



A.No.4406 of 2022

**A.No.4406 of 2022**  
in  
**C.S. (Comm.Div.) No.111 of 2021**

|               |            |
|---------------|------------|
| Reserved on   | 13.02.2023 |
| Pronounced on | 24.05.2023 |

**C.SARAVANAN, J.**

The above application has been filed by the applicant/first defendant under Order XIII-A Rule 3 of the Commercial Courts Act 2015, to pass a summary judgment dismissing the plaintiffs claim for permanent injunction and for mandatory injunction in C.S.(Comm.Div.)No.111 of 2021 in respect of the Trademark “Green Bell” against the applicant/ first defendant herein in the above suit. Prayer in A.No.4406 of 2022 reads as under:-

“The plaintiff’s claim for Declaration, Permanent Injunction and Mandatory Injunction as prayed for in C.S.No.(COMM.DIV) No.111 of 2021 in respect of the Trademark “ Green Bell” against the 1<sup>st</sup> defendant with exemplary costs.”

2. The respondents herein/plaintiffs have filed the above suit for the following relief:-



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- a) A declaration that the Plaintiffs are the prior user of the trade name “**GREEN BELL**”, the bell logo device mark more fully described in Schedule A, and the yellow and green colour trade dress associated with the trade name “**GREEN BELL**” used by the Plaintiff more fully described in Schedule C;
- b) A declaration that the Defendants have passed off the Plaintiffs’ trade name by using the offending name “**GREEN BELL**”, the plaintiffs’ bell logo device mark more fully described in Schedule A by using his own offending bell logo more fully described in schedule B, and have used a deceptively similar green and yellow offending trade dress more fully described in Schedule D to imitate the Plaintiffs’ trade dress more fully described in Schedule C;
- c) A declaration that the trade name “**BELL**” has attained a secondary meaning in the coconut powder industry due to the Plaintiffs’ desiccated coconut powder being sold under the names “**GREEN BELL**” and “**RED BELL**” and that the Defendants have passed off the same by using the offending trade name “**GREEN BELL**”;
- d) A permanent injunction restraining the Defendants their men, agents, assignees, representatives, distributors, franchisees, job workers, servants or anyone claiming through or under them from in any manner selling, providing services, displaying and advertising in all forms of media and on the internet their offending trade name “**GREEN BELL**”, the offending bell logo device mark more fully described in Schedule B, and the green and



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yellow colour offending trade dress more fully described in Schedule D;

- e) A permanent injunction restraining the Defendants, their men, agents, assignees, representatives, distributors, franchisees, job workers, servants or anyone claiming through or under them from in any manner selling, providing services, displaying and advertising in all forms of media and on the internet, the trade name, “**BELL**” in relation to coconut products which has acquired a secondary meaning due to the Plaintiffs’ desiccated coconut powder being sold under the names “**RED BELL**” and “**GREEN BELL**”;
- f) For a preliminary decree in favour of the Plaintiffs directing the 1<sup>st</sup> Defendant to render accounts of the profits made by them in the course of their acts of passing off till the date of rendition of accounts and a final decree be passed in favour of the Plaintiffs for the amounts of profits found to have been made by the 1<sup>st</sup> Defendant after they render accounts;
- g) Mandatory injunction directing the Defendants to deliver up for the purpose of destruction, all the deceptively similar packaging used for desiccated coconut powder containing the offending “**GREEN BELL**” trade name which is an established trade name of the Plaintiffs, inclusive of the offending bell logo and the green and yellow offending trade dress;
- h) Mandatory injunction directing the 3<sup>rd</sup> defendant to remove the commercial listing of the offending “**GREEN BELL**” product on its website sold through the 1<sup>st</sup> Defendant or the 2<sup>nd</sup> Defendant or through their men, agents,



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assignees, representatives, distributors, franchisees, job workers, servants or anyone claiming through or under them;

- i) Direct the Defendants to bear the costs of this civil suit.

3. The dispute pertains to the use of word “ GREEN BELL” along with the device Bell for Desiccated Coconut Powder used both by the respondents herein / plaintiffs and the applicant/first defendant.

4. The admitted fact of the case is that the plaintiffs are the registered proprietors of the Label Bell vide TM.No.1848542 in Class 29. The application was filed for registration of the aforesaid label on 07.08.2009. The registration of the aforesaid label was only after a similar mark were earlier registered in the name of one Cee Emm Exports vide TM.Nos.1220040,1356047 in Class 29 and TM.No.1199502 in Class 35 and TM.No.119503 in Class 30.

5. Though the applications were filed by the aforesaid proprietor M/s.Cee Emm Exports, and the marks were registered, they were not renewed by the aforesaid proprietor. Therefore, the registration in favour



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of aforesaid proprietor M/s.Cee Emm Exports lapsed. The details of the marks of the above said M/s.Cee Emm Exports are as under:-

**Table-I:-**

| S. No. | Appln No. | Class | Applicant Details | Date Filing | Status of Application    | Trademark         |
|--------|-----------|-------|-------------------|-------------|--------------------------|-------------------|
| 1.     | 1220040   | 29    | Cee Emm Exports   | 04/08/2003  | Registered (Not Renewed) | "Bell" Word Mark. |
| 2.     | 1356047   | 29    | Cee Emm Exports   | 09/05/2005  | Registered (Not Renewed) |                   |
| 3.     | 1199502   | 35    | Cee Emm Export    | 19/05/2003  | Registered (Not Renewed) | "Bell" Word Mark  |
| 4.     | 1199503   | 30    | Cee Emm Export    | 19/05/2003  | Registered (Not Renewed) |                   |

6. On the other hand the plaintiffs filed application for registration of a label mark which was almost identical to the above mark which were earlier registered by the above proprietor M/s.Cee Emm Exports.



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7. The details of the applications filed by the plaintiffs in the above

two Trademarks are as under:-

**Table-II:-**

|    |         |    |                             |            |                       |                                                                                                    |
|----|---------|----|-----------------------------|------------|-----------------------|----------------------------------------------------------------------------------------------------|
| 1. | 1848542 | 29 | Plaintiffs<br>(RED<br>BELL) | 07/08/2009 | Accepted &<br>Opposed | <br>Red Bell    |
| 2. | 4795736 | 29 | Plaintiffs                  | 25/12/2020 | Objected              | <br>Green Bell |

8. Though the T.M.A.No.1848542 was filed on 07.08.2009 by the plaintiffs, it has been opposed. The Mark is yet to be registered or rejected. The T.M.A.No.1848542 is thus pending. The plaintiffs have also filed a second application for registration of a label depicting the device of a Bell with the word “Bell” in green, yellow, red and white background vide T.M.A.No.4795736 in Class 29 on 25.12.2020. The said application is also pending.



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9. The first defendant/applicant herein on the other hand filed the following applications in Class 29, 30 & 35 as detailed below:-

**Table-III:-**

|    |         |         |                              |            |                                              |                                                                                                    |
|----|---------|---------|------------------------------|------------|----------------------------------------------|----------------------------------------------------------------------------------------------------|
| 1. | 3806690 | 35      | 1 <sup>st</sup><br>Defendant | 16/04/2018 | Registered                                   | Green Bell<br>(Word Mark)                                                                          |
| 2. | 4827576 | 35<br>✓ | 1 <sup>st</sup><br>Defendant | 20/01/2021 | Accepted<br>&<br>Opposed by<br>the Plaintiff | <br>GREEN BELL. |
| 3. | 4826320 | 29<br>✓ | 1 <sup>st</sup><br>Defendant | 19/01/2021 | Registered                                   |                |
| 4. | 4829652 | 30      | 1 <sup>st</sup><br>Defendant | 21/01/2021 | Registered                                   | "Green Bell"<br>Word Mark                                                                          |
| 5. | 4884436 | 30      | 1 <sup>st</sup><br>Defendant | 01/03/2021 | Objected                                     |               |
| 6. | 5070964 | 29      | 1 <sup>st</sup><br>Defendant | 03/08/2021 | Registered                                   |               |



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10. It is the case of the plaintiffs/respondents herein that the first defendant/applicant herein has adopted a label of “GREEN BELL” which is deceptively similar to the label used by the plaintiff as in Schedule A to the plaintiff. A comparison of the two labels in Green and Yellow background of the plaintiffs and the defendants are as under:-

**SCHEDULE A**

The Plaintiffs' trade device used for their “GREEN BELL” product



**SCHEDULE B**

The 1<sup>st</sup> Defendant's offending trade device used for his “GREEN BELL” products





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11. The application for summary judgment is based on the contradictions in the present suit notice filed along with the plaint and the actual copy of the notice received by the counsel for the first defendant/applicant herein as detailed below:-

| S.No. | Details               | Notice filed along with the<br>Plaint                                                                                                                                                                                                                                                               | Notice received by the<br>counsel of the 1 <sup>st</sup> Defendant                                                                                                                                                                                                                                  |
|-------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | Date of the<br>Notice | <b>08<sup>th</sup></b> February 2021                                                                                                                                                                                                                                                                | <b>10<sup>th</sup></b> February 2021                                                                                                                                                                                                                                                                |
| 2.    | Para-2                | 2. In the year <b>2007</b> , my client bonafidely, honestly, continuously, commercially, openly, exclusively and to the exclusion of others, without interruption and in the course of trade and as proprietor thereof is using the trademark “Green Bell” in relation to its goods and businesses. | 2. In the year <b>2013</b> , my client bonafidely, honestly, continuously, commercially, openly, exclusively and to the exclusion of others, without interruption and in the course of trade and as proprietor thereof is using the trademark “Green Bell” in relation to its goods and businesses. |
| 3.    | Para-9                | 9. My client states that my client has been using this trademark “Green Bell” since <b>2007</b> , which has acquired a distinctive feature in respect of the goods and services of my client by such continued and extensive use of the said Trademark.                                             | 9. My client states that my client has been using this trademark “Green Bell” since <b>2013</b> , which has acquired a distinctive feature in respect of the goods and services of my client by such continued and extensive use of the said Trademark.                                             |
| 4.    | Para-16               | 16. My client states that during the course of trade my client honestly conceived and adopted the                                                                                                                                                                                                   | 16. My client states that during the course of trade my client honestly conceived and adopted the mark “GREEN                                                                                                                                                                                       |



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|    |         |                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                           |
|----|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |         | mark “GREEN BELL” as their trading style and adopted the mark “GREEN BELL” in respect of desiccated Coconut in manufactured and marketed by them as early as the year <b>2007</b> . The trading style “GREEN BELL” and the mark “GREEN BELL” were being put to use continuously and extensively since the year <b>2007</b> by my client till date. | BELL” as their trading style and adopted the mark “GREEN BELL” in respect of desiccated Coconut in manufactured by them as early as the year <b>2013</b> . The trading style “GREEN BELL” and the mark “GREEN BELL” were being put to use continuously and extensively since the year <b>2013</b> by my client till date. |
| 5. | Para-19 | 19. My client states that my client has been using the trademark “GREEN BELL” since <b>2007</b> and you have been using the mark from 2015. By the user date itself it is most clear that my client is an honest founder of the trademark “GREEN BELL”.                                                                                            | 19. My client states that my client has been using the trademark “GREEN BELL” since <b>2013</b> and you have been using the mark from 2015. By the user date itself it is most clear that my client is an honest founder of the trademark “GREEN BELL”.                                                                   |
| 6. | Para-20 | 20. My client submit that your client is liable for infringement of my client’s trademark, committing act of passing off by yourself and enabling others to pass off your goods as and for the goods of my client and thereby earn illegal profit.                                                                                                 | 20. Further my client states that my client has applied registration for a device mark with a Logo of “GREEN BELL” and you have applied for workd mark. Your logo was not shown in the application your applied for. But you have printed the logo in your bag which is illegal and my client strictly warns it.          |



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12. It is the case of the applicant/first defendant that there are also variance in the sales invoices filed before the Trademark Registry and the sale invoices filed before this Court. Similarly, contradictions have been elicited in the GST bills filed before the Trademark Registry and before this Court. Similarly, a reference has been made to the difference in the value of the invoices filed before the Trademark Registry and before this Court as a plain document.

13. The application filed under Order XIII-A of CPC is resisted by the respondents/plaintiffs on the ground that the points taken out in the affidavit filed in support of the above application are the question of fact which would require a detailed trial and the power under Order XIII-A of CPC as amended for the purpose of Commercial Courts Act, 2015 cannot be invoked to short circuit the proceedings.



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14. That apart, it is submitted that the defendant has never used the brand “GREEN BELL” from 2015 and that the defendant has been using the mark “SQUEENY ULTRA” from 2015 and had registered the mark “SQUEENY ULTRA” vide TM.No.3116580.

15. It is also submitted that the applicant /first defendant herein has not given any details of the aforesaid mark in the application filed in support of the present application.

16. It is further case of the respondents/plaintiffs that the aforesaid mark “SQUEENY ULTRA” has been altered in an unscrupulous manner by the applicant/ first defendant herein after the dispute arose between the plaintiffs and the applicant/first defendant.

17. In the counter filed by the applicant/ first defendant, it is submitted that the Plaintiffs during the opposition proceedings had not filed the invoices for every annual year since 2009 but filed only few sample of invoices which reflect considerable sale of the Plaintiffs product for all the annual year since the year 2009 which highlighted the



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Plaintiffs' prior usage of the mark "GREEN BELL".

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18. It is submitted that the applicant/first defendant has very cleverly included the *proforma* invoices filed by the Plaintiffs before the trademark registry and the sizable sample invoices produced by the respondents/Plaintiffs to arrive at an amount which would obviously be lesser than the total turnover for the period 2010-2011 and 2012-2013.

19. It is further submitted that the allegations of the first defendant pertaining to invoices and other connected documents and their veracity is an issue that is fit to be decided only in the course of trial, therefore, the first Defendant filing an application under XIII-A of the Civil Procedure Code, 1908, for a summary judgment and at the same time raising issues about the veracity of the Plaintiffs' invoices and connected documents is inherently contradictory as the veracity of invoices can be decided only during the course of trial.



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20. It is further submitted that contrary to the allegations of the first defendant, the said dealer, V.S.A Cocos is still functioning in the same address in Erode under the GST No.33AAJPP4772B1ZT and have also filed GST returns as recently as on 09.10.2022 which clearly shows that V.S.A Cocos is very much functional. The first defendant has produced random screen shots which are questionable and is trying to build an entirely concocted narrative around the legitimacy of invoices of the Plaintiffs with the sole intention of hoodwinking the Hon'ble Court into believing that the Plaintiffs have fabricated invoices, it is pertinent to note that the veracity of the documents produced by the first defendant can be decided only during the course of trial.

21. I have perused the application filed under Order XIII-A of CPC and the documents filed by both parties.

22. Among the two marks which have been filed by the plaintiffs as in Table-II above application in T.M.A.No.1848542 in Class 29 of the plaintiffs was opposed by M/s.S.S.Coco Agaro Industries vide Opposition No.769542.



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23. The Trade Mark Registry has treated T.M.A.No.1848542 in Class 29 of the plaintiffs as abandoned on the ground that neither the plaintiff nor the opponent M/s.S.S.Coco Agaro Industries appeared for a hearing fixed on 14.03.2023. This information is available in the Trade Mark Registry website. Hence the application filed for registration of the label by the plaintiffs in T.M.A.No.1848542 at the present is deemed to have been abandoned under Rule 50(3) of the Trademark Rules, 2017 as per the order of the Trade Mark Registry.

24. As far as T.M.A.No.4795736 in Class 29 of the plaintiffs is concerned two other marks of one Mr.S.Ravindran of New.No.63, Tiruppur Road, Kangayam Road, Kangayam, Tiruppur District, Tamil Nadu vide registered Trademark Nos.972429 and 2865228 in Class 29 have been cited as grounds for refusing registration of the mark vide T.M.No.4795736 in the Examination Report dated 30.12.2020.

25. This information is also available in the Trade Marks Registry Website which indicates that the preliminary examination report was generated sent to the plaintiffs Trademark Attorney.



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26. It appears that the Trademark Application No.4795736 is listed for further hearing. Thus, the fact remains that none of the two applications filed by the plaintiffs have been registered so far.

27. The plaintiffs have also filed application for opposing registration of Trademark No.4827576 on 08.06.2021 filed by the first defendant (applicant herein) in Class 29 vide Opposition No.1109859. After the opposition was filed earlier by the plaintiff on 08.06.2021, plaintiffs have filed revised notice of opposition on 18.08.2021.

28. Prior to initiation of Opposition No.1109859 against registration of Trade Mark Application in T.M.A.No.4795736 of the defendant, the defendant has also filed a suit before the Commercial Court (District Court) at Tumkur in O.S.No.18 of 2021 on 06.04.2021 against the plaintiff for the following relief:-

- i. *Grant permanent injunction restraining Defendant their servants, assigns or agents or any one claiming through them from and any manner infringing Plaintiff's well established trademark 'GREEN BELL' by using offending mark "GREEN BELL" of defendant or any other mark which is identical and/or deceptively similar to the Plaintiff's registered*



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- trademark;*
- ii. Direct the Defendant to surrender to Plaintiff, entire stock of unused offending hoardings, bills, packages, negatives, positives, transparencies, block for destruction;*
  - iii. Direct the defendant to render honestly and faithfully true account of the profit that Defendant have derived by promotion their business by using offending trademark and artistic copyright "GREEN BELL";*
  - iv. Direct the defendant to pay sum of Rs. /- per month towards Damages for the infringing of Plaintiff's trademark "GREEN BELL" by adopting identical and/or deceptively similar trademark;*
  - v. Direct payment of such profits to the Plaintiff by way of damages for infringing Plaintiff's trademark Green Bell Desiccated Coconut Powder; and*
  - vi. Direct the Defendant to pay to Plaintiff the costs of this suit*

29. Thus, the applications filed by the plaintiffs for registration of the Device Mark appears to have been abandoned for non-appearance, while the other application is pending for hearing.



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30. The first plaintiff has also filed an Opposition No.1109859 against registration of a label mark vide T.M.No.4827576 by the first defendant. The fact also remains that the defendant has earlier filed a suit before the Commercial Court, (District Court) Tumkur in O.S.No.18 of 2021, as early as on 06.04.2021. The present suit is subsequent to the above suit in as much as it has been filed sometime during November 2021.

31. In terms of Section 10 of CPC No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. Thus, present suit is liable to be stayed.



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32. Power under Order XIII-A of CPC as amended for the purpose of Commercial Courts Act, 2015 cannot be exercised in favour of the party, if there are several disputes in the questions of fact which would require a detailed trial.

33. Merely because there are parallel proceedings pending before this Court and before the Trademark Registry for registration of marks on behalf of the plaintiff and the defendant and merely because documents filed by the plaintiff before this Court are in variance with the documents filed by the plaintiffs before the Trade Mark Registry in Opposition No.1109859 against registration of T.M.No.4827576 of the defendant cannot be a ground to give a summary disposal of the suit under Order XIII-A of CPC as amended for the purpose of Commercial Courts Act, 2015. Genuinity, authenticity, proof and relevancy of the documents are to decided only after Trial in the present case.



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34. To give a summary Judgment, the Court has to be satisfied that the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

35. In my view, the issues raised by the first defendant/applicant herein in the present application are a matter of Trial which has been decided after the documents are marked before this Court. The defendant has not satisfied on facts that the case warrants a summary disposal without Trial. Therefore, there is no merits in this application. It is liable to be dismissed. It is accordingly dismissed.

**24.05.2023**

Index: Yes/ No  
Neutral Citation: Yes/No  
Speaking/Non-speaking Order  
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