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C.S.No.98 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.98 of 2019

and

A.Nos.3764, 876 and 3763 of 2019

and

O.A.Nos.96 and 97 of 2019

S.Suresh

Trading as Flash Beauty Saloon,
No.1/17, Vannarpathi, Kodambakkam,
Chennai - 600 024, Tamil Nadu, India.

... Plaintiff

Vs.

A.Mani,
No.8, 1st Floor, Bangalore Main Road,
HDFC Bank Opposite,
Sriperumbudur - 600 001, India

... Defendant

PRAYER: Plaint filed under Order VII Rule 1 of C.P.C. read with Order IV Rule I of the High Court Original Side Rules; Sections 51, 55 and 62 of the Copyright Act, 1957; Sections 27, 134 and 135 of the Trademarks Act, 1999 for the following reliefs:

a) A permanent injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the registered copyright of the Plaintiff by using the artistic work FLASH or, any other



logo/artistic work/design/device that are identical or deceptively similar to the said copyright of the Plaintiff, and thereby restraining the Defendant from in any manner infringing the copyright of the Plaintiff and thus render justice;

b) A permanent injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off his/their services by using the word mark "FLASH" or label mark FLASH, artistic work, or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said mark of the Plaintiff in respect of hygienic and beauty care for human beings, and thereby restraining the Defendant in any manner from passing off and thus render justice;

c) That the Defendant be ordered and directed to pay to Plaintiff a sum of Rs.5,00,000 (Rupees Five Lakhs only) by way of damages;

d) A Preliminary Decree be passed in favor of the Plaintiff directing the Defendant to render a true and faithful accounts of all profit made by him, using the Plaintiff's Said Trademark & Copyrighted work and a final decree be passed in favour of the Plaintiff for the amount of profit thus found to have been made by the Defendant, together with interest, after the Defendant has rendered accounts;



e) That the Defendant be directed to deliver-up to the Plaintiff for destruction, all labels, all other print materials, stickers, signage, visiting cards, letter heads, catalogues, pamphlets, brochures, all other advertising and promotional material, all stationary, and such other material used for infringing and passing off;

f) for the costs of the suit.

For Plaintiff : Mr.Ramesh Ganapathy

For Respondent : Mr.R.Sathish Kumar

JUDGMENT

Both the counsels have placed before this Court a joint memorandum of compromise entered into between the plaintiff and the defendant though the same has not been signed by the respective parties due to shortage of time. The learned counsel for the plaintiff as well as the learned counsel for the defendant have made an endorsement in the Court bundle on instructions that the unsigned memorandum of compromise placed before this Court has been agreed upon by the plaintiff and the defendant. The joint memorandum of compromise entered into between the plaintiff and the defendant reads as follows:



"JOINT COMPROMISE MEMORANDUM FILED BY THE PARTIES"

The Parties herein respectfully submit as follows:

A. The Parties herein submit the above suit is filed by the Plaintiff for Permanent Injunction for Infringement of Copyright and for Passing off against the Defendant and for directions.

B. The Plaintiff and the Defendant respectfully submit that with a view to give quietus to the matter, they have agreed to settle the dispute amicably on the following terms:-

TERMS OF MEMORANDUM OF COMPROMISE:

- 1. Both the Plaintiff and the Defendant agree that BOTH OF THEM can independently use the trade mark and artistic work "**FLASH**" for services provided under class 44 without any restrictions in respect of the number of shops and the locality of the shops.*
- 2. Both the Plaintiff and the Defendant however undertake to ensure that there is atleast one kilometer radius distance between the plaintiff and defendant shops trading under the trade mark, "**FLASH**" in order to refrain from competition.*
- 3. Both the Plaintiff and the Defendant agree the trademark "**FLASH**" shall not be transferred to any 3rd Party by assignment either in writing or orally to 3rd Party whatsoever.*
- 4. The trademark and artistic work "**FLASH**" used by the plaintiff or defendant shall be used either as a partnership firm with others or as a company in which the plaintiff or the defendant shall be a partner or a director and shall ensure that either the partnership firm, LLP or the Company shall not have exclusive right, title or interest over the trade mark or artistic work "**FLASH**" and the right shall always remain with the plaintiff or the defendant as an individual.*



5. The plaintiff and defendant have to ensure that all name boards and signs which contains **FLASH** shall be removed at time of his retirement, resignation or disassociation from partnership firm or company as director. The said trademark "**FLASH**" is not transferrable to any 3rd party except to the legal heirs of either party.
6. The Plaintiff and defendant agrees not to use same color combination for their shops, name boards, brochures, advertisements etc., as used by the other party and the same shall be decided between the parties by mutual understanding and negotiations.
7. The Plaintiff herein undertakes to withdraw the Rectification Petition bearing Opposition No. 265093 filed against the trademark application filed by the Defendant herein having Application No. 2857962 under Class 44.
8. The Defendant herein undertakes to withdraw the Opposition bearing Opposition No. 981648 filed against the trademark application filed by the Plaintiff herein having Application No. 2859366 under Class 44.
9. The plaintiff undertakes to give the suit prayer A, B, C, D, E, F in para 24.
10. The defendant undertakes to give up the counter claim prayer 38(a) and 38(b) in para 38.,."

2. In terms of the joint memorandum of compromise extracted supra, this suit is disposed of. Consequently, the connected applications are closed.

No Costs.

22.12.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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