IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.697 of 2017

1.M/s.CSCO LLC,
A Limited Liability Company,
Rep by its Corporate Representative,
Mr.David Apperman,
525, Fashion Avenue, STE 1006,
New York, NY 10018-4901,
United States of America.

2.A Base Ix Company LLC,
A Limited Liability Company,
Rep by its Corporate Representative,
Mr.David Apperman,
525, 7th Avenue, Suite 1508,
New York, NY 10018,
United States of America. ... Plaintiffs

vs

1.M/s.Lakshmi Saraswathi Spintex Limited,
Rep by its Managing Director,
No.9, (Old No.8), Crescent Road,
Shenoy Nagar, Chennai – 600 030.

2.Mr.S.Naveen Chandra,
Joint Managing Director,
M/s.Lakshmi Saraswathi Spintex Limited,
No.9, (Old No.8), Crescent Road,
Shenoy Nagar, Chennai – 600 030.

3.Mr.C.S.Adithya Praveen,
Managing Director,
M/s.Lakshmi Saraswathi Spintex Limited,
No.9, (Old No.8), Crescent Road,
Shenoy Nagar, Chennai – 600 030. ... Defendants
(Amended as per order dated 18.07.2019
passed in App.No.4996 of 2019)

Prayer: This Civil Suit is filed under Order IV Rule 1 of O.S Rules read with Order VII Rule 1 of CPC read with Section 134 of the Trade Marks Act, (47 of 1999), prayed for a Judgment and Decree:-

a) A permanent injunction restraining the defendant Nos.1 to 3 herein, their men, agents, servants or any other person through them, from and in any manner dealing with, marketing or selling or offering to sell the Ladies Tops manufactured by the 1st defendant carrying the label of the registered Trade Mark "GLITZ" owned by the plaintiff No.1, pursuant to the purchase orders placed by the plaintiffs;

b) Directing the defendants 1 to 3 herein to jointly and severally pay to the plaintiffs a sum of US $10,00,000/-(presently amounting to approximately Rs.6,50,00,000/-) as damages for the monetary and other loss and damage caused to the name, reputation, standing and business of the plaintiffs by intentionally infringing the registered Trade Mark "GLITZ" owned by the plaintiffs;

(c) Directing the defendant Nos.1 to 3 herein to surrender to the plaintiffs for destruction the entire stock of Ladies Tops manufactured by the 1st defendant carrying the label of the registered Trade Mark "GLITZ" owned by the plaintiffs pursuant to the purchase placed by the plaintiffs;

(d) Directing the defendant Nos.1 to 3 herein to render true and proper accounts of the quantities of Ladies Tops already sold by them together with the details of the customers and further direct the defendants to pay to the plaintiffs such amount as may be found due and payable on such accounts being taken;

(e) Directing the defendants 1 to 3 herein to pay the costs of this suit to the plaintiffs and

(f) grant such further or other reliefs.

For Plaintiffs : No Appearance

For Defendants : Mr.R.Sathish Kumar for D1 to D3

JUDGMENT

The plaintiffs have filed this suit for a permanent injunction restraining the defendant Nos.1 to 3 from infringing their trade mark "GLITZ". The plaintiffs have further filed this suit for a decree for compensation towards damages suffered by them on account of the use of the aforesaid trade mark by the defendants. The prayer in the suit filed by the plaintiffs read as under:

> "a) A permanent injunction restraining the defendant Nos.1 to 3 herein, their men, agents, servants or any other person through them, from and in any manner dealing with,

marketing or selling or offering to sell the Ladies Tops manufactured by the 1st defendant carrying the label of the registered Trade Mark "GLITZ" owned by the plaintiff No.1, pursuant to the purchase orders placed by the plaintiffs;

b) Directing the defendants 1 to 3 herein to jointly and severally pay to the plaintiffs a sum of US $10,00,000/-(presently amounting to approximately Rs.6,50,00,000/-) as damages for the monetary and other loss and damage caused to the name, reputation, standing and business of the plaintiffs by intentionally infringing the registered Trade Mark "GLITZ" owned by the plaintiffs;

(c) Directing the defendant Nos.1 to 3 herein to surrender to the plaintiffs for destruction the entire stock of Ladies Tops manufactured by the 1st defendant carrying the label of the registered Trade Mark "GLITZ" owned by the plaintiffs pursuant to the purchase orders placed by the plaintiffs;

(d) Directing the defendant Nos.1 to 3 herein to render true and proper accounts of the quantities of Ladies Tops already sold by them together with the details of the customers and further direct the defendants to pay to the plaintiffs such amount as may be found due and payable on such accounts being taken;

(e) Directing the defendants 1 to 3 herein to pay the costs of this suit to the plaintiffs and

(f) grant such further or other reliefs."

2.The defendants, on the other hand, claims that it is the plaintiffs who are in turn are liable to pay a sum of Rs.7,97,25,268/- for the invoices raised between January 2016 and April 2016 together with interest at the rate of 12% p.a. for the supplies effected by the 1st defendant to the plaintiffs and that the plaintiffs failed to pay the aforesaid amount to the defendants.

3.After the written statement was filed together with the counter claim by the 1st defendant, the plaintiffs failed to appear before this Court. The counsel for the plaintiffs reported no instructions. Therefore, on 09.01.2023, the following issues were framed:-

> "1.Whether the suit filed by the plaintiffs is maintainable?
>
> 2.Whether the defendants are entitled to recover a sum of Rs.7,97,25,268/- with interest from the plaintiff(s) in their counter claim?
>
> 3.To what other reliefs the parties are entitled to?"

The case was directed to be listed before the learned Additional Master – I, by an order dated 14.12.2022, for recording evidence.

4.Pursuant to the aforesaid order of this Court, the defendants marked Exs.D1 to D6 before the learned Additional Master – I on

31.01.2023, as detailed below:-

1.	Ex.D1	Original Board Resolution dated 18.01.2023
2.	Ex.D2	Invoices from the 1st defendant to the plaintiff – October 2015 to April 2016, (29 Invoices)
3.	Ex.D3	Email exchanged between the plaintiffs and the 1st defendant (Section 65-B of I.E Act Produced)
4.	Ex.D4	Office Copy of legal notice sent by the plaintiff
5.	Ex.D5	Reply sent by the 1st defendant
6.	Ex.D6	Statement of accounts as on 19.01.2018

5.Today also, when the case was listed "for arguments", the learned counsel for the plaintiffs reports 'no instructions' from the plaintiffs. On perusing the plaint, the written statement containing the counter claim and documents marked as Exhibits before the learned Additional Master – I on 31.01.2023, it is noticed that the case was filed by the plaintiffs for alleged infringement of the trade marks of the plaintiffs. As admittedly the subject trade mark is not registered in India. There are also no documents available on the file of this Court to infer any infringement of the Plaintiffs Trademarks by the defendants in India.

The defendants were given a work order to manufacture and supply the garments for being marketed by the plaintiffs. The export consignment which was earlier exported by the 1st defendant, was initially rejected and later accepted by the plaintiffs. The Plaintiffs has not paid the 1st defendant for the supplies effected by them.

6.The learned counsel for the defendants submits that the defendants are manufacturer of garments and are one of the leading exporters of garments to several countries including to their customers United states of America. In the course of their business, they were associated with several companies represented by their agents in India. Mr. Christian Durai was one such agent and representative of the 1st plaintiff company in New York. It was submitted that the said agent, Mr.Christian Durai (Quality controller of Mr.David Apperman) used to stay in India and accord quality approval for the export orders and sign them on behalf of the 1st plaintiff. Thus, garments manufactured by the 1st defendant for the plaintiffs were exported to the 1st plaintiff based on the Purchase Orders, vide Invoices of the plaintiffs and corresponding export invoices were raised.

7. It is noted that the plaintiffs and the 1st defendant company had business dealings since 2015 and that during the course of their transaction monies were paid by the plaintiffs for the goods supplied by the 1st defendant company. It is noted that the 1st defendant company has supplied goods worth about 1.6 million US dollars to the plaintiffs from 2015 till 2016 and as on date, the principal amount due from the plaintiffs to the 1st defendant company was USD 8,73,904.56 for the garments supplied, invoiced and shipped from January 2016 till April 2016 and since the plaintiffs neglected to pay the same, the 1st defendant has filed this counter claim to recover Rs.7,97,25,268/- together with interest at rate of 12% p.a. from the plaintiffs herein.

8.It is noted that the 1st defendant has sent two containers- 1st container No.APZU443313 from Tuticorin port to San Pedro, California and raised Invoice No.EXP/SLSS/006 dated 05.04.2016 and 2nd container No.APZU3501108 from Tuticorin to New Jersey and raised Invoice No.EXP/SLSS/008 dated 14.04.2016 which were dispatched from India port on 08.04.2016 and 14.04.2016 and were to reach the destination around the second and third week of May 2016 respectively.

9.It is noted that when the goods themselves were to reach the destination around the second and third week of May 2016, the plaintiffs through their agent have sent an email dated 27.04.2016 that "due to quality issues with the garments on this shipping, we will not be taking possession of these goods and the container", which was clearly a part of conspiracy by the plaintiffs to cheat the defendants. However subsequently the plaintiffs accepted both the shipment and thus the payments for the Export invoices raised for the respective consignment fell due along with the other dues from the plaintiffs to the 1st defendant.

10.It is noted that since 2015, 1st defendant has actually manufactured and shipped 27 consignments of garments to the plaintiffs and all of them were recorded by the plaintiffs and not even once the issue of quality of goods was raised though in one consignment certain issues regarding carton marking alone were raised.

11.It is noted that a payment on 24.05.2016 for USD 18421.10 on the Export was made by the plaintiffs to the 1st defendant and several payments were still due from plaintiffs and as of May 2016, the plaintiffs owed a sum of USD 8,73,904.56 to the 1st defendant.

12.It is noted that the 1st defendant had informed vide email dated 09.11.2016, that they have 85000 units which were manufactured and ready to be exported and due to the non payments the same was stuck in the warehouse of the 1st defendant and that these goods were not shipped due to the non payment of previous dues from the plaintiffs.

13.It is noted that with regards to the non-payment dues amounting to USD 8,73,904.56 with interest from the plaintiffs to the defendants, the 1st defendant approached the ECGC (Export Credit Guarantee Corporation Limited), an export insurance company with whom the 1st defendant had the insurance cover which facilitates the discounting of bills with any nationalized bank in India. The ECGC had in turn assigned the recovery to the said sums due from CSCO LLC (the plaintiffs) to M/s. MNS Credit Management Group who had communicated with the plaintiffs.

14.It is noticed that upon initiation of ECGC, the 1st defendant received a legal notice, dated 12.11.2016 [Ex.D.4] from the counsel for the plaintiffs stating that the plaintiffs are owners of the trademark GLITZ and that use by the 1st defendant amounts to infringing the plaintiffs rights over the trademark GLITZ.

15.It is noted that the 1st defendant replied on 12.11.2016 [Ex.D.5] to the plaintiffs' legal notice dated 12.11.2016, stating that the plaintiffs owe a sum of USD 8,73,904.56 to the 1st defendant and there are also finished and semi-finished goods lying in their warehouses and the plaintiffs legal notice alleging trademark infringement is a counter-blast to the initiation of the proceedings before the ECG by the 1st defendant.

16.The trademark GLITZ and its registration in the USA by the plaintiffs does not give a cause of action in India before this Court for infringement. There are no records to support that registration was obtained for same mark in India by the plaintiffs.

17.The goods that were manufactured to be exported to USA cannot be sold in the Indian market readily. The plaintiffs did not ask the 1st defendant to "remove" the label GLITZ. In any event, the 1st defendant has given an undertaking not to sell the garments bearing the trademark GLITZ manufactured by them for the plaintiffs in the open market. Therefore, the suit filed for alleged infringement of trademark by the defendants is liable to be dismissed.

18.Ex.D6 statement of accounts and Ex.D2 invoices show that the balance due from the plaintiffs to the 1st defendant was Rs.7,97,25,268/-. Thus, the present suit filed by the plaintiffs is a precautionary move based on false allegations and to cheat and defraud the 1st defendant company. Hence, the suit filed by the plaintiffs, for the reliefs claimed, is liable to be set aside.

19.The plaintiffs have also not denied having received the goods/consignment exported. Therefore, for the supplies effected to the plaintiffs by the 1st defendant, the plaintiffs cannot hold back the payment. For the supplies effected to the plaintiffs by the defendants under Exhibit D2 series invoices, the plaintiffs are liable to pay amounts due to the defendants.

20.Under these circumstances, the counter claim filed by the 1st defendant stands allowed together with interest at 12% p.a. from the due date in the respective invoices in Ex.D2 till the date of realization.

21.In the result, the suit filed by the plaintiffs stands dismissed and the counter claim of the 1st defendant stands allowed together with interest at 12% p.a. from the due date in respective invoices in Ex.D2 till the date of realization to be paid by both plaintiffs to the 1st defendant jointly and severally.

27.02.2023

Internet : Yes / No
Index : Yes / No
Speaking Order/Non-Speaking Order

jas

Plaintiffs' witness:-

- Nil -

Defendants' witness:-

S.Naveen Kumar : D.W.1

Documents exhibited by the plaintiffs:-

- Nil-

Documents exhibited by the Defendants:-

1.	Ex.D1	Original Board Resolution dated 18.01.2023
2.	Ex.D2	Invoices from the 1st defendant to the plaintiff – October 2015 to April 2016, (29 Invoices)
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CSNJ

C.SARAVANAN, J.

jas/smn

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