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O.S.A(CAD)Nos.24, 25 and 26 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

O.S.A(CAD)Nos.24, 25 and 26 of 2023

and

C.M.P.Nos.5944, 5952 & 5954 of 2023

in

O.S.A(CAD)Nos.24, 25 and 26 of 2023

Mr.V.K.R.Venkatesan
trading as V.K.R.Prakash Modern Rice Mill
34/8, Kalleripatu Colony Road
Arni Taluk
Thiruvannamalai District 632 317
represented by his power agent
Mr.R.Yuvaraj
residing at No.40, Flat No.4
Madhuram Apartments, 1st Main Road
New Colony, Chrompet
Chennai-600 044.

... Appellant in all OSAs

Vs.

M.Selvanambi
trading as Sri Venkateswara Modern Rice Mills
Irumbedu, Arani-632 317.

... Respondent in all OSAs

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OSA(CAD)No.24 of 2023 filed under Section 13 of the Commercial Courts Act, 2015 read with Order 43 Rule 1 of CPC read with Order XXXVI Rule 9 of Original Side Rules praying to set aside the common order dated 07.02.2023 in O.A.No.816 of 2022 in C.S(Comm.Div.)No.249 of 2022.

OSA(CAD)No.25 of 2023 filed under Section 13 of the Commercial Courts Act, 2015 read with Order 43 Rule 1 of CPC read with Order XXXVI Rule 9 of Original Side Rules praying to set aside the common order dated 07.02.2023 in O.A.No.815 of 2022 in C.S(Comm.Div.)No.249 of 2022.

OSA(CAD)No.26 of 2023 filed under Section 13 of the Commercial Courts Act, 2015 read with Order 43 Rule 1 of CPC read with Order XXXVI Rule 9 of Original Side Rules praying to set aside the common order dated 07.02.2023 in O.A.No.814 of 2022 in C.S(Comm.Div.)No.249 of 2022.

For Appellant in all OSAs : Mr.A.Swaminathan

For Respondent in all OSAs : Mr.T.D.Selvan Babu



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COMMON JUDGMENT

[Judgment of the Court was made by M.SUNDAR, J.,]
Matter mentioned at half past ten.

2. Mr.A.Swaminathan, learned counsel on record for appellant in all the three captioned 'Original Side Appeals' [hereinafter 'OSAs' for the sake of convenience and clarity] and petitioner in captioned 'Civil Miscellaneous Petitions' [hereinafter 'CMPs' for the sake of convenience and clarity] and Mr.T.D.Selvan Babu, learned counsel for sole respondent in all the three captioned OSAs and captioned CMPs are before us.

3. Aforementioned learned counsel on both sides submit in unison in one voice that the captioned OSAs arise out of interim orders in interlocutory applications in C.S(Comm.Div.)No.249 of 2022 but now, C.S(Comm.Div.)No.249 of 2022 itself has since been withdrawn on 16.04.2024 and therefore, the captioned OSAs and captioned CMPs have become infructuous.



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4. Both learned counsel have placed before us a copy of
aforementioned 16.04.2024 order, wherein and whereby, the suit itself has
been withdrawn and a copy of the order is as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

Curam:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.(COMM.DIV.) No.249 of 2022

V.K.R. Venkatesan
Trading as V.K.R. Prakash Modern Rice Mill
34/R, Kallieripattu Colony Road,
Arani Taluk
Thiruvannamalai District- 632317
Represented by his Power Agent
R. Yuvraj
residing at No.46, Flat No.4
Madhuran Apartments, 1st Main Road
New Colony, Chimpet, Chennai - 600 044
... Plaintiff

Vs.

M.Selvaraj
Trading as Sri Venkateswara Modern Rice Mills
Irumbadu, Arani-632 317
... Defendant

Prayer: This Civil Suit filed under Order VII Rule 1 and Section 26 of CPC read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act 1999 and Sections 51, 54, 55 and 62 of the Copyright Act, 1957 & Provision 1 to Section 7 of the Commercial Courts Act, 2015 praying to pass judgment and decree as follows:

<https://www.mhc.tn.gov.in/judis>



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CAD/CAD/2023/24, 25 and 26

(a) a permanent injunction restraining the Defendant, himself, his partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising rice using the MSN SIVAJI BRAND trademark or any other similar trademark which is identical to the Plaintiff's SIVAJI BRAND trademark amounting to infringement of the Plaintiff's registered trademark SIVAJI BRAND in any manner whatsoever;

(b) a permanent injunction restraining the Defendant, himself, his partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through them from in any manner by use of MSN SIVAJI BRAND label, or any other artistic works which are deceptively similar to Plaintiff's copyrighted artistic works in SIVAJI BRAND label or any in other manner whatsoever;

(c) a permanent injunction restraining the Defendant, himself, his directors, legal representatives, successors-in-business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under him from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering



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U.S. CYRILIA DUTTA No.249 of 1992

for sale, advertising or in any other manner dealing in rice or any other product bearing the almost identical mark MSN SIVAJI BRAND which is confusingly similar to Plaintiff's mark SIVAJI BRAND, using any similar label, get-up, or packaging, which in any manner whatsoever would be considered to be similar to the Plaintiff's label, get up or packaging;

(d) the Defendant be ordered to pay to the Plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark and copyright and passing off;

(e) the Defendant be ordered to surrender to the Plaintiff for destruction all goods advertisement materials, packing materials, cartons, wrappers, labels in respect of rice and other allied/cognate goods containing the offending mark/label or any other mark/label similar to Plaintiff's trademark/labels SIVAJI BRAND;

(f) a preliminary decree be passed in favour of the Plaintiff directing the Defendant to render true and faithful account of profits earned by them by use of offending label/trademark for rice or other allied and cognate goods 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

(g) for entire costs of the suit.

For Plaintiff : Mr.A.Swaminathan

For Defendant : Mr.T.D.Selvan Babu

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C.S. COMM. DVT. No. 24 of 2023

JUDGMENT

Today (16.04.2024), the matter is listed under the caption "for withdrawal" based on the letter of the learned counsel for the plaintiff dated 15.04.2024.

2. When the matter is taken up for hearing today (16.04.2024), the learned counsel for the plaintiff on record seeks permission of this Court to withdraw this suit and he has also made an endorsement to that effect.

3. In view of the above letter and endorsement made by the learned counsel for the plaintiff on record, this suit is dismissed as withdrawn. No costs.

16.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Case Citation : Yes/No
Kas-2

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https://www.mhc.tn.gov.in/judis



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5. Learned counsel for appellant in captioned OSAs and petitioner in captioned CMPs has made endorsements in the case file and scanned reproduction of the same are as follows:

Endorsement in O.S.A(CAD)No.24 of 2023:

Kindly permit to withdraw the
Appeal and CMPs, as the
same become infructuous
as the CS No 249 of 2022
was withdrawn.
6/6/2024
Counsel for Appellant

Endorsement in O.S.A(CAD)No.25 of 2023:

Kindly permit to withdraw the
Appeal and CMPs, as the
main CS No 249 of 2022
has been withdrawn and
dismissed.
6/6/2024
Counsel for Appellant



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Endorsement in O.S.A(CAD)No.26 of 2023:

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Permit to withdraw as
infructuous main suit
CS No 24 of 2022 is
been withdrawn. Hence
Permit to withdraw appeal No 26/2023
and Cmp 6954/2022 6/6/2024
Counsel for Appellee
A. SWAMINATHAN
1721/06
351, New Addl L.C.
Madras H.C.

6. To be noted, as regards learned counsel for appellant Mr.A.Swaminathan (Enrol.No.1721/06) with address for service at No.351, New Additional Law Chambers, High Court, Chennai-600 104 submits that he has filed change of vakalatnama in place of Mr.Arun C.Mohan and his co-counsel yesterday (05.06.2024). This submission is recorded.

7. In any event, aforementioned 16.04.2024 order of Commercial Division makes it clear that the main suit itself has been withdrawn and therefore, the captioned OSAs arising out of interim orders thereat have obviously become infructuous.



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8. Adverting to the proceedings made yesterday (05.06.2024)

Mr.A.Swaminathan, learned counsel for appellant and Mr.T.D.Selvan Babu, learned counsel for respondent express regret for missing the matter yesterday.

9. In the light of the narrative thus far, captioned OSAs and captioned CMPs are disposed of as closed / withdrawn having become infructuous. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
06.06.2024

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

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To

The Sub-Assistant Registrar
Original Side
High Court, Madras.

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

O.S.A(CAD)Nos.24, 25 and 26 of 2023

06.06.2024