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C.S. No.371 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.371 of 2016

Shyam Enterprises Private Limited
Represented by its Director (Legal)

A. Ravikumar Reddy

...

Plaintiff

vs.

Hotel Amaravati,
#20, Daba Garden Main Road,
Daba Garden,
Opposite Potluri Towers,
Vishakapatnam – 530 020.

...

Defendant

Prayer : Plaint has been filed under Order IV Rule 1 of the O.S. Rules r/w Order VII Rule 1 of C.P.C. Rules r/w Sections 27, 28, 29, 134 and 135 of Trade Marks Act, 1999 praying for the following judgment and decree:-

a) For a permanent injunction to restrain the Defendant, its directors / partners / proprietor as the case may be successors-in-business, assigns, heirs, servants, agents, representatives and all or any other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/ trading style AMARAVATI in respect of hotel and hospitality service or other allied and cognate service/ goods amounting to infringement of the Plaintiff's registered



C.S. No.371 of 2016

trademark AMARAVATHI or as being in some way connected with the Plaintiff and/or in any manner whatsoever;

b) For a permanent injunction restraining the Defendant, themselves, its directors/partners/proprietor as the case may be, successors-in-business, assigns, heirs, servants, agents, representatives and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all forms of media and through internet under the trade name/ trading style AMARAVATHI in respect of hotel and hospitality service or other allied and cognate service/goods amounting to passing off their services/goods as and for the goods and services of the Plaintiff or as being in some way connected with the Plaintiff and/or in any manner whatsoever;

c) The Defendant be ordered to pay to the Plaintiff, a sum of Rs.10,00,000/- as damages for committing infringement of trademarks and passing off its products as and for the Plaintiff's products or services;

d) The Defendant be ordered to surrender to the Plaintiff all name boards, invoices/bills, prints, sign board, display cards, visiting cards, menu cards, hoardings, letter head, stationery products, bags, leaflet, brochures, blocks, moulds, plates, screen prints, packing and advertising material and any other material in the Defendant's possession, which bears the trademark/ trade name AMARAVATHI;

e) a preliminary decree be passed in favour of the plaintiff directing the Defendant to render account of profits made by use of the identical trademark/ trade name AMARAVATHI amounting to infringement of the Plaintiff's registered trademarks and/or passing off



C.S. No.371 of 2016

and a final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendant after the latter have rendered accounts and

f) For costs of suit.

For Plaintiff : Mr.Arun C. Mohan

For Defendant : Set exparte

JUDGMENT

This suit has been filed for infringement and passing-off. The plaintiff is a registered proprietor of the Trademark AMARAVATHI having obtained registrations on 25.10.1982 and 19.02.2004 and it has been renewed periodically and is valid upto date. The plaintiff is aggrieved by the usage of the same trademark AMARAVATI by the defendant for its restaurant business at Visakhapatnam.

2. The details of the plaintiff's turnover which runs to several crores of rupees are disclosed in paragraph No.7 of the plaint and is reproduced hereunder :

Year	Sales in figures(in Rs.)
2010-11	4,27,63,828
2011-12	6,75,23,032
2012-13	8,79,15,846
2013-14	6,22,22,678
2014-15	6,96,23,467
2015-16	7,34,53,007

3. The plaintiff has incurred huge amount of money towards



C.S. No.371 of 2016

advertisement expenses for marketing the plaintiff's restaurants by name AMARAVATHI. The details of the advertisement expenses incurred by the plaintiff from 2010 onwards till 2016 are found in paragraph No.8 of the plaint and the same is reproduced hereunder :-

Year	Advertisement Expenses (in Rs.)
2010-11	35,40,568
2011-12	23,31,161
2012-13	35,07,801
2013-14	33,84,030
2014-15	34,35,416
2015-16	31,87,588

4. The plaintiff is having restaurants all over India and in abroad as seen from the averments contained in the plaint. According to the plaintiff, they came to know about the usage of the same trademark “AMARAVATHI” by the defendant in the month of February 2016. The plaintiff has stated in the plaint that the usage of name AMARAVATHI by the defendant for its restaurant business amounts to infringement of trademark and also amounts to passing off. The plaintiff has also caused a legal notice dated 22.02.2016 to the defendant requesting the defendant to cease and desist from using the mark AMARAVATHI, which is exclusively vested with the plaintiff as per the registrations obtained by



C.S. No.371 of 2016

the plaintiff under the Trade Mark's Act. No reply has been received to the said notice. The plaintiff is having restaurants in Chennai as well and the registrations are obtained in Chennai and therefore, this Court is having the jurisdiction to entertain the suit.

5. In the aforementioned circumstances, the suit has been filed seeking for the following reliefs :

a) permanent injunction to restrain the defendant or any persons claiming through them from using the trade name /trading style AMARAVATHI in respect of hotel and hospitality service or other allied services amounting to infringement of plaintiff's registered Trade Mark.

b) permanent injunction to restrain the defendant or any persons claiming through them from using the trade name /trading style AMARAVATHI in respect of hotel and hospitality service or other allied services as if the goods / services provided by the defendant is connected to the plaintiff's goods /services amounting to passing off of their services / goods as and for the goods and services of the plaintiff.

c) to direct the defendant to pay a sum of Rs.10,00,000/- towards



C.S. No.371 of 2016

damages to the plaintiff for committing infringement of trademarks and passing off.

(d) to direct the defendant to surrender to the plaintiff all name boards and other materials in the defendant's possession, which bears the trademark / trade name AMARAVATHI.

(e) to direct the defendant to pass a preliminary decree in favour of the plaintiff by directing the defendant to render accounts pertaining to the usage of the trade mark /trade name AMARAVATHI.

6. Insofar as the claim for damages as well as the other reliefs sought for in prayer (c) (d) and (e) above are concerned, the learned counsel for the plaintiff on instructions is not pressing those reliefs. The said statement is recorded. The learned counsel for the plaintiff on instructions is pressing only for the reliefs (a) and (b) referred to supra.

7. The defendant has already been set exparte by this Court on 12.10.2023. They have also not filed their written statement despite service of suit summons on them on 03.08.2016 itself. The right of the defendant to file written statement as per the Commercial Court's Act, 2015 also stands forfeited in view of the fact that the written statement



C.S. No.371 of 2016

has not been filed within the maximum statutory period of 120 days.

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8. Before the learned Additional Master - III, the plaintiff's representative Mr.Langesh G, who is the Chief Financial Officer was examined as a witness(PW1) on behalf of the plaintiff. He has also filed proof affidavit reiterating the contents of the plaint. Before the learned Additional Master – III, the following documents were marked as Exhibits on the side of the plaintiff :

1.	Ex.P1 is the original board resolution dated 02.02.2023.
2.	Ex.P2 is the office copy of the legal notice sent by the plaintiff's counsel to the defendant dated 22.02.2016.
3.	Ex.P3 is the printout of the plaintiff regarding its sales figures and advertisements in various newspaper for plaintiff's Amaravathi
4.	Ex.P4 is the printout of the menu card for defendant's restaurant
5.	Ex.P5 is the printout of the photographs of defendant's restaurant
6.	Ex.P6 is the photocopy of the certificate of registration of trademark AMARAVATHI under No.396948 in class 30

9. As seen from Ex.P6, the plaintiff is having registration for the trade mark AMARAVATHI under the Trade Marks Act. AMARAVATHI has been registered under Class 30. Ex.P3 will prove that the plaintiff is having a huge turnover and they have incurred advertisement expenses running to several crores of rupees from 2010-16. The advertisements given by the plaintiff in various newspapers to promote its restaurants which are marked as Ex.P3 will prove the



C.S. No.371 of 2016

plaintiff's credentials and its reputation. The Menu card of the defendant's restaurant which has been marked as Ex.P4 reveals that the defendant has copied the tradename /trademark viz.,AMARAVATHI which exclusively belongs to the plaintiff.

10. The plaintiff has prior to the institution of the suit issued a legal notice dated 22.02.2016 which has been marked as Ex.P2 requesting the defendant to cease and desist from using the mark AMARAVATHI. Despite receiving the said notice, the defendant has continued to use the trademark Hotel AMARAVATI for its restaurant business as seen from the averments contained in the plaint. The photographs of the defendant's restaurant which has been marked as Ex.P5 also reveals that the defendant has copied the plaintiff's reputed trademark AMARAVATHI for its restaurant business. Both AMARAVATHI and AMARAVATI are phonetically similar which will cause confusion in the minds of general public. Any person of average intelligence will think the defendants restaurant is run by the plaintiff. The plaintiff is also carrying on restaurant business only. The mark AMARAVATHI has been copied by the defendant which is proved by



C.S. No.371 of 2016

the documents marked as Exhibits on the side of the plaintiff. The defendant has already been set exparte and has also not chosen to defend the suit. The defendant by adopting the trademark and trading style AMARAVATHI for its restaurant will certainly make the general public believe that the restaurant is being run by the plaintiff, whereas it is not true. The defendant has used an almost identical tradename /trademark for its restaurant business which will certainly cause great harm and serious loss to the plaintiff's business as well as goodwill and reputation earned by the plaintiff's services. The plaintiff has been in the restaurant business ever since 1980 and the trademark AMARAVATHI has been used by them for their restaurant business ever since then. Being a registered trademark and the plaintiff being in continuous usage of the same for long number of years, the usage of the trademark by the defendant would certainly cause disrepute to the plaintiff's reputation in the market as the standards of the defendant may be lower than that of the plaintiff.

11. After giving due consideration to the aforementioned facts and after giving due consideration to the oral and documentary evidence placed on record by the plaintiff and also after giving due consideration



C.S. No.371 of 2016

to the plaint averments, this Court is of the considered view that insofar as the injunction reliefs sought for in prayer (a) and (b) are concerned, the plaintiff has proved the suit claim. However, insofar as the remaining reliefs found in prayers (c) to (e) are concerned since the plaintiff is not pressing the said reliefs, this Court is not granting the same.

12. For the foregoing reasons, the suit is partly decreed by granting the following reliefs :

a) permanent injunction restraining the defendant or any person claiming through them from using the trade name /trading style AMARAVATI in respect of hotel and hospitality service or other allied services.

b) permanent injunction restraining the defendant or any person claiming through them from using the trade name /trading style AMARAVATI in respect of hotel and hospitality service or other allied services as if the goods / services provided by the defendant is connected to the plaintiff's goods /services.

13. Insofar as the reliefs sought for in prayer (c), (d) and (e) are



C.S. No.371 of 2016

concerned, the suit is dismissed as not pressed.

WEB COPY 14. The defendant is also directed to pay the cost of the suit.

18.10.2023

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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APPENDIX



C.S. No.371 of 2016

List of Witness Examined on the side of the Plaintiff:

Mr.G. Langesh as PW1

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List of documents marked on the side of the plaintiff :

S. No.	Exhibits	Description of documents
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3.	P3	Ex.P3 is the printout of the plaintiff regarding its sales figures and advertisements in various newspaper for plaintiff's Amaravathi
4.	P4	Ex.P4 is the printout of the menu card for defendant's restaurant
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WEB COPY



C.S. No.371 of 2016

ABDUL QUDDHOSE, J.

vsi2

C.S. No.371 of 2016

18.10.2023