



O.S.A. (CAD) Nos. 67 to 69 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM

THE HON'BLE MR.JUSTICE M. SUNDAR

AND

THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A. (CAD) Nos. 67 to 69 of 2022

&

C.M.P. Nos. 9229, 9232, 9234 & 9235 of 2022

in

O.S.A. (CAD) Nos. 67 to 69 of 2022

Gurugadahalli Rudresh Sharanth
Proprietor of M/s. Unique Agro Links
No.5 and No.6, Madihalli Extension,
Hassan Circle, Tiptur,
Karnataka – 572 201.

..Appellant in all
O.S.As

Vs.

1. M/s. Susil Palm Products,
represented by its Partner
A. Mohan Kumar,
S.F. No.29, Patta No. 1418,
Ellapalayam,
Vellankoil (Post),
Gobichettipalayam – 638 054.



O.S.A. (CAD) Nos. 67 to 69 of 2022

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2. A. Mohan Kumar
Partner in M/s. Susil Palm Products,
Aged about 53 years,
S/o. Ammasai Gounder,
S.F. No.29, Patta No. 1418,
Ellapalayam,
Gobichettipalayam – 638 054.
3. K. Shanmugasundaram,
Partner in M/s. Susil Palm Products,
Aged about 64 years,
S/o. Kumarasamy,
S.F. No.29, Patta No. 1418,
Ellapalayam, Vellankoil (Post),
Gobichettipalayam – 638 054.
represented by Power of Attorney Holder
Mr.A.Mohankumar
4. S. Parimala Devi,
Partner in M/s. Susil Palm Products,
Aged about 56 years,
W/o.Shanmugasundaram,
S.F. No.29, Patta No. 1418,
Ellapalayam,
Gobichettipalayam – 638 054.
represented by Power of Attorney Holder
Mr.A.Mohankumar
5. A. Janaki,
Partner in M/s. Susil Palm Products,
Aged about 72 years,
W/o.Late Ammasai Gounder,
S.F. No.29, Patta No. 1418,
Ellapalayam,
Gobichettipalayam – 638 054.
represented by Power of Attorney Holder



O.S.A. (CAD) Nos. 67 to 69 of 2022

Mr.N. Senthilkumar for
R1 to R5

COMMON JUDGMENT

(Delivered by M. SUNDAR,J.)

This common judgment/order will now dispose of captioned three 'Original Side Appeals' ('O.S.A.s' in plural and 'O.S.A.' in singular for the sake of brevity, convenience and clarity) and captioned four 'Civil Miscellaneous Petitions' ('C.M.P.s' in plural and 'C.M.P.' in singular for the sake of brevity, convenience and clarity) thereat.

2. Owing to the trajectory the matter has taken before us (which will be set out infra), it is really not necessary to delve into or dilate on facts in great detail. In other words, short facts i.e, factual matrix in a nut-shell shorn of granular particulars and containing facts that are imperative for appreciating this order will suffice.



O.S.A. (CAD) Nos. 67 to 69 of 2022

3. Factual matrix in a nut-shell is that a suit in C.S. (Comm. Div.)

No.111 of 2021 was filed by five plaintiffs against three defendants with prayers inter alia for a declaration that plaintiffs are prior users of a trademark 'GREEN BELL' (bell logo/device mark) set out in the schedule thereto, a declaration that defendants have committed passing off, another declaration that the trade name 'BELL' has attained secondary meaning in coconut powder industry, a permanent injunction restraining defendants from advertising their name 'GREEN BELL', another permanent injunction restraining defendants from providing services qua alleged offending mark, another prayer limb seeking preliminary decree for rendition of accounts, a mandatory injunction qua delivery of offending mark, another mandatory injunction qua 3rd defendant to remove commercial listing of 'GREEN BELL' product from its website and the suit contains two other usual limbs i.e., one limb seeking costs and another residuary limb.

4. Along with aforementioned suit, plaintiffs took out three applications namely, O.A. Nos. 782 & 783 of 2021 and Application No. 4476 of 2021 with prayers for injunctions qua providing services,



O.S.A. (CAD) Nos. 67 to 69 of 2022

displaying, advertising alleged offending mark and a direction to make inaccessible website/webpages. A Hon'ble Single Judge presiding over the Commercial Division of this Court, in and by a detailed order dated 06.12.2021 acceded to the prayers in all the three applications and granted *ex parte* interim orders as prayed for. The three defendants, after entering appearance, took out three applications in Application Nos. 154, 155 & 156 of 2022 seeking to vacate the three interim orders in O.A. Nos. 782, 783 & Application No. 4476 of 2021 granted by order dated 06.12.2021. After full contest, all the three vacate injunction applications were dismissed by a common order dated 31.01.2022 made by a Single Judge presiding over the Commercial Division (hereinafter 'impugned common order' for the sake of convenience and clarity).

5. Assailing the impugned common order, 1st defendant in the suit, i.e., Gurugadahalli Rudresh Sharanth, Proprietor of M/s. Unique Agro Links, No.5 and No.6, Madihalli Extension, Hassan Circle, Tiptur, Karnataka – 572 201 has preferred the captioned appeals. To put it with specificity, 1st defendant is pursuing the captioned appeals. The reason is



O.S.A. (CAD) Nos. 67 to 69 of 2022

this Court is informed that 2nd defendant, i.e., Rachit Bajaj, Proprietor of M/s.R.S. Enterprises, A-6, Shradhanand Market, Delhi – 110 006 entered appearance through counsel, but counsel now reports ‘ No instructions’ and 3rd defendant i.e., India Mart Intermesh Limited., Company having registered office at 1st Floor, 29-Daryaganj, Netaji Subash Margh, Delhi – 110 002, though duly served, has not chosen to come before this Court.

6. Mr.S.A. Shanmugam, learned counsel for appellant and Mr.V. Sharathi, learned counsel appearing on behalf of Mr.N. Senthilkumar, learned counsel for respondents 1 to 5 in the captioned matters are before us.

7. In the earlier listing, matters were mentioned and were adjourned at the instance of respondents but we find that the captioned appeals have neither been admitted nor notice regarding admission has been issued. Therefore, we deem it appropriate to issue notice regarding admission today and Mr.V. Sharathi, learned counsel, who is present in Court and who is already on record before the Commercial Division accepts



O.S.A. (CAD) Nos. 67 to 69 of 2022

notice for all five respondents.

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8. As regards the main suit, both learned counsel before us submit that pleadings are complete, issues have been framed on 07.06.2024 and trial, i.e., recording of evidence is to commence. Considering the nature of the matter, taking into account the facts and circumstances of the case and also the obtaining position that interim orders have been operating for over 2 ½ years now, viewed in the context of the main suit having reached advanced stage, both sides fairly agreed that the main suit itself can be taken up i.e., trial followed by hearing out arguments without the legal tussle qua interlocutory applications in captioned intra court appeals arising therefrom.

9. This Court places on record its appreciation for learned counsel on both sides for the fair approach that has been taken. Both sides also agreed for appointment of a dedicated Commissioner (Retired Judge of District Judiciary) for recording evidence/markings documents, i.e., exhibits so as to expedite the trial.



O.S.A. (CAD) Nos. 67 to 69 of 2022

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10. Be that as it may, before we write the operative portion of this order, we deem it appropriate to record that learned counsel for appellant submits that though issues were framed on 07.06.2024 by the Commercial Division, issues pertaining to counter claim made by the defendants in the written statement have not been framed and therefore, it is necessary to have additional issues framed.

11. In the light of the narrative thus far, we make the following order:

a) The 2nd defendant in the suit C.S.(Comm.Div.) No. 111 of 2021 is set *ex parte* as Mr.V. Sharathi, learned counsel, who has filed vakalathnama for 2nd defendant reports 'No instructions';

b) The 3rd defendant is set *ex parte*. To be noted, 3rd defendant has been duly served and has not chosen to come



O.S.A. (CAD) Nos. 67 to 69 of 2022

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before this Court and enter appearance through counsel. It is further to be noted that we are informed that 120 days from the date of service of suit summons qua 3rd defendant has elapsed and in view of 'Commercial Courts Act, 2015 (Act 4 of 2016)' {hereinafter 'CCA' for the sake of brevity} and more particularly substituted proviso to Order VIII Rule 1 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity), 3rd defendant has lost its rights to file written statement. Suffice to say that 3rd defendant is also set *ex parte*;

c) In the suit, 1st defendant has therefore become sole defendant;

d) Captioned matters will now be listed before Commercial Division on 28.06.2024 under the caption 'FOR FRAMING ADDITIONAL ISSUES'. Learned counsel on both sides agree that the exercise of framing additional issues will be completed as expeditiously as possible and in any event, by 10.07.2024. (To be noted, we are informed that the matter is scheduled to be listed before the Commercial Division on 09.07.2024);



O.S.A. (CAD) Nos. 67 to 69 of 2022

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e) We appoint Mr. Paul Doss, retired Sub Judge as Commissioner to record evidence i.e., record depositions (oral evidence) of both sides and also mark exhibits on both sides by sitting on a day to-day basis either in the Arbitration Centre or Mediation Centre under the aegis of this Court. Both Arbitration and Mediation Centres being adjuncts of this Court, the Directors of both Centres are requested to facilitate the sitting, if a request is made, depending upon to whom the request is made;

f) Recording of evidence shall commence on 15.07.2024 and the entire exercise will be completed by 12.08.2024;

g) Learned Commissioner will not have any adjudication powers. If any objection is raised as regards evidence being let in or document being marked, the same shall be recorded for the Commercial Division to take a call ultimately while hearing out the suit;

h) Remuneration of learned Commissioner for the entire



O.S.A. (CAD) Nos. 67 to 69 of 2022

WEB COPY

exercise is fixed at Rs.1,50,000/- (Rupees One lakh and fifty thousand only) and both sides shall bear the aforementioned amount in equal moieties i.e, Rs.75,000/- each;

i) Learned Commissioner shall post 12.08.2024 forward the depositions and documents in a sealed cover to the Commercial Division through the Registrar General of this Court. The Commercial Division is thereafter requested to complete the hearing i.e, by way of written arguments followed by oral arguments as expeditiously as the business of Commercial Division would permit, preferably by 13.09.2024. Though obvious, we make it clear that we have not expressed any opinion or view on the merits of the matter;

j) Though obvious, we also make it clear for the sake of specificity that any observation made in the interim orders dated 06.12.2021 and/or impugned common order dated 31.01.2022 will have no bearing either on the recording of



O.S.A. (CAD) Nos. 67 to 69 of 2022

WEB COPY

evidence by the learned Commissioner or in the main suit being decided by the Commercial Division. In other words, recording of evidence and hearing out the main suit shall be on its own merits and in accordance with law dehors the *ex parte* interim orders and order in the vacate injunctions applications (impugned common order) thereat.

12. Captioned three O.S.As and C.M.Ps thereat are disposed of in the aforesaid manner along with aforementioned directives. There shall be no order as to costs.

nv

(M.S.J.) (K.G.T.J.)
18.06.2024

M. SUNDAR,J.

AND

K. GOVINDARAJAN THILAKAVADI,J.

nv



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O.S.A. (CAD) Nos. 67 to 69 of 2022

O.S.A. (CAD) Nos. 67 to 69 of 2022
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18.06.2024