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C.S.(Comm.Div.) No.187 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

C.S. (Comm.Div.) No.187 of 2022

&

O.A.Nos.561 and 562 of 2022

in

C.S. (Comm.Div.) No.187 of 2022

M/s.Vasanta Bhavan Hotels India Private Limited

Represented by its Director

Mr.Anand Krishnan (M-35 years)

Having its office at No.34

Developed Plots (South Phase)

Industrial Estate, Guindy, Chennai – 600 032

..Plaintiff

Vs.

Salem Sree Vasantha Bhavan

No.66/6, Indira Nagar

Bangaluru By-pass

State Bank Colony

opposite to Gokulam Speciality Hospital

Swarnapuri Annexe, State Bank Colony

Narasothipatti, Salem, Tamil Nadu – 636 004

..Defendant



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Prayer:

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This Civil Suit is preferred under Order VII Rule 1 of CPC read with Order IV Rule 1 of High Court O.S. Rules and Sections 134 and 135 of the Trade Marks Act, 1999 praying for judgment and decree

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 “VASANTHA BHAVAN” by using the offending Trade Mark and Trading Style “Salem Sree Vasantha Bhavan” or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiffs Trade Mark “VASANTHA BHAVAN”.

B)Granting a permanent injunction restraining the Defendant their men, servants, agents or anyone claiming through or under them from in any manner Passing off the Plaintiff Trade Mark and Trading Style “VASANTHA BHAVAN” by using the offending Trade Mark and Trading Style “Salem Sree Vasantha Bhavan” 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 “VASANTHA BHAVAN”.

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 “Salem Sree Vasantha Bhavan” and directing payment of such profits to the Plaintiff by way of damages for infringement committed by the Defendant.



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D) Directing the defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade Mark “Salem Sree Vasantha Bhavan” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes, brochures, printing blocks etc., bearing the offending Trademark for destruction.

E) Directing 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 : Ms.Preetha Natarajan

For Defendant : Mr.S.Kishore Kumar

J U D G M E N T

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

2. This judgment / order has to be read in conjunction with and in continuation of earlier proceedings made in the listings on 13.10.2022, 27.10.2022 and 14.11.2022 which read as follows:

' Proceedings dated 13.10.2022



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In these proceedings parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 22.09.2022.

3. Today, Ms.Preetha Natarajan, learned counsel on record for sole plaintiff and Mr.S.Kishore Kumar, learned counsel for the lone defendant are before this Commercial Division.

4. It is submitted by both sides that it is possible to give a closure to the matter if it is listed after Diwali vacation. Request acceded to.

5. Interim order already granted by Hon'ble predecessor Judge on 01.09.2022 and extended on 15.09.2022 and 22.09.2022 (operating till today) to continue until next listing.

List on 27.10.2022.'

Proceedings dated 27.10.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.10.2022.

2. In these proceedings also, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Today also, Ms.Preetha Natarajan, learned counsel on record for sole plaintiff and Mr.S.Kishore Kumar, learned



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counsel on record for lone defendant are before this Commercial Division.

4. Mr.S.Kishore Kumar, learned counsel on record for lone defendant, advertng to earlier proceedings dated 13.10.2022 submits that if further time is granted, a closure to the main suit may be possible. To be noted, learned counsel requests for two weeks time. Request acceded to.

5. Interim order already granted by Hon'ble predecessor Judge on 01.09.2022, extended on 15.09.2022, 22.09.2022 and 13.10.2022 (operating till today) to continue until next listing.

6. List on 10.11.2022.'

Proceedings dated 14.11.2022

Ms.Roshini, learned counsel on record for sole plaintiff and Mr.S.Kishore Kumar, learned counsel on record for lone defendant are before this Commercial Division.

2. At request of both sides, list the captioned matter under the cause list caption 'FOR REPORTING SETTLEMENT' day-after-tomorrow. List on 16.11.2022.

3. Interim order already granted by this Commercial Division is extended until next listing.'



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3. Today, Ms.Preetha Natarajan, learned counsel on record for sole plaintiff and Mr.S.Kishore Kumar, learned counsel for lone defendant are before this Commercial Division.

4. Adverting to aforementioned earlier proceedings, both learned counsel submit that the defendant has since filed a notarized affidavit dated 08.11.2022 and supporting documents in the form of typed-set of papers dated 09.11.2022.

5. A scanned reproduction of the aforementioned affidavit dated 08.11.2022 (together with docket) is as follows:



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

C.S. No.187 of 2022

M/s.Vasanta Bhavan Hotels India Pvt. Ltd.
Represented by its Director
Mr.Anand Krishnan (M - 35years)
Having its Office at No.34,
Developed Plots (South Phase)
Industrial Estate, Guindy, Chennai - 600 032.

... Plaintiff

-VS-

Salem Sree Vasantha Bhavan
No.66/6, Indra Nagar
Bengaluru By-pass
State Bank Colony
Opposite to Gokulam Specialty Hospital
Swamapuri Annexe, State Bank Colony
Karasothipatti, Salem
Tamilnadu 636 004.

... Defendant

AFFIDAVIT FILED BY THE DEFENDANT

1. K.Thavaman, Son of Kangu Reddy, Hindu, aged about 50 years, Proprietor of Hotel Salem Sree Shivasakthi Bhavan (previously having name as Salem Sree Vasantha Bhavan), having address at No.73/53, Indira Nagar State Bank Colony, Salem 636 004, do hereby solemnly affirm and sincerely states as follows:-

1. I respectfully submit that I am the proprietor of the Defendant Hotel and as such I am well acquainted with the facts of the case.
2. I respectfully submit that I have been engaged in the business of running a small tiffin centre from the year 2015 in the name and style of "Salem Sree Vasantha Bhavan" in memory of my beloved mother named Vasantha. While so, in the month of April 2022, I received a legal notice from the Plaintiff stating that I am using their Trademark of



For SALEM SREE SHIVASAKTHI BHAVAN (VEG)

Proprietor



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"Vasantha Bhavan" in relation to my business and calling me to restrain from using the same. To the above said legal notice I replied to the plaintiff by way of reply notice dated 28.04.2022 stating that I am running above said small tiffin centre in the name and style of "Vasantha Bhavan" using my mother's name Vasantha and as such there is no infringement by me in respect to the statutory rights of trademark of the plaintiff. Eventhough the above said reply notice has been received by the plaintiff they have instituted the present suit without any basis and obtained an ad interim injunction order dated 01/09/2022 against me by restraining to use the mark of "Vasantha Bhavan" in my trading business. In compliance of the said order of this Hon'ble court I immediately removed the name board of my shop named "Salem Sree Vasantha Bhavan" and further decided to change the name of my tiffin centre to "Salem Sree Shivasakthi Bhavan" as I strongly believe that my goodwill is based only on the quality of food I serve and also, I am doing a very petty business in the said location. Therefore I have taken steps to change the name of my tiffin centre from "Salem Sree Vasantha Bhavan" to "Salem Sree Shivasakthi Bhavan" and also obtained FSSAI license dated 12/09/2022 from the concerned authorities. I am herewith respectfully submitting the photographs and the documents with respect to name change of the Defendant centre along with this Affidavit.

3. I humbly submit that my previous hotel name "Salem Sree Vasantha Bhavan" has not infringed the Plaintiff's trademark by any means and also at present I am not carrying out business infringing the rights of the plaintiff's and as such the present suit in C.S. No.187 of 2022 is abuse of process of law and is liable to be dismissed.

Hence, it is most respectfully prayed that this Hon'ble Court may be pleased to record this Affidavit and pass such suitable order.



For SALEM SREE SHIVASAKTHI BHAVAN (VEE

Proprietor



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other orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

For SALEM SREE SHIVASAKTHI BHAVAN (VEG)

[Signature]
Proprietor

Solemnly affirmed at Salem
on this the 08th day of November, 2022
after the contents of this affidavit
were read out and explained to the
deponent in Tamil by me and after having
understood the same signed his name
in my presence.

BEFORE ME,

[Signature] 08/11/2022
E.K. SRINIVASAN, B.A., B.L.,
ADVOCATE & NOTARY PUBLIC
#12, SUNDARA VINAYAGAR KOIL ST,
CHENNAI - 600 021.
Mob : 9840637838
Notary Public, Chennai





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

C.S. No.187 of 2022

M/s.Vasanta Bhavan Hotels India Pvt.
Ltd. Represented by its Director
... Plaintiff

-vs-

Salem Sree Vasantha Bhavan
Narasothipatti, Salem
... Defendant



**AFFIDAVIT FILED BY THE
DEFFENDANT**

*R. Rathi
21/11/2022
Registration 10/1/2022*

M/s.C.Santhosh Kumar
L.Poovendra Perumal &
S.Kishore Kumar



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6. Adverting to the aforementioned affidavit, learned counsel for plaintiff submits on instructions that the contents of the affidavit insofar as it relates to change of name from 'Salem Sree Vasantha Bhavan' to 'Salem Sree Shivasakthi Bhavan' and change of FSSAI license are correct. Saying so, learned counsel on record for plaintiff has made an endorsement in the case file and a scanned reproduction of the same is as follows:

I have an instruction
to ~~for~~ ^{frug} the prayers
under Para 36 (C,D,E)
of Plaintiff. This Honble
Court ^{may} pass an order
recording the affidavit
filed by the Defendant
on 8/11/2022.

NP:
Counsel for
Plaintiff

D/c
ms
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7. To be noted, the prayer paragraph in the plaint is Paragraph 36 and the same reads as follows:

'36. The Plaintiff therefore prays for judgment and decree:

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 "VASANTHA BHAVAN" by using the offending Trade Mark and Trading Style "Salem Sree Vasantha Bhavan" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiffs Trade Mark "VASANTHA BHAVAN".

B)Granting a permanent injunction restraining the Defendant their men, servants, agents or anyone claiming through or under them from in any manner Passing off the Plaintiff Trade Mark and Trading Style "VASANTHA BHAVAN" by using the offending Trade Mark and Trading Style "Salem Sree Vasantha Bhavan" 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 "VASANTHA BHAVAN".

C) Directing the Defendant to render a true and faithful account of the profits earned by them through the sale of food



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products bearing the offending trade mark “Salem Sree Vasantha Bhavan” 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 “Salem Sree Vasantha Bhavan” 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.

E) Directing 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.'

8. Now that prayers (C), (D) and (E) have been given up by the plaintiff, prayers (A) and (B) stand answered to the benefit of the plaintiff in the light of the aforementioned affidavit dated 08.11.2022 filed by the defendant. If the stated position of the defendant and confirmation of the stated position by the plaintiff are recorded that would draw the curtains on the captioned matter.



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Captioned main suit is disposed of as closed recording the stated position of both sides. Consequently, captioned applications are closed.

There shall be no order as to costs.

16.11.2022

Speaking Order/Non-speaking Order
Index: Yes/No

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