



C.S.Nos.681 and 708 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.Nos.681 and 708 of 2011

and

O.A.Nos.834 and 835 of 2011

and

A.No.4949 of 2011

C.S.No.681 of 2011

1.A.D.Padmasingh Isaac

2.M/s.Aachi Masala Foods (P) Limited,

Old No.4, New No.181/1,
6th Avenue, Thangam Colony,

Anna Nagar,
Chennai - 600 040.

Represented by its Director
Ashwin Pandian

... Plaintiffs

Vs.

Hotel Aachis,

No.18, Thiruvalluvar Salai,

Opposite to Bus Stand,

Dindigul - 624 001.

(amended as per order dated 12.08.2021
in A.No.2497 of 2021)

... Defendant



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Prayer in C.S.No.681 of 2011: This Civil Suit is filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the Code of Civil Procedure read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, prayed for a Judgment and Decree:-

[a] granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the same name AACHI used by the plaintiffs and the trade mark name Hotel Aachis or any other similar Trade Mark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trade mark/name AACHI and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu Card by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark Nos.838786, 922594, 922595, 976559, 1025302, 1025304, 1025305, 1116254, 1340323, 1375755, 1375756, 1380625, 1415328, 1415329, 1418281, 1458532, 1479158, 1479159, 1555564, 1564085, 1567065, 1567068, 1595537, 1595538, 1595539, 1595540 or in any manner infringing the plaintiffs' registered Trade Marks referred herein.



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[b] granting a permanent injunction restraining the defendants by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements the mark/name AACHI in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs' Trade Mark/name AACHI or in any other manner pass off their business or goods as and for that of the plaintiffs.

[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 HOTEL AACHIS or other deceptively similar trade mark used in the pouches and packets bearing the word AACHI.

[d] directing the defendant to render an account of profits made by them by the use of the impugned trademark HOTEL AACHIS on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts.

[e] directing the defendant to pay to the plaintiffs the costs to the suit.



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C.S.No.708 of 2011

1.A.D.Padmasingh Isaac

2.M/s.Aachi Masala Foods (P) Limited,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai - 600 040.
Represented by its Director
Ashwin Pandian

... Plaintiffs

Vs.

Aachis N/V Mess,
38-A, Scheme Road,
Bus Stand Opposite,
Dindigul - 624 001.
(amended as per order dated 12.08.2021
in A.No.2498 of 2021)

... Defendant

Prayer in C.S.No.708 of 2011: This Civil Suit is filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the Code of Civil Procedure read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, prayed for a Judgment and Decree:-

[a] granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the same name AACHI used by the plaintiffs and the trade mark name Aachis Mess or any other similar Trade Mark name or similar sounding



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expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trade mark/name AACHI and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu Card by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark Nos.838786, 922594, 922595, 976559, 1025302, 1025304, 1025305, 1116254, 1340323, 1375755, 1375756, 1380625, 1415328, 1415329, 1418281, 1458532, 1479158, 1479159, 1555564, 1564085, 1567065, 1567068, 1595537, 1595538, 1595539, 1595540 or in any manner infringing the plaintiffs' registered Trade Marks referred herein.

[b] granting a permanent injunction restraining the defendants by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements the mark/name AACHI in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs' Trade Mark/name AACHI or in any other manner pass off their business or goods as and for that of the plaintiffs.



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[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 Aachis Mess or other deceptively similar trade mark used in the pouches and packets bearing the word AACHI.

[d] directing the defendant to render an account of profits made by them by the use of the impugned trademark Aachis Mess on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts.

[e] directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Ms.Gladys Daniel
(In both C.S) Assisted by
Mr.P.S.Raman
Senior Counsel

For Defendants : Mr.S.Rajasekar
(In both C.S) for Mr.S.Sashidhar



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COMMON JUDGMENT

After hearing the learned Senior Counsel for the plaintiffs and the defendants at length, the orders were reserved on 02.03.2023 and yesterday i.e., on 11.07.2023, these cases were listed for clarification. At this stage, the learned counsel on record for the plaintiffs submits that the plaintiffs have opted to withdraw the suits.

2. The learned counsel on record for the plaintiffs submits that she has been advised to withdraw the suits and she has also made the following endorsement to that effect:

“In C.S.No.681 of 2011

The plaintiff may be permitted to withdraw and abandon the suit under Order 23 Rule(1) of CPC.

In C.S.No.708 of 2011

The plaintiff may be permitted to withdraw and abandon the suit under Order 23 Rule(1) of CPC.”

3. The learned counsel for the defendants, on the other hand, would submit that the plaintiffs have to pay costs in each suit in



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accordance with Order XXIII Rule 1(4)(b) of the Code of Civil Procedure.

4. In the opinion of this Court, the plaintiffs have wasted the time of this Court and the respective defendants by filing these frivolous suits.

5. Considering the above, the plaintiffs shall pay each of the defendants a sum of Rs.50,000/- separately as costs within a period of two weeks from today. Besides, the plaintiffs shall pay a sum of Rs.1,00,000/- also to the Cancer Institute (WIA), East Canal Bank Road, Adyar, Chennai - 20, within such time.

6. The plaintiffs and the defendants shall report compliance of this order before the Joint Registrar (Original Side) of this Court on or before 02.08.2023. In case, the plaintiffs fail to comply with this order, this order shall stand revoked automatically, in which case, the Court records shall be transmitted to the Chamber for pronouncing Judgment and Decree on merits.



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7. These Civil Suits stand dismissed with costs subject to compliance of this Judgment. The connected Original Applications and Application will stand closed thereafter.

12.07.2023

Internet : Yes/No

Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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