



WEB COPY

**A.Nos.567 and 568 of 2022
in CS.(Comm.Div.)No.190 of 2022**

C. SARAVANAN, J.,

The applicant/plaintiff secured an exparte injunction from this Court on 02.09.2022 in both the applications for interim order to restrain the respondent from using the offensive trademark and their style "Vasantha Bhavan" interms of prayers in the respective applications.

2. The prayers in the respective applications reads hereunder :-

(i) A.No.567 of 2022 is prayed to grant an order of Interim injunction restraining the defendant/respondent, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff/applicant Trade Mark and Trading style "VASANTA BHAVAN" by using the offending Trade Mark and Trading style "VASANTHA BHAVAN" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff's/applicant's Trade Mark "VASANTA BHAVAN".



WEB COPY



(ii) A.No.568 of 2022 is prayed for prayed to grant an order of Interim injunction restraining the defendant/respondent, their men, servants, agents or anyone claiming through or under them from in any manner passing-off the plaintiff/applicant Trade Mark and Trading style "VASANTA BHAVAN" by using the offending Trade Mark and Trading style "VASANTHA BHAVAN" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff/applicant Trade Mark "VASANTA BHAVAN".

3. The applicant/plaintiff used to have issued a legal notice prior to institution of present suit on 26.03.2022 and thereafter proceeded to file the suit on 29.08.2022. The respondent has not replied to the same, the reasons given in the counter by the respondent is that though notice was received by the respondent, on receipt of the same and got in touch with the applicant/plaintiff. It is informed that they have also issued notices to many persons with regard to using of name "Vasanta Bhavan" and earlier informed by Mr.Jayaprakash, the associate of one Mr.Ravi, who is one of the Director of the applicant's company and there is no further action taken on the side of



WEB COPY

the respondent. It is therefore, the case of the respondent that suppressing the above the applicant/plaintiff has obtained an interim injunction.

4. That apart, it is submitted that the applicant had mis-represented the fact that the respondent has been using the word "Vasantha Bhavan" since 1983, through the predecessor namely Mr.V.Selvaraj. It is submitted that earlier the partnership firm was leading from 01.10.1983 and the said partnership firm has also received registration before the Regional Commissioner, Employees Provident Funds, Tamil Nadu and Pondicherry States and the issue relating to allotment of TAN number was also allotted to the respondent by the Income Tax Department on 05.05.1998 and the issue was taken up to the Sales Tax Appellate Tribunal in TA.No.563 of 1995 and TMP.No.601 of 1995 for the assessment year 1992-1993.

5. It is submitted that the hotel business "Vasanta Bhavan" was started by late Shri.A.Muthukrishnan who is the relative to the respondent as well. The further case of the respondent is that late Shri.A.Muthukrishnan had himself helped the respondent in setting up its business in several ways. The suit has been filed, as if the respondent have started up business all of a



WEB COPY

sudden to infringe the registered trade mark of the applicant/plaintiff. It is further submitted that there was a dispute between the partners of the respondent partnership concern. The dispute between the partners of the aforesaid firm was mediated by late Shri.Muthukrishnan and it is he who brokered a peace between the partners and a settlement was arrived between the members of the firm. In this connection, a reference is made to the Settlement Memo dated 29.05.2011, signed in the presence of late Shri.Muthukrishnan/founder/predecessor to whom the applicant/plaintiff had placed their rights.

6. On behalf of the applicant/plaintiff, the learned Senior Counsel has drawn to the attention to the registration of the word "Vasanta Bhavan" under Clause 43 vide TM.No.5045270. It is submitted that the trade mark has been used since 1974 (30.10.1974). It is submitted that the device of "Namma Veedu Vasanta Bhavan" was registered vide TM.No.2272730 under Clause 43 where in a user has been claimed since 07.01.2003 and that the word "Namma Veedu Vasanta Bhavan" has been in use since 1974. It is submitted that in the teeth of registrations obtained by the applicant/plaintiff, it is not open for the respondent to use the offending mark for their hotel business.



WEB COPY

7. That apart, the learned Senior Counsel also submitted that the firm was dissolved in the year 2011 i.e., on 31.01.2011, the partners have clearly admitted that there is no goodwill and therefore, only the applicant/plaintiff has enjoyed the goodwill in the eyes of the consumers in entirety.

8. Considered the arguments advanced by the learned senior counsel appearing for the applicant/plaintiff and the learned counsel appearing for the respondent/defendant and perused the materials available on record.

9. In both the applications, the applicant has obtained two registrations under clause 43 as detailed above. The respondent also not denied that the applicant/plaintiff are entitled to the registration of the trade mark.

10. The facts on record prima facie indicate the mark was adopted by late Shri.K.Muthukrishnan during his lifetime as is evident from the paper



WEB COPY

advertisement made during the year 1974.

11. On the other hand, the documents filed by the respondent/defendant also confirms that the word "Vasantha Bhavan" was used by them not only in Gingee but also in Arni and the business in Gingee which was in the hands of the predecessors was continued by the respondent/defendant. The documents filed by the respondent/defendant also confirms that the severe statutory proceedings have been initiated against the respondent/defendant by the statutory authorities when the word "Vasantha Bhavan" has been used and therefore it cannot be straight away inferred that the respondent/defendant has started using the mark/word "Vasantha Bhavan" only recently. The user of the respondent/defendant is also prior to the trademark application filed by the applicant/plaintiff for registration of the respective trade marks in the year 2012.

12. That apart, the documents filed by the respondent acknowledging the receipt of Rs.10,000/- and Rs.40,000/- to the Chennai Hotel Association on 21.05.2021, bears the signature of Mr.Ravi who is the Director/son of Director of the applicant/son of late Shri.Muthukrishnan.



WEB COPY

Therefore, it cannot be construed straight away that the applicant/plaintiff will be entitled to the interim injunction against the respondent as they have been using in their business since 1983. The facts also indicate that the business that was carried on by the respondent's predecessor was carried after dissolution of partnership deed on 31.01.2011, after a deed of reconstitution of firm was made on 27.12.2012.

13. Therefore, I do not find any reason to continue the interim injunction which has been granted by this Court on 02.09.2022. At the same time the adoption of legend "V" above the word "Vasanth Bhavan" (வஸந்தபவன்) by the respondent/defendant appears to be similar to the legend adopted by the applicant/plaintiff which is also part of the registered trade mark, use of the aforesaid mark may give an indication to the consumers that both the applicant/plaintiff and the respondent/defendant are connected with each other.

14. Under these circumstances, I am inclined to vacate the interim



WEB COPY

order passed by this Court on 02.09.2022. The respondent/defendant is however directed to remove the legend "V" above the word "Vasantha Bhavan"(வஸந்தபவன்) and in all the communications and business transactions, including the board and advertising materials. The above exercise shall be carried out by the respondent/defendant within a period of thirty days from the date of receipt of a copy of this order.

tsh

09.01.2023.
(1/2)

C. SARAVANAN, J.,
tsh



WEB COPY



**A.Nos.567 and 568 of 2022
in CS.(Comm.Div.)No.190 of 2022**

09.01.2023.