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C.S.(Comm.Div.)No.111 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.(Comm.Div.)No.111 of 2023
and O.A.Nos.426 to 428 of 2023
and A.No.2623 of 2023

Aasife Biriyani Pvt Ltd,

Rep.by its Managing Director Mr.C.Y.Aasife,
Grls No. 325, D.No.11 / 3Q, Railway Station Road,
Alandur, Chennai - 600 016.
Tamil Nadu, India.

...Plaintiff

Vs.

Greens Lands Restaurant,

Rep by its Partners,
Mr.Samzuddin and Mr. Mustafa Al Ameen,
No.218, Theni Main Road, PP Chavadi,
Kalavasal, Madurai - 625 016.

...Defendant

PRAYER: **Plaint** is filed under under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of Original Side Rules, read with Sections 27, 29, 134 & 135 of the Trademarks Act, 1999, and Sections 51, 55 & 62 of the Copyright Act, 1957 praying for:-



i. Permanent Injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the registered trademark  of the Plaintiff having Registration Number 3768877, or any other word/ words/ logo/ artistic work/ design/ device that are identical or deceptively similar to the said registered Trademark of the Plaintiff in Class 43.

ii. Permanent injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representative and any other person passing off his their services by using the device mark  of the Plaintiff or any other word/ words/ logo/ artistic work/ design/ device that are identical or deceptively similar to the said mark of the Plaintiff in respect of providing food and drinks, temporary accommodation.

iii. Permanent injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the copyright of the Plaintiff by using the artistic work in the registered trademark  or any other logo/ artistic work/ design/ device that are identical or deceptively similar to the said copyright of the Plaintiff.



iv. A Preliminary Decree be passed in favour of the Plaintiffs directing the Defendant to render a true and faithfully accounts of all profit made by them, using the Plaintiffs Said Trademark and Copyright and a final decree be passed in favour of the Plaintiff for the amount of profit thus found to have been made by the Defendant, together with interest, after the Defendant has rendered accounts.

v. For the costs of the suit; and

vi. Pass such other or further order as this Hon'ble Court deems fit, in the interest of justice and equality.

For Plaintiff : M/s.Hansika.N

JUDGMENT

The learned counsel for the plaintiff would submit that the matter has been settled between the parties and she has also made an endorsement in the plaint, seeking leave of this Court to withdraw the suit.

2. In view of the endorsement made by the learned counsel for the plaintiff, leave is granted. The suit is dismissed as withdrawn.



3. The Hon'ble Apex Court in ***High Court of Judicature at Madras vs. M.C.Subramaniam and others reported in (2021) 3 SCC 560*** held that in cases where the matter is settled out of court by private negotiation of parties, the refund of court fee can be ordered. The relevant observation of the Hon'ble Apex Court is as follows:-

“23. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69-A is to reward parties who chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the Court fees deposited by them. Such refund of Court, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As the Karnataka High Court has rightly observed in Kamalamma the parties who have agreed to settled their disputes without requiring judicial intervention under Section 89 CPC are even more



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deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the state of the logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivise the methods of out-of-Court settlement stated in Section 89 CPC and afford step-brotherly treatment to other methods availed by the parties.”

4. In view of the law laid down by the Hon'ble Apex Court in the above said decision, the plaintiff is entitled to get refund of the Court fee affixed by it in the plaint.



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5. Accordingly, the suit is dismissed as withdrawn. Consequently,

Original Application Nos.426 to 428 of 2023 and Application No.2623 of

2023 are closed. No costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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P.T. ASHA, J,

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