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C.S.(Comm. Div.)No.158 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2022

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THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm. Div.) No.158 of 2022

and

A.No.3442 of 2022

and

O.A.Nos.493 & 494 of 2022

in

C.S.(Comm. Div.) No.158 of 2022

1.Mr.A.D.Padmasingh Isaac
Proprietor, Aachi Spices and Foods
Old No.4, New No.181/1
6th Avenue, Thangam Colony
Anna Nagar, Chennai – 600 040.

2.M/s.Aachi Masala Foods Private Limited
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai – 600 040
Represented by its Director
Mr.Ashwin Pandian.

.. Plaintiffs

Vs.

D.B.Halingali & Co.,
A.P.M.C. Yard,
Jamkhandi – 587 301.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Original



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Side Rules and Order VII Rule 1 of Civil Procedure Code, 1908 read with Sections 27(2), 29, 134 and Section 135 of the Trade Marks Act, 1999 praying for the following reliefs:

a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale

using the trademark **ARCHI** &  or any other similar Trade Mark name or similar sounding expression in any media or the red oval device in relation to any products and use the same on any pouches, packets of candies or confectionaries or any other goods and use the same in name board, invoices, letter heads and visiting cards or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark "**AACHI & **" or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark No. 838786, 1731915, 3370962 and 3371000 or in any manner infringe the Plaintiffs' registered Trademark;

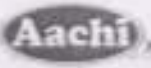
b) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale

using the trademark **ARCHI** &  or any other similar Trade Mark name or similar sounding expression in any media or the red oval device as shown in Document No.2 by using any other trade mark



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which is in any way, phonetically, visually or deceptively similar to the Plaintiffs' Trademark '**AACHI & **', as shown in Document No.1 relation to above mentioned products and use the same in any pouches, packets of candies or confectionaries or any other goods or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually and deceptively similar to the Plaintiffs' Trademarks '**AACHI & **', as shown in Document No.1 in any manner pass off the Plaintiffs goods;

c) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials

containing/bearing the name **ARCHI & ** or other deceptively similar trade mark used in the pouches and packets in respect of their products;

d) directing the Defendants to render an account of profits made by them by the use of the impugned Trademark **ARCHI & ** on the goods referred and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts;



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e) directing the Defendant to pay to the Plaintiffs the costs to the suit, and

f) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.T.Hemalatha

For Defendant : Mr.T.Jeyanthi Mani Selvam

J U D G M E N T

This judgment/order will now dispose of the captioned main suit and the captioned three applications.

2.To be noted, the captioned matter is listed under the cause list caption 'FOR REPORTING SETTLEMENT'.

3.Ms.T.Hemalatha, learned counsel for the two plaintiffs and Mr.T.Jeyanthi Mani Selvam, learned Counsel on Record for the sole defendant are before this Commercial Division. Both learned counsel submit that parties to the captioned main suit have since settled the *lis*



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and they have reduced the terms of settlement to writing vide a
'Memorandum of Compromise dated 12.10.2022' [hereinafter 'said MOC'
for the sake of convenience and clarity]. A scanned reproduction of said
MOC (together with docket) is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

C. S. (Comm. Div.) No. 158 of 2022

1. Mr. A. D. Padmasingh Isaac
Proprietor, Aachi Spices and Foods
Old No. 4, New No. 181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040

2. M/s. Aachi Masala Foods Private Limited
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai - 600 040
Represented by its Director
Mr. Ashwin Pandian

Plaintiffs

Versus

D. B. Halingali & Co.,
A. P. M. C. Yard,
Jamkhandi - 587 301

Defendant

MEMORANDUM OF COMPROMISE BETWEEN THE PLAINTIFFS AND THE
DEFENDANT

1. The Defendant agrees that the 1st Plaintiff is the Registered Proprietor of the Trademark **AACHI** in word and various device registrations,

2. The Defendant agrees that the 1st Plaintiff is the prior user of the Trademark **AACHI** and the 2nd Plaintiff is its licensee.

For Aachi Spices and Foods Aachi Masala Foods Pvt. Ltd.

Proprietor

Director

1st Plaintiff

2nd Plaintiff

Defendant

D. B. HALINGALI & CO.
APMC Yard, JAMKHANDI-587301
Dist. Bagalkot, (Karnataka)
0837921008



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3. The Plaintiffs and the Defendant have agreed to compromise the matter in the following terms:

4. The terms Plaintiffs and Defendant shall mean and include its heirs, executors, administrators, successors and assigns of each party.

5. The Defendant submit to a Judgment and decree as prayed for in terms of prayers [a] & [b] of para 38 of the Plaint for

a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the

trademark **ARCHI** &  or any other similar Trade Mark name or similar sounding expression in any media or the red oval device in relation to any products and use the same on any pouches, packets of candies or confectionaries or any other goods and use the same in name board, invoices, letter heads and visiting cards or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark "AACHI &  " or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark No. 838786, 1731915, 3370962 and 3371000 or in any manner infringe the Plaintiffs' registered Trademark;

For Aachi Spices and Foods

Aachi Masala Foods Pvt. Ltd.

Proprietor

Director

1st Plaintiff

2nd Plaintiff

Defendant

D. B. HALINGALI & CO.
APMC Yard, JAMKHANDI-587301
Dist. Bagalkot, (Karnataka)
Udyam No. 9902227292, 0015321008



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b) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the

trademark ARCHI &  or any other similar Trade Mark name or similar sounding expression in any media or the red oval device as shown in Document No.2 by using any other trade mark which is in any way, phonetically, visually or deceptively similar to the Plaintiffs' Trademark 'AACHI & ' as shown in Document No. 1 relation to above mentioned products and use the same in any pouches, packets of candies or confectionaries or any other goods or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually and deceptively similar to the Plaintiffs' Trademarks 'AACHI & ' as shown in Document No.1 in any manner pass off the Plaintiffs goods;

6. The Defendant undertakes to withdraw any application filed for registration of the trademark as shown in Document No 2 with respect to or other deceptively similar trade mark used in the pouches and packets, bottles in respect of their products the impugned trademark /name which is in any manner deceptively or phonetically confusingly similar to the Plaintiffs Trademark/name AACHI or in any other manner.

Aachi Spices and Foods Aachi Masala Foods Pvt. Ltd.

Proprietor

1st Plaintiff

Director

2nd Plaintiff

Defendant

D. B. HALINGALI & CO.
APMC Yard, JAMKHANDI-587301
Dist. Bagalkot. (Karnataka)
Mobile No. 9902227292, 9035921008



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7. The Defendant undertakes not to oppose the Applications filed by the Plaintiffs for the registration of the trademark **AACHI**.

8. The Defendant shall not use or make any application for registration of the Trademark **ARCHI** &  or any other similar Trade Mark name or similar sounding expression in any media or the red oval device as shown in Document No. 2 by using any other trade mark or its formative marks in future.

9. The Defendant shall not adopt any of the word or visual features of the Plaintiffs' Trademark **AACHI** or any mark deceptively similar thereto in future.

In view of the decree for permanent injunction, the Plaintiffs have given up the relief contained in prayers [c], [d] & [e] in para 38 of the suit including cost of the suit.

Dated at Chennai on this the th 12 day of October 2022

or Aachi Spices and Foods **Aachi Masala Foods Pvt. Ltd.**

Proprietor

Director

1st Plaintiff

2nd Plaintiff

D. B. HANINGALI & C
APMC Yard, JAMKHANDI-587
Dist. Bagalkot, (Karnataka)
Mobile No. 9902227292, 9938921

Counsel for Plaintiffs

Counsel for Defendant



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List Case on 18/10/2022

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IN THE HIGH COURT OF JUDICATURE AT
MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

C. S. (Comm. Div.) No. 158 of 2022

Mr. A. D. Padmasingh Isaac
Proprietor, Aachi Spices and Foods and Anr.
Plaintiff;

Vs

D. B. Halingali & Co.,
Defendant

MEMORANDUM OF COMPROMISE BETWEEN
THE PLAINTIFFS AND THE DEFENDANT



29266
M/S. C. DANIEL
GLADYS DANIEL
V. REVATHY
J. VENNILA
T. HEMALATHA
COUNSEL FOR PLAINTIFFS
MOBILE NO: 9884441794

MR. T. JEYANTHI MANI SELVAM
COUNSEL FOR DEFENDANT
MOBILE NO: 7845510047



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4.To be noted, in the plaint, the plaintiffs in paragraph 2 have averred that they are not aware of the constitution of the defendant. However, now learned counsel for defendant submits that the defendant is a proprietary concern. Learned counsel submits that Mr.Dharmanna B. Halingali is carrying on business in the name and style of 'D.B.Halingali & Co.,' as proprietor. A scanned reproduction of vakalatnama of the defendant as available in this case file (together with docket) is as follows:



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1. Mr. A. D. Padmasingh Isaac
Proprietor, Aachi Spices and Foods
Old No. 4, New No. 181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040
2. M/s. Aachi Masala Foods Private Limited
No.1926, 34th Street, I Block,
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Chennai - 600 040
Represented by its Director
Mr. Ashwin Pandian

Plaintiffs

Versus

D. B. Halingali & Co.,
A.P.M.C. Yard,
Jamkhandi - 587 301

Defendant

I, Dharmanna B. Halingali, Proprietor of D. B. Halingali & Co., the Defendant herein, do hereby appoint and retain Mr. T. Jeyanthi Mani Selvam, Advocate as our Counsel to appear for us in the above case and on our behalf to defend the same and all proceedings therein before and after decree. They are also authorized to depute other Counsel to act on their behalf and also in appeal under clause 15 of the letters patent and application for review Judgment.

Dated at Chennai on this the 12th day of October 2022

[Signature]
Counsel for Defendant

[Signature]
D. B. HALINGALI & CO.
APMC Yard, Jamkhandi-587301
Dist. Bagalkot. (Karnataka)
Mobile No. 9902227292, 9035921009

ACCEPTED : The address for services of all notices and processes on the Defendant is that of his Counsel, Mr. T. Jeyanthi Mani Selvam, Advocate at 80, Law Chambers, Madras High Court Campus, Chennai - 600 104.



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MS3 List Case 18/10/22

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C. S. (Comm. Div.) No. 158 of 2022

Mr. A. D. Padmasingh Isaac
Proprietor, Aachi Spices and Foods and Anr.
Plaintiffs

Vs

D. B. Halingali & Co.,

Defendant



29370

Noted
Sentry
For
Counsel for Plaintiff

DANIEL & GLADYS
ADVOCATES
111 Floor, Y.M.C.A. Building
223, N.S.C. Bose Road, Chennai-600 001.
Ph : 25384674 Fax : 25391006

Presented on 14/10/2022

14/10/2022

MR. JEYANTHI MANI SELVAM
EN.No. 4456/2019

COUNSEL FOR DEFENDANT
MOBILE NO: 7845510047



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5. Adverting to the signature in the vakalatnama, both learned counsel submit that the same person i.e., Mr. Dharmanna B. Halingali who has executed the vakalatnama has executed said MOC also.

6. As regards the presence of the parties, learned counsel on both sides submit that there is some difficulty for the respective parties (feeling under the weather as regards plaintiffs and difficulty in traveling as regards defendant). They submit that said MOC was signed in the presence of each other and on this basis, both counsel request for dispensing with presence of parties. Owing to the facts, circumstances of the case on hand, trajectory the matter has taken and considering contents of said MOC, this dispense with prayer is acceded to.

7. Both learned counsel also request for a compromise decree in the main suit in terms of the said MOC. This request is also acceded to.

8. Captioned main suit i.e., C.S.(Comm. Div.)No.158 of 2022 is decreed in terms of said MOC which shall now form part of the judgment



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and decree. Consequently, captioned three applications are disposed of as closed. There shall be no order as to costs.

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M.SUNDAR, J.

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C.S.(Comm. Div.) No.158 of 2022
and
A.No.3442 of 2022
and
O.A.Nos.493 & 494 of 2022
in
C.S.(Comm. Div.) No.158 of 2022

Dated : 18.10.2022