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C.S. (COMM. DIV.) No.100 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (COMM. DIV.) No.100 of 2023

and

A. No.1227 of 2024

Paulsons Beauty and Fashion Private Ltd.,
Rep. by its Authorised Signatory
Shabnam Banu

... Plaintiff

-Vs-

Sulthana Restaurant
No.101/1, Jawaharlal Nehru,
Madagadi,
Near Arasalaru Bridge,
Karaikal,
Puducherry – 609 602.

... Defendant

PRAYER : PLAINT FILED UNDER ORDER VII RULE 1 OF CPC
READ WITH ORDER IV RULE 1 HIGH COURT O.S. RULES AND
SECTION 134 AND SECTION 135 OF THE TRADEMARKS ACT,
1999 to grant a judgment and decree on the following terms :

a. Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff trademark and trading style “SULTHAN'S BIRIYANI” by using the offending Trade Mark and



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Trading style “SULTHANA” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trademark “SULTHAN'S BIRIYANI”.

b) Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner Passing off – plaintiff Trademark and trading style “SULTHAN'S BIRIYANI” by using the offending Trade Mark and Trading style “SULTHANA” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark “Sulthan's Biriyani”.

c) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark “SULTHANA” and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant.

d) Directing to the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian

JUDGMENT

The Advocate Commissioner appointed by this Court's order dated 05.03.2024 has submitted a report dated 14.03.2024. As seen from the same, the defendant's restaurant under the name SULTANA



RESTAURANT is closed and the Advocate Commissioner had also been informed by some of the local residents that the defendant's restaurant has remained closed for the last four months.

2. The learned counsel for the plaintiff would submit that since the defendant's restaurant by name SULTANA RESTAURANT, which according to the plaintiff is a deceptively similar trademark to that of the plaintiff's trademark SULTHAN'S BIRIYANI is closed, this Court after recording the report of the Advocate Commissioner that the defendant restaurant is closed, can close the suit.

3. After recording the report of the Advocate Commissioner, dated 14.03.2024 and after recording the fact that the defendant is not running the restaurant and in view of the fact that the prayer sought for by the plaintiff in the suit has been indirectly achieved, nothing survives of further adjudication in this suit.

4. After recording the endorsement made by the learned counsel for the plaintiff, this suit is closed. Consequently, connected application is also closed.



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5. The plaintiff is directed to pay an additional remuneration of Rs.15,000/- (Rupees fifteen thousand only) to the Advocate Commissioner, within a period of one week from the date of receipt of a copy of this order.

15.03.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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