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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 16.03.2023**

**PRONOUNCED ON : 28.04.2023**

**CORAM:**  
**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**  
**C.S.No.325 of 2019**

M/s.Sangeetha Caterers and Consultants LLP

Represented by its Designated Partners:

1.P.Rajagopal

2.P.Suresh

No.7, Gandhi Nagar, 1<sup>st</sup> Main Road, 4<sup>th</sup> Floor,  
Adyar, Chennai – 600 020.

... Plaintiff

vs

M/s.Hotel Sangeethaa Pure Veg.

Represented by its Proprietor,

N.Suriyapraba,

No.324B/1-A, NH-45,

Near Senkurichi Toll Plaza,

Ulundurpet, Villupuram District,

Pin Code – 606 107.

... Defendant

**Prayer:** Civil Suit is filed under Order IV Rule 1 of the Original Side Rules, and Order VII Rule 1 of CPC r/w Section 27, 134 and 135 of the Trademarks Act, 1999 and Proviso 1 of Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, praying to,



(a) For permanent injunction restraining the defendants, their legal representatives, their successors in business, assigns, franchisees, servants or agents operating the restaurant business by infringing the plaintiffs trademark “Sangeetha”, SVR Sangeetha, SVR Sangeetha Veg Restaurant and Sangeetha (with a Veena Mark) or by use of confusingly similar or any other mark deceptively and identically similar to the plaintiffs registered trademark Sangeetha or in any other manner whatsoever;

(b) a permanent injunction restraining the defendants, their legal representatives, their successors in business, assigns, franchisees, servants or agents operating restaurant business by the name “Hotel Sangeethaa” pure veg and from committing the act of passing off and enabling others in passing off the restaurant business in the deceptively similar mark which is identical to the plaintiff's trademark in any manner whatsoever;

(c) the defendant be ordered to surrender to the plaintiff for destruction of all the packing containers, card board boxes, packing materials, covers and carry bags, screen prints, bills, sign boards, billing software, menu cards, and any other material in their possession bearing the mark “Hotel Sangeethaa” which is identical to the plaintiffs mark Sangeetha;



(d) the defendant be ordered to pay the plaintiffs a sum of Rs.25,00,000/- (Rupees Twenty Five Laksh Only) as damages for their wrongful and illegal act by use of the trademark Sangeetha:

(e) To pay cost and;

(f) for such further and other reliefs.

For Plaintiff : Mr.L.Rajasekar  
for P.Rakesh Kumar  
For Respondent : Perumbulavil Radhakrishnan  
and Mr.S.P.Vijayaraghavan  
for M/s.E.Angayarkanni

### **J U D G M E N T**

The present suit has been filed by the plaintiff seeking permanent injunction restraining the defendant from infringing the plaintiff's registered trademark "Sangeetha", SVR Sangeetha, SVR Sangeetha Veg Restaurant and Sangeetha (with a Veena Mark). The plaintiff also sought for injunction restraining the defendant from operating restaurant business in the name of "Hotel Sangeethaa" and thereby committing the act of passing off by deceptively using trademark identical to that of the registered trademark of the plaintiff. The plaintiff also sought for a direction to the defendant to surrender all materials in the hands of the defendant bearing the mark "Hotel



“Sangeethaa” to the plaintiff for destruction. The plaintiff also sought for damages to the tune of Rs.25,000/- from the defendant for their wrongful and illegal act of infringing/passing off the registered trademark of “Sangeetha”.

**Plaint averments:**

2.1. The plaintiff is a limited liability partnership firm constituted in the year 2015 engaged in running of restaurants under registered trademark “Sangeetha”, SVR Sangeetha, SVR Sangeetha Veg Restaurant and Sangeetha (with a Veena Mark). The plaintiff obtained registration of the above said trademarks under class 42 relating to services for providing food, drink, catering services, hotels and restaurant services.

2.2 It was averred by the plaintiff that one of the designated partners of plaintiff namely one P.Suresh had established “Hotel Sangeethaa” in the year 1985. The trademarks were registered in the name of P.Rajagopal and his brother. After formation of partnership firm Sangeetha caterers and consultants, the trademarks held in the name of two partners individually were assigned to the firm vide assignment agreement dated 28.06.2006. Subsequently, the partnership firm was converted into a limited liability partnership as the four persons viz., P.Rajagopal, P.Suresh, Anirudh



Rajagopal and Sanjana Suresh had entered into a limited liability partnership agreement dated 01.04.2015. Thereafter, there was a reconstitution in the plaintiff firm on 31.03.2017 by which two of the existing partners retired and the business of the firm was carried forward with other two continuing partners viz., P.Rajagopal and P.Suresh.

2.3. The plaintiff firm applied for legal certificate for the above said trademarks and the Registrar of Trade Marks had issued the said certificates dated 23.10.2018. It was further averred by the plaintiff that the plaintiff firm is pioneer in the food beverage and restaurant industry and due to their sheer hard work and innovative methods they had acquired an impeccable reputation amongst their consumers and have obtained the pinnacle in reputation. It was also stated that the plaintiff firm has been continuously using the registered trademarks and the customers identified the above said trademarks with that of the plaintiff. It was also stated by the plaintiff that they had acquired copyright for the artistic work and unique colour combination for their trademark.



2.4. It is averred by the plaintiff that they recently acquired knowledge about the use of the registered trademark of plaintiff by the defendant by naming their restaurant as “Hotel Sangeetha” pure veg. The use of identical and deceptively similar logo viz., “HSV”. It was also stated by the plaintiff that they issued a legal notice dated 19.11.2018 and the same was replied by the defendant admitting to the use of the name “Sangeethaa” but raised a defense as if trademark used by them was not similar to that of the plaintiff. The plaintiff specifically averred that the defendant's mark “Hotel Sangeethaa” is *prima facie* visually, phonetically, structurally and absolutely identical to the plaintiff's registered trademark “Sangeetha”. The use of the identical trademark by the defendant amounts to infringement of plaintiff's registered trademark and hence the plaintiff was constrained to file of the suit seeking injunction and other reliefs.

**Averments found in the written statement:**

3.1. The defendant filed the written statement and denied the ownership of the plaintiff over the registered trademarks mentioned in the plaint. The defendant also raised a defense that the mark used by the defendant was not similar to that of the registered trademarks of the plaintiff.



It was averred by the defendant that he started his business at Ulundurpet in the year 2015 by using the mark “Hotel HSV Sangeethaa pure Veg”. The plaintiff issued a lawyer notice dated 19.11.2015 requesting the defendant to cease and desist using the said trademark. The defendant issued a reply through their counsel on 04.12.2015, claiming that the notice issued by the plaintiff was untenable. Thereafter, the plaintiff kept quiet for longtime and allowed the defendant to develop its customers and goodwill. It was further averred that when the defendant opened another outlet near the existing restaurant, the plaintiff issued another notice dated 19.11.2018 reiterating the very same allegations. The said notice was replied by the defendant dated 01.12.2018, denying the averments contained therein.

3.2. It was further averred by the defendant that the trademark used by it is not similar to that of the plaintiff's trademark. It was also alleged that the plaintiff was trafficking in trademarks and filed application for registration in respect of various classes under class 16, 30, 32 and 33 without engaging itself in the said classes. It was also stated by the defendant that they were not using Veena mark and had not called their outlet at restaurant. On the contrary, the mark of the defendant is “Hotel HSV Sangeethaa pure



“veg” and the same is clearly distinguishable from the plaintiff's “Sangeetha” written in running letters. It was also averred that the defendant's mark has a device of “VEL” with the image of “Murugan Seated on a Peacock” placed above the words. It was also contended by the defendant that in plaintiff's registered mark the word “Sangeetha” alone was written in a stylistic manner and font. The claim of the plaintiff can only be restricted to the use of mark “Sangeetha” as registered. The defendant's mark and trading style are nowhere near the mark of the plaintiff's trademark. It was also stated that the font used by the plaintiff in its mark was cursive or running letters and whereas the font used in defendant's mark are in capital letters. On these grounds, the defendant sought for dismissal of the suit.

#### **4. Issues Framed:**

After hearing both the sides, this Court framed the following issues on 11.11.2019, which read as follows:

(i) Whether the plaintiff is entitled for permanent injunction against the defendant for infringement of the plaintiff's registered trademark “Sangeetha”, SVR Sangeetha, SVR Sangeetha Veg Restaurant and Sangeetha (with a Veena Mark) and operating the restaurant business in the name and



style of “Hotel Sangeetha”?;

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(ii) Whether the plaintiff is entitled for permanent injunction against the defendant for operating her restaurant business by the name “Hotel Sangeetha” Pure Veg and committing the act of passing off their Food products as that of the plaintiff's restaurants with their registered trade mark?;

(iii) Whether the plaintiff is entitled for the damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) for the wrongful and illegal use of the plaintiff's registered trademarks?;

(iv) Whether the plaintiff is entitled for direction against the defendant to surrender and destruction of all materials, software, menu cards, packing materials which bears the plaintiff's trademark “Sangeetha”, SVR Sangeetha, SVR Sangeetha Veg Restaurant and Sangeetha (with a veena mark)?.

(v) To what other reliefs, the plaintiff is entitled to?.

#### 5. Evidence:

On behalf of the plaintiff, one of the designated partner of the plaintiff limited liability partnership namely one P.Rajagopal was examined as PW.1. Through him sixteen documents were marked as Exs.P1 to P16.



On behalf of the defendant power of attorney and husband of defendant's proprietrix was examined as DW.1. Thirteen documents were marked on behalf of the respondent as Exs.D1 to D13.

**Arguments by the learned counsel for the plaintiff:**

6. The learned counsel for the plaintiff by taking this Court to the evidence of PW.1 and the exhibits marked on behalf of the plaintiff submitted that the plaintiff is the registered owner of trademark “SVR Sangeetha, SVR Sangeetha Veg Restaurant, Sangeetha (with Veena mark), Sangeetha Veg Restaurant (with veena mark)” and hence running of restaurant by the defendant in the name and style of “Hotel Sangeethaa” would amount to infringement of registered trademark of the plaintiff.

7. The learned counsel for the plaintiff by referring to Section 137 of Trademarks Act submitted that legal use certificates by the plaintiff under Exs.P5 to P8 is a *prima facie* evidence of plaintiff's right over the registered trademark and hence the defendant is not entitled to infringe/passing off the trademark of the plaintiff. The learned counsel further submitted that the defendant established its Restaurant with identical name in the National



Highways near Ulundurpet Tollgate and it established its dishonest intention to reap the benefits of plaintiff's reputation acquired through long use and sincere service. The learned counsel further submitted that the registration of trademark in favour of plaintiff has not been challenged by the defendant before the competent authority so far and hence the plaintiff is entitled to the benefit of legal effect of registration. The learned counsel further submitted that the mark used by the defendant is visually and phonetically, identical to that of the registered trademark of the plaintiff and hence the dishonest intention of the defendant to deceive the general public get manifested.

8. The learned counsel for the plaintiff relied on the following judgments in support of his contentions:

(i) *K.R.Chinna Krishna Chettiar Vs. Shri Ambal and Company Madras and another reported in 1969*

(2) *SCC 131*;

(ii) *Renaissance Hotel Holdings Inc. Vs. B.Vijaya Sai and others reported in (2022) 5 SCC*;

(iii) *Cadbury India Limited and others Vs. Neeraj Food Products reported in CDJ 2007 DHC 1788*.



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**Arguments of the learned counsel for the defendant:**

9. The learned counsel for the defendant contended that the word Sangeetha is not the registered trademark of the plaintiff and hence the prayer in the suit, as if the plaintiff is registered proprietor of the trademark “Sangeetha” is not maintainable. Secondly, the learned counsel for the defendant submitted that the plaintiff limited liability partnership is not the registered proprietor of the trademarks mentioned in the suit prayer and hence the plaintiff has no *locus standi* to maintain a suit. The learned counsel further by relying of Section 134(1) (c) of Trademarks Act submitted that for the relief of passing off plaintiff cannot sue in the place where he resides or carry on business. It was further submitted by him that the plaintiff failed to obtain any leave for joinder of cause of action and hence the prayer for passing off is not maintainable before this Court. The learned counsel further submitted that the plaintiff issued a cease and desist notice in the year 2015 and failed to take any further action immediately after that and the defendant developed his business by investing huge money. The present suit was filed in April 2019 after a delay of nearly four years. Therefore, the plaintiff is guilty of acquiescence and hence the suit is liable to be dismissed.



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10. The learned counsel for the defendant relying on Section 17 of trademarks Act also submitted that the plaintiff cannot claim exclusive right over the part of the registered trademark namely “Sangeetha”. In support of his contentions, the learned counsel relied on the following judgments:

(i) Power Control Appliances Vs. Sumeet Machines Private Limited reported in 1994 SCC (2) 448;

(ii) Kerala Jewellers, Madras Vs. Kerala Jewellers, Trichy, reported in 1999 SCC online Mad 834;

(iii) Chennai Hotel Saravana Bhavan, Srikalahasti, Chittoor District and others Vs. Hotel Saravana Bhavan, Srikalahasti, Chittoor District, reported in 2005 SCC online AP 248;

(iv) Registrar of Trademarks Vs. Ashok Chandra Rakhit Limited reported in AIR 1955 SC 558;

(v) S.K.Sachdeva and another Vs. Shri Educare Limited and another reported in 2016 SCC online Del 6708.



## 11. Issues Nos.1 and 2:

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The plaintiff herein instituted the present suit claiming injunction against defendant from infringing/passing off registered trademark of the plaintiff. The first and foremost objection raised by the learned counsel for the defendant is the plaintiff, a limited liability partnership is not the registered proprietor of the trademarks mentioned in the plaint.

12. In support of its contention that the plaintiff is the registered proprietor of the trademarks, the plaintiff produced the legal use certificates issued by the Trademark Registrar under Exs.P5 to P8, which would make it clear that there is an endorsement in the bottom of the certificate mentioning the name of the plaintiff as subsequent proprietor in respect of the registered trademark mentioned therein. Therefore, by producing Exs.P5 to P8, the plaintiff proved that it is the registered proprietor of trademarks namely: (i) SVR Sangeetha; (ii) “Sangeetha (with the device of Veena); (iii) Sangeetha Veg Restaurant-SVR; (iv) “Sangeetha veg Restaurant (with a device of veena). In the legal use certificate, while describing the proprietor it was mentioned that the category of the proprietor as partnership firm trading as “Sangeetha Caterers and Consultants LLP.



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13. Section 137 of trademarks Act reads as follows:

*(1) A copy of any entry in the register or of any document referred to in sub-section (1) of section 148 purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.*

*(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be prima facie evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.*

14. A reading of above provision would make it clear that when certificate issued by the Registrar of Trademark is produced, it shall be treated as *prima facie* evidence as to the entry and contents thereof. Therefore, the plaintiff by producing legal certificate issued by the trademark registrar proved its proprietorship and right to maintain the suit for infringement of its registered trademark against the defendant.



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15. The learned counsel for the defendant by taking this Court to Section 134 (2) of Trademarks Act submitted that the suit filed by the plaintiff is not maintainable as far as the prayer for passing off is concerned as cause of action for passing off arose outside the territorial limits of this Court. The learned counsel further submitted that the plaintiff has not obtained any leave under clause 14 of letters patent for combining the cause of action and consequently, the suit filed by the plaintiff insofar as prayer for injunction concerning passing off is not maintainable.

16. Section 134 of Trademarks Act reads as follows:

*(1) No suit--*

*(a) for the infringement of a registered trade mark; or*

*(b) relating to any right in a registered trade mark; or*

*(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.*

*(2) For the purpose of clauses (a) and (b) of sub-section (1), a*



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*"District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.*

*Explanation.--For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.*

17. A reading of above provision would make it clear that as far as the suit covered under Section 134(1) (a) and (b) of Trademarks Act are concerned, the suit can be instituted within the local limits of the Court within whose jurisdiction the plaintiff “resides” or “carries on business” or personally works for gain. However, as far as the suit for passing off is concerned it is covered by Section 134 (1) (c) of Trademarks Act and hence Sub Section (2) of said Section is not applicable to such suits. Therefore, necessarily the plaintiff has to obtain leave for combining the cause of action in order to maintain the relief regarding passing off along with the reliefs for



infringement of trademarks. In the case on hand, the situs of defendant's business situated outside the territorial limits of this Court. The plaintiff is therefore expected to get leave of the Court to combine the cause of action which arose outside the territorial limits under Clause 14 of letters patent. As submitted by the learned counsel for the defendant, there is no material available on record to show that the plaintiff obtained such leave. Under Section 21 of CPC, any objection as to lack of territorial jurisdiction has to be made before settlement of issues. In the case on hand, the defendant failed to make any objection with regard to the territorial jurisdiction of this Court to entertain the prayer for injunction regarding passing off.

18. Admittedly, no issue had been framed with regard to the territorial jurisdiction to entertain a prayer for passing off. Under Clause 14 of letters patent when plaintiff has got two or three cause of action against the defendant and any one of such cause of action not relating to immovable property arose outside the territorial limits of this Court, it shall be lawful for this Court to grant leave to combine the cause of action along with other cause of action which arose within its territorial limits and try both the cause of action together in one suit. In the case on hand, the defendant after service



of summons entered appearance and participated in the trial in respect of both the cause of action without any murmur. The failure of the defendant to raise its little finger with regard to combined trial of both the cause of action for infringement of trademark and passing off would amount to waiver of its right to object. In this regard, it would be appropriate to refer to the observation of this Court in ***Arvind Laboratories Vs. Hahnemann Laboratory Private Limited reported in CDJ 2007 MHC 5791***, which reads as follows:.

*“20. In contra distinction to Clause 12, the requirement to obtain leave under Clause 14 does not appear to be, necessarily, a prior leave. All that is expected of this Court under Clause 14, is to call upon the defendant, to show cause why several causes of action should not be joined together in one suit and to pass an order for the trial of the same. In other words, Clause 14 does not even contemplate "a leave", but only a notice to the defendant to show cause, followed by an order for joint trial of all the causes of action. The only requirement under Clause 14 is that this Court should have jurisdiction in respect of at least one of the several causes of action on which the plaintiff sues and that such several causes of action are not for land or other immovable property.*



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*21. Therefore, it is clear that the requirement to obtain leave under Clause 12 precedes the institution of the suit, while the requirement under Clause 14 is not one for leave to institute the suit but one for combining several causes of action for a trial of the same together. Consequently, the requirement under Clause 14 follows and not precedes the institution of the suit.”*

19. Therefore, leave under Clause 14 of letters patent is not to institute the suit, but only for combining several causes of action for trial. The leave under clause 14 is only procedural in nature and hence the parties by their conduct can waive their right to object. Hence, the defendant having participated in the trial in respect of both the cause of action is not entitled to turn around and object that no leave was obtained to combine both the cause of action. In other words, merely because the plaintiff has not obtained a formal order for combining the cause of action, there is no inherent lack of jurisdiction especially when the defendant participated in the trial without objecting to combining of the cause of action. Hence, the objection raised by the learned counsel for the defendant in this regard is not acceptable to this Court.



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20. As mentioned earlier the legal use certificates produced by the plaintiff would establish that the plaintiff is the registered owner of trademark SVR Sangeetha, SVR Sangeetha Veg Restaurant, Sangeetha (with a veena mark) and Sangeetha Veg Restaurant (device of veena). The defendant used the mark “HSV Hotel Sangeetha pure veg”. The learned counsel for the defendant by taking this Court to Section 17 of trademarks Act submitted that merely because part of the word used in registered trademark of the plaintiff also forms part of the trademark used by the defendant, the plaintiff cannot claim any infringement of trademark. In other words, it is the specific contention of the learned counsel for the defendant merely because the word “Sangeetha” which is generic in nature is used as part of the trademark of the defendant there cannot be any infringement of the registered trademark which has to be seen as a whole. Section 17 of trademarks Act, which reads as follows:

*(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.*

*(2) Notwithstanding anything contained in sub-section (1), when a trade mark--*



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*(a) contains any part--*

*(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or*

*(ii) which is not separately registered by the proprietor as a trade mark; or*

*(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.*

21. A reading of above provision would suggest an exclusive right to use the registered trademark conferred on the registered owner is only in respect of whole of combination of words registered and such registered owner cannot claim any exclusive rights of use in respect of any part or portion of said registered trademark. However, Section 17 of trademarks Act has to be read along with Section 29 of trademarks Act, which explains what would constitute infringement of trademark. Section 29 of trademarks Act reads as follows:

*(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which*



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*is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*

*(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of--*

*(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or*

*(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or*

*(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.*

*(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.*



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*(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which--*

*(a) is identical with or similar to the registered trade mark; and*

*(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and*

*(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.*

*(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.*

*(6) For the purposes of this section, a person uses a registered mark, if, in particular, he--*

*(a) affixes it to goods or the packaging thereof;*

*(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;*



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- (c) imports or exports goods under the mark; or*
- (d) uses the registered trade mark on business papers or in advertising.*

*(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.*

*(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising--*

- (a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or*
- (b) is detrimental to its distinctive character; or*
- (c) is against the reputation of the trade mark.*

*(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.*



22. If the combination of words or marks registered with trademark registrar is used by a person who is not the registered proprietor or a person who is not a permitted user, it would amount to infringement of trademark as per Section 29 of the Act. If a 3<sup>rd</sup> party uses the exact combination of words or marks registered with trademark registrar then the mark used by him can be termed as identical to that of the registered mark. On the other hand, if the 3<sup>rd</sup> party uses the combination of registered trademark by making small changes to the registered trademark for cosmetic purpose without substantially changing the appearance or catch of the registered trademark such tinkered trademark used by the 3<sup>rd</sup> party has to be compared with the registered trademark to decide whether it is deceptively similar to that of the registered trademark. In the case on hand, both the plaintiff and defendant are admittedly engaged in restaurant business. Therefore, they are users of the respective trademarks for the same class of business or service. Therefore, the service rendered by both the plaintiff and defendant are identical and it has to be seen whether the combination of trademark used by the defendant is similar to the one registered by the plaintiff. If the answer to this question is in affirmative, Section 29(2) (b) of trademarks act will get attracted.



23. In this regard it would be appropriate to refer to the observations of the Apex Court in *Renaissance Hotel Holding inc. Vs. B.Vijaya Sai and others reported in (2022) 5 SCC* in this regard. The relevant observation of the Apex Court is as follows:

*37. A perusal of Sub-section (2) of Section 29 of the said Act would reveal that a registered trade mark would be infringed by a person, who not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of the three eventualities mentioned in Clauses (a), (b) and (c), is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. The first eventuality covered by Clause (a) being its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark. The second one covered by Clause (b) being its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark. The third eventuality stipulated in Clause (c) would be its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark*

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*50. ----- The use by the Defendant of the trade mark of the Plaintiff is a sine qua non in the case of an action for infringement. It has further been held that if the essential features of the trade mark of*



*the Plaintiff have been adopted by the Defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark, would be immaterial in a case of infringement of the trade mark, whereas in the case of a passing off, the Defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the Plaintiff.*

24. It would also be appropriate to refer to the observations of the Apex Court in *Corn Products Refining Company Vs. Shangrila Food Products Limited*, reported in AIR 1960 SC 142, wherein it was held that over all similarity of the two composite words must be considered in case of infringement of trademark, the relevant observations is as follows:

*“It is well known that the question whether the two marks are likely to give rise to confusion or not is a question of first impression. It is for the court to decide that question. English cases proceeding on the English way of pronouncing an English word by Englishmen, which it may be stated is not always the same, may not be of much assistance in our country in deciding questions of phonetic similarity. It cannot be overlooked that the word is an English word which to the mass of the Indian people is a foreign word. It is well recognised that in deciding a question of*



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*similarity between two marks, the marks have to be considered as a whole.”*

25. In the light of law laid down by the Apex Court in the above said decisions, let us examine the present case on hand. The plaintiff got registration of the following combination of words SVR Sangeetha, SVR Sangeetha Veg Restaurant, Sangeetha (with a veena mark) and Sangeetha Veg Restaurant (device of veena). The defendant uses the following combination of words as a trademark as seen from Ex.P11-”HSV Hotel Sangeethaa Pure Veg”. The defendant added one alphabet (a) in the word Sangeetha and added two prefix namely HSV and Hotel. The prefix in the registered trademark namely SVR is replaced by HSV in the trademark of the defendant. The prefix SVR and HSV when used in small font, certainly would cause confusion in the mind of the general public. The addition of the word hotel by the defendant would not make any substantial differentiation in view of the fact the word “Hotel” is synonymous with the business in which both the parties are engaged. As far as suffix is concerned the plaintiff used the suffix Veg Restaurant and Veg Restaurant (device of veena). The suffix used by the defendant is pure Veg, which is synonymous with the suffix used by the plaintiff. If the combination of the words used by the plaintiff is taken



as a whole and compared with the combination of the words used by the defendant certainly it will cause confusion in the minds of ordinary person with average intelligence and imperfect re-collection. Therefore, it can be safely concluded that the combination of words used by the defendant for its trademark is similar to the combination of words used in the registered trademark of the plaintiff, if at all not identical. Therefore, I am of the definite opinion, in the case on hand, Section 29 (2) (b) of trademarks Act gets attracted.

26. When this Court comes to the conclusion that Section 29 (2) (b) of trademarks Act gets attracted as the trademark used by defendant is similar to the registered trademark of plaintiff and both of them engaged in identical business, the plaintiff is not entitled to the benefit of statutory presumption available under Section 29(3) of trademarks Act. However, this Court in the previous paragraph has come to the conclusion that if the registered trademark of the plaintiff and the trademark used by the defendant are compared it is likely to cause confusion in the mind of ordinary general public. Therefore, even if the statutory presumption under Section 29(3) is not attracted, still the plaintiff is entitled to succeed as it is able to establish the similarity of defendant's trademark with that of its registered trademark.



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27. The learned counsel for the defendant submitted that the plaintiff who issued cease and desist notice in the year 2015 waited for sometime and filed the suit belatedly only in the year 2019 and hence he is guilty of acquiescence. Ex.D4 is the cease and desist notice issued by the plaintiff dated 19.11.2015 in the said notice, the plaintiff asserted that it came to know about the proposal of the defendant to open restaurant by using similar trade name. When DW.1 was cross examined, he deposed the defendant's restaurant was opened only on 04.07.2016. Therefore, it is clear when the plaintiff acquired knowledge about proposal of the defendant to open restaurant in a similar name, the plaintiff issued notice calling upon him to prevent him from doing so. Thereafter, there was lull in the activity and defendant appeared to have opened restaurant only on 04.07.2016.

28. In fact, during cross examination DW.1 it was suggested to him by the counsel for the plaintiff that notice was issued by the plaintiff even prior to commencement of business by the defendant and the same was answered by him in affirmative. Therefore, it is clear as a pre-emptive act, the plaintiff issued a notice on 19.11.2015 itself to the defendant, after receipt of notice,



there was lull in the activity, subsequently, he opened the restaurant with a similar name. Exs.P12 and P13 are bills issued by the defendant restaurant dated 23.10.2018 and 03.04.2019. After acquiring knowledge about opening of the restaurant by the defendant with a similar name in October 2018, the plaintiff appeared to have sent another notice dated 19.11.2018 under Ex.P14 and thereafter filed the suit on 09.04.2019. Therefore, it cannot be said there is a delay or acquiescence on the part of the plaintiff in approaching this Court. Immediately, after acquiring knowledge about the opening of the restaurant, the plaintiff issued second notice and filed the suit within a reasonable time. In such circumstances, the submission made by the learned counsel for the defendant on the ground of acquiescence cannot be accepted.

29. In view of the discussions made earlier, the plaintiff's are entitled to injunction as prayed for and accordingly, issue Nos.1 and 2 are answered in favour of the plaintiff.

**Issue No.3:**

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30. The plaintiff also sought for damages to the tune of Rs.25,00,000/- from the defendant for wrongful and illegal use of registered trademark. The plaintiff failed to lead any evidence in support of his claim for damages to the tune of Rs.25,00,000/-. The witness examined by plaintiff has not mentioned anything about the quantification of the damages by the plaintiff. The learned counsel for the plaintiff by relying on the answer given by DW.1 to a question in his cross examination that the average monthly sale of his restaurants would be Rs.20,00,000/-, submitted that a decree for damages as prayed for by the plaintiff shall be passed. Merely, because the monthly average sale of the defendant would be to the tune of Rs.20,00,000/-, we cannot presume and quantify the damages suffered by the plaintiff at Rs.25,00,000/- in the absence of any acceptable evidence available on record. Therefore, I hold that the plaintiff failed to prove its claim for damages and consequently, the suit is dismissed in respect of the prayer for damages is concerned. Issue No.3 is answered against the plaintiff.



## Issue No.4:

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31. This Court in issue Nos.1 and 2 has already come to a conclusion that the trademark used by the defendant is similar to the registered trademark of the plaintiff and the plaintiff's claim of infringement of his registered trademark is proved. Hence the plaintiff is entitled to injunction as prayed for. Therefore, the defendant is not entitled to use or retain any materials bearing the plaintiff's trademark SVR Sangeetha, SVR Sangeetha Veg Restaurant, Sangeetha (with a veena mark) and Sangeetha Veg Restaurant (device of veena). Therefore, the defendant is directed to surrender all materials including sign board, menu cards, bills, billing software, packaging materials etc in their possession bearing of the trademarks similar to the registered trademark of the plaintiff for destruction.

## Issue No.5:

32. In the facts and circumstances of the case, it would be appropriate to direct the defendant to pay the cost of the litigation to the plaintiff.

**Conclusion:**

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33. (a) The suit is partly decreed by granting permanent injunction in favour of the plaintiff and against the defendant as prayed for in prayer A and B of the plaint.

(b) The defendant is directed to surrender to the plaintiff all materials in his possession bearing the trademark similar to that of the registered trademark of the plaintiff namely SVR Sangeetha, SVR Sangeetha Veg Restaurant, Sangeetha (with a veena mark) and Sangeetha Veg Restaurant (device of veena);

(c) The suit is dismissed, in respect of the claim for damages in prayer “d” in the plaint claiming damages against the defendant.

(d) The defendant is directed to pay cost of the suit to the plaintiff.

28.04.2023

Index : Yes / No  
NCC : Yes / No  
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S.SOUNTHAR, J.

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Pre-delivery order made in  
**C.S.No.325 of 2019**

**28.04.2023**