Detectors, Electronic Safety, Lockers, Electronic Weighing sale and various other products under an almost identical mark MAXVELL with similar colour scheme or any other similar or identical mark and in any other manner whatsoever; permanent injunction restraining the Defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing selling, offering for sale and/or distributing money counting machines, UV Detectors, Electronic Safety, Lockers, Electronic Weighing sale and various other products which would amount to passing of their products as and for the plaintiff's products by using a deceptively similar mark MAXVELL with similar colour scheme, or any other similar or identical mark and in any other manner whatsoever; the defendant be ordered to surrender to the plaintiff for destruction of all lables, cartons, containers, packaging materials, blocks, dyes, prints, screen prints, notices, pamphlets, advertisements, hoardings and other promotional materials bearing the mark MAXVELL which is identical to the plaintiff's registered trademark MAXVELL; pass a preliminary decree in favour of the plaintiff directing the defendants for rendition of their accounts of sales and profits of the impugned goods sold by the defendants under the impugned mark MAXVELL and a final decree be passed in favour of the plaintiff for the amount of profit found



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

to have been made by the Defendants after such accounts are rendered; the defendant be ordered and decreed to pay to the plaintiff a sum of Rs.10,00,000/- as punitive and compensatory damages for committing acts of infringement of trademark and passing off of MAXVELL and to pay costs of the proceedings.

For Plaintiff : Mr.H.Siddarth

For Defendant : Mr.Siddarth Govind

ORDER

In the captioned matter, Mr.H.Siddarth, learned counsel for sole plaintiff-company and Mr.Siddarth Govind, learned counsel for lone defendant are before this Court.

2. Both the aforementioned learned counsel submit that the plaintiff and defendant have settled the captioned main suit out of Court and have reduced the terms of settlement qua a 'Joint Memo of Compromise dated 15.09.2022' [hereinafter 'said MOC' for the sake of convenience and clarity]. Both learned counsel have jointly placed before this Commercial Division said MOC and a scanned reproduction of the same together with docket is as follows:



WEB COPY



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Ordinary Original Civil Jurisdiction)

C.S. (Comm.) No. 139 of 2022

Haritha Automation Private Ltd.
No. 10, Gowdia Mutt Road,
Royapettah,
Chennai 600 014
Rep by its Director Mr. Anandh Jain

...Plaintiff

Vs.

Mr. Mahaveer D Patil
Proprietor, M/s. Tushar Enterprises
Gala No. 3, 37, Digamber Jain Boarding,
Mahaveer Nagar, Sangli,
Maharashtra 415 416

...Defendant

JOINT MEMO OF COMPROMISE ENTERED INTO BETWEEN THE PLAINTIFF
AND THE DEFENDANT UNDER ORDER XXIII RULE 3 OF CIVIL PROCEDURE
CODE

The Plaintiffs and the Defendant humbly beg to submit as follows:

The terms Plaintiff and Defendants shall mean and include their heirs, executors, administrators, successors and assigns of each party.

1. The Plaintiff is a leading OE supplier of financial equipment products such as Money counting machines, UV Detectors, Electronic Safety Lockers, Electronic Weighing Scales in banking and retail industry selling its products under the popular brand name MAXSELL in distinctive label. The mark MAXSELL is depicted on all the products supplied by the Plaintiff in a distinctive label having unique artistic features.

15 SEP 2022

Noted & Registered
At Serial Number
1822
2022
Society Reg. No. 832

GOVT. OF INDIA

For Haritha Automation Private Limited
Anandh Jain
Director



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

WEB COPY

2. The Plaintiff has also obtained registration for the mark MAXSELL under Class 9, the said class being the relevant with regard to various types of currency machines and weighing scale machines and therefore by virtue of registration and proprietary rights, the Plaintiff has exclusive statutory rights in respect of the trademark "MAXSELL".

3. Around December, 2021, the Plaintiff came to know that the Defendant who was once their authorised distributor/channel partner is selling similar products viz. currency counting machines under a deceptively similar mark MAXVELL. The defendant made minor insignificant changes and merely misspelt the Plaintiff's registered trademark MAXSELL to arrive at the deceptively similar mark MAXVELL. Further, the Defendant had also blatantly copied the manner of representation existing in the design of the packaging, labels and overall trade dress of the Plaintiff's product bearing the trademark MAXSELL.

4. A bare perusal of the side-by-side pictures of the mark of the Plaintiff and the impugned mark of the Defendant is provided below for reference

MAXSELL

Maxvell

Plaintiff's Mark

Defendant's Mark

5. On coming to know that the Defendant had slavishly imitated the Plaintiff's mark MAXSELL and were using the impugned mark MAXVELL in respect of their business and on identical products, the Plaintiff had immediately issued a Dealership Cancellation Letter dated 20.10.2021 to the Defendant terminating the dealership with immediate effect. Further, on account of such illegal use of their mark MAXSELL, they had issued a cease and desist notice dated 07.01.2022 to the

For Kallitha Automation Private Limited

[Signature]
Director

2



[Signature]



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

WEB COPY

Defendant reiterating the proprietary rights of the Plaintiff in the mark MAXSELL and demanded that the Defendant restrain from using the deceptively similar marks MAXVELL. In response to the cease and desist notice dated 07.01.2022, the Defendant had issued a reply notice dated 04.05.2022 refusing to comply with the requisitions made by the Plaintiff.

In view of the foregoing, the Plaintiff had filed CS (Comm.) No. 139 of 2022 seeking reliefs of permanent injunction restraining the Respondent from committing infringement of trademark and passing off and for other reliefs. The Plaintiff had also filed OA No. 411 and 412 seeking interim reliefs and this Hon'ble Court vide its order dated 21.07.2022 was pleased to grant ad interim injunction in favour of the Plaintiff and had also ordered notice on the Defendant.

7. In terms of the order dated 21.07.2022 in OA No. 411 and 412, the Plaintiff had taken out notice on the Defendant. On receipt of the notice, the Defendant had approached the Plaintiff and undertook to negotiate and settle the suit. Consequent thereto, negotiations took place between the Plaintiff and the Defendant and after negotiations and discussions, the Defendant has agreed and consented that they would refrain from using the mark MAXSELL of the Plaintiff.

8. The Defendant states that in furtherance of the consent given by them to the Plaintiff, they have removed their mark MAXVELL from their existing stocks, website, labels, cartons, containers, packaging materials, blocks, dyes, prints, screen prints, notices, pamphlets, advertisements, hoardings, and other promotional materials including commercial listings on websites which is deceptively similar to the Plaintiff's registered trademark MAXSELL.

9. The Defendant hereby undertakes that they will not infringe, directly or indirectly, through their associates, sister concerns, dealers, manufacturer, distributors, retailers or through servants, agents, stockiest, assigns and

For Hartha Automation Private Limited


Director







C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

WEB COPY

representatives and all others acting for and on their behalf, any of the Trademarks of the Plaintiff including the mark "MAXSELL" in future.

10. In view of the , the Plaintiff and the Defendant hereby submits to a judgment and decree as prayed for in terms of prayers (a) and (b) in para 34 of the plaint, follows:-

- a) A permanent injunction restraining the Defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from infringing the registered trademark MAXSELL of the Plaintiff by manufacturing, selling, and/or distributing money counting machines, UV Detectors, Electronic Safety Lockers, Electronic Weighing Scale and various other products under an almost identical mark MAXVELL with similar colour scheme or any other similar or identical mark and in any other manner whatsoever;
- b) A permanent injunction restraining the Defendant, themselves, its proprietor/directors/partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing money counting machines, UV Detectors, Electronic Safety Lockers, Electronic Weighing Scale and various other products which would amount to passing off their products as and for the Plaintiff's products by using a deceptively similar mark MAXVELL with similar colour scheme or any other similar or identical mark and in any other manner whatsoever;

For Haidhe Automation Private Limited

A. Sankar
Director



[Signature]



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

WEB COPY

11. Further, in view of the above undertaking, the Plaintiff agrees to give up other reliefs sought by them against the Defendant in para 34 (c), (d) and (e), and (g) as aforesaid.

12. The parties shall bear their own costs.

In view of the foregoing, it is jointly prayed by the Plaintiff and the Defendant that this Hon'ble Court may be pleased to record the terms of this Joint Memo of Compromise and decree the suit in terms of the same and pass such further or other orders that this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case and thus render justice.

Dated at Chennai/ ^{SANGLI} on this the 15th day of September 2022.

For Haritha Automation Private Limited
Plaintiff
[Signature]
Director

Defendant
[Signature]

[Signature]
Counsel for Plaintiff

[Signature]
Counsel for Defendant

15 SEP 2022

BEFORE ME,
[Signature]
Adv. P. *[Signature]* Sheth
Advocate for the High Court of India
Mumbai-Sangli, Dist. Sangli

Solemnly affirmed before me by
Shri Mahavir Dharmapal Patel
Who is the *[Signature]* to me by
Shri *[Signature]*
whom personally known.

Notary & Registrar
At Serial Number 1822
Sheth 2022
Notary Reg. No. 832



WEB COPY



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

(13)

**IN THE HIGH COURT OF
JUDICATURE AT MADRAS**
(Commercial Jurisdiction)
C. S. (COMM.) NO. 139 OF 2022

Haritha Automation Private Limited
Plaintiff

vs.

Mahaveer D Patil
Proprietor, M/s Tushar Enterprises
Defendant

MEMO OF COMPROMISE

26828



M/s M Sheela
H Siddarth
M Prarthana
(Counsel for Plaintiff)

98403 0408
M/s Siddarth Govind
G Elango
(Counsel for Defendant)



WEB COPY



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

3. Both learned counsel, on instructions, submit that the parties would abide by the terms of the aforesaid MOC and request for the captioned suit to be decreed in terms of said MOC. Both learned counsel submit that the parties, who have signed said MOC, have the authority to do so.

4. To be noted, plaintiff is a Company and the defendant is a proprietary concern. This Court is informed that Proprietor Mr.Mahaveer D.Patil has signed the said MOC. Both the learned counsel request for dispensing with the presence of the parties for recording said MOC.

5. Considering the nature of the matter and contents of said MOC, the request is acceded to.

Captioned suit is decreed in terms of said MOC, which shall form part of judgment and decree. Consequently, all captioned applications are disposed of as closed. There shall be no order as to costs.

22.09.2022

gpa



WEB COPY



C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

M.SUNDAR.J.,

gpa

C.S.(Comm. Div) No.139 of 2022
and O.A.Nos.411 & 412 of 2022
& A.Nos.2863 & 2864 of 2022

22.09.2022