



WEB COPY



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

A.No.4418 of 2022
in
C.S (Commercial Division)No.51 of 2021

C.SARAVANAN, J.

The defendants in the above suit have filed this application direct the plaintiffs to take back the remaining spare parts purportedly valuing Rs.20,00,000 (Rupees Twenty Lakh) lying in their custody and/ or to allow them (the applicants herein), to use the respondents (plaintiffs companies) name board for a period of two years to sell the remaining spare parts of the respondents and to settle the value to the applicants and thereby to record the above joint affidavit and to pass appropriate orders.

2. The above suit has been filed by the respondents for the following relief:-

a) Permanent/perpetual injunction against the infringement of the plaintiffs' Whirlpool and other Whirlpool formative marks, by restraining the defendants, their promoters, assigns, relatives, successors-in-interest, licenses, franchisees, partners, representatives, servants, distributors, employees, agents etc., or anyone associated with them from using 'Whirlpool' and other Whirlpool formative marks or any other mark



WEB COPY



A.No.4418 of 2022

in

C.S(Commercial Division)No.51 of 2021

identical with or deceptively similar to the plaintiffs' registered and well-known marks, Whirlpool and other Whirlpool formative marks as a logo design, trade mark, service mark, house mark, trade name, trading style, corporate name, website, domain name, e-mail address, business card or otherwise in any manner whatsoever, including importing/exporting, so as to infringe the plaintiffs' said trademarks;

b) Permanent/perpetual injunction against infringement of the plaintiffs' copyright, by restraining the defendants, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, partners, representatives, servants, distributors, employees, agents etc., or anyone associated with them from using copyrighted material of plaintiffs;

c) Permanent/perpetual injunction restraining the defendants, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, partners, servants, distributors, employees, agents etc., or anyone associated with them from using 'Whirlpool' and other 'Whirlpool' formative marks and/or any mark identical with or similar to the plaintiffs' "Whirlpool" and other Whirlpool formative marks in any manner whatsoever so as to pass off or enable others to pass off their business as that of the plaintiffs or in some manner convey a connection with the plaintiffs;

d) Direct the defendants their promoters, assigns, relatives, successors-in-interest, licensees, franchisee, partners,



WEB COPY



A.No.4418 of 2022

in

C.S(Commercial Division)No.51 of 2021

representatives, servants, distributors, employees, agents etc., or anyone associated with them not to pursue any trade mark application(s) that they may have filed before any other competent body or government authority for obtaining rights (statutory or otherwise) in plaintiffs' 'Whirlpool' and other Whirlpool formative marks in any manner whatsoever including as a trade/service mark, house mark, trade name, trading style, corporate name, website, domain name, e-mail address or otherwise in any manner whatsoever in relation to their business/products/services and further restrain them from applying for or obtaining registration thereof;

e) Direct the defendants, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, partners, representatives, servants, distributors, employees, agents etc., or anyone associated with them to deliver-up to the plaintiffs for destruction their entire stationery, letterheads, signage, reprographic material, brochures, literature or any other material for advertising, selling or marketing any goods and/or services being plaintiffs' " Whirlpool' and other Whirlpool formative marks and/or any mark similar to the plaintiffs' 'Whirlpool', and other Whirlpool formative marks;

f) Direct the defendants to render a true and faithful account of the profits made by using the 'Whirlpool', and other Whirlpool formative marks post relinquishment of authorised service partner agreement and the defendants be further ordered and directed to



WEB COPY



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

pay to the plaintiffs such amount as may be found due on such account being taken;
g) The defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.30,00,000/- as damages on account infringement of trade mark, infringement of copyright and passing off;
h) Direct the defendants to pay to the plaintiffs costs of the suit

3. This application has been filed by the applicants after interim orders were passed by this Court on 01.10.2021 in Original Application Nos. 530, 531 and 532 of 2021 restraining the applicants from infringing their trade mark. By another order on the same day, this Court had also allowed Application No.3101 of 2021 for joiner of cause of action in the above suit under Clause 14 of the Letters Patent of Madras High Court.

4. The respondents had also filed Application No.250 of 2022 for wilful disobedience of this Court order dated 1.10.2021 by the respective applicants under Order XXXIX Rule 2A of CPC. The said application was however closed after recording the submissions of the counsel for the applicants on 18.8.2022.



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

WEB COPY

5. The case of the applicants herein is that there is no proper termination of contract under the Service Partner Agreements between the applicants and the 2nd respondent in the respective applications.

6. It is submitted that both the applicants were appointed as authorised service persons of the respondents and that the applicants decided to terminate the contract to Service Partner Agreements by issuing notice dated 18.1.2018. However, the contract was not terminated as per the Service Partner Agreements signed with the 2nd respondent.

7. It is submitted that as per the Service Partner Agreements signed with the 2nd respondent, the accounts between the parties were to be settled within a period of 90 days from the date of expiry of notice of termination, provided there were clear and transparent documentations.

8. It is submitted that as per the Service Partner Agreements signed with the 2nd respondent, upon termination, the respondents at their sole discretion had to decide whether to take back unsold spare parts,



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

accessories and finished goods invoiced earlier with the applicants/defendants to meet their financial aspirations and objectives.

9. However, the respondents failed to settle dues and therefore the applicants proceeded to provide services using the spares in their custody already purchased by them from the respondents.

10. I have considered the arguments advanced by the learned counsel for the respondents and the learned counsel for the applicants. The applicants terminated the contract by issuing notice for termination of the Service Partner Agreements on 18.1.2018. The applicants/defendants should have taken an inventory of the stock purchased from the respondents/plaintiffs and called upon them to take back the stock and settle the amounts, due if any. No such steps were taken by the applicants/defendants then and therefore.

11. If the respondents failed to take back the inventory of the spare parts that was purchased by the applicants, they should have taken such steps to force the respondents by filing a suit immediately.



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

WEB COPY

12. On the other hand, they appear to have continued to use the trade mark which would be *prima facie* in violation of the rights of the respondents/plaintiffs. They appear to have continued to violate the rights of the respondents despite ad-interim order of this Court dated 1.2.2021 in O.A.No.530 to 532 of 2021.

13. Further, as per the Service Partner Agreements signed by the respective applicants/plaintiffs with the respondents/defendants, it was the sole discretion of the respondents/plaintiffs as to whether the goods were to be taken back or not.

14. The Service Partner Agreements further stipulated that stock post expiry dates, defective, not saleable etc will not be taken back. The Service Partner Agreement was terminated on 18.1.2018 by the applicants/defendants. Therefore, the present application for a strange prayer at this stage cannot be entertained in this proceeding.



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

WEB COPY

15. That apart, the present suit has been filed only for infringement of copyrights and trademark by the applicants/defendants and is not a suit for recovery of money. These applications have been filed to cover the lacuna. These applications can neither be countenanced nor entertained in this proceeding. It was incumbent on the part of the applicants/defendants to have pressed for their relief under the Service Partner Agreements as soon as they issued email dated 18.1.2018 terminating their relationship to the respondents/plaintiffs.

16. Further, even after the suit summons was served on the applicant, they failed to file their respective written statements together with a counter claim in accordance with the provisions of O.S Rules, CPC as amended for the purpose of Commercial Courts Act, 2015.

17. They have thus lost their substantial right to defend themselves in the suit or claim any set off /counter claim, since, no written statement has been filed within 30 days or within a period of further 90 days with an application to condone the delay.



WEB COPY



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

18. Both the applicants/defendants having forfeited their right to file written statement in terms of the amended provisions of Code of Civil Procedure for the purpose of Commercial Courts Act, 2015. Therefore, they cannot ask for the above relief at this stage.

19. Therefore, the present Application is liable to be dismissed and is accordingly dismissed.

08.02.2023

kkd



WEB COPY



A.No.4418 of 2022
in
C.S(Commercial Division)No.51 of 2021

C.SARAVANAN,J.

Kkd

Pre-delivery Order in
A.No.4418 of 2022
in
C.S.No.51 of 2021

08.02.2023