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O.S.A.Nos.197, 198, 199 and 200 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.Nos.197, 198, 199 and 200 of 2020

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C.M.P.No.10328 of 2020 in O.S.A.No.197 of 2020

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C.M.P.No.10331 of 2020 in O.S.A.No.198 of 2020

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C.M.P.No.10332 of 2020 in O.S.A.No.199 of 2020

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C.M.P.No.10334 of 2020 in O.S.A.No.200 of 2020

Sri Narasus Coffee Company Private Ltd.,

Rep. By its Managing Director

P.Sivanantham

S/o.R.P.Sarathy

No.20, NathajiSubhash Bose Road

George Town, Chennai – 600 001

and its principal place of business

No.16, Court Road

Johnsonpet, Salem – 636 007

... Appellant
in all OSAs

Vs.

M/s. Narasus Dairy

A Firm rep. By its Partner

K.R.Ramanujam

No.22A, Gandhi Road

Hasthampatty, Salem

Tamil Nadu – 636 007

... Respondents
in all OSAs



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Prayer in O.S.A.No.197 of 2020: Original Side Appeals filed under Order 13 Rule 1 of Commercial Courts Act, 2015 read with Section 15 of Letters Patent to set aside the common judgment dated 21.08.2020 and amended vide order dated 27.08.2020 in A.No.1508 of 2010 in C.S(Comm.Div.) No.158 of 2020.

Prayer in O.S.No.198 of 2020 : Original Side Appeals filed under Order 13 Rule 1 of Commercial Courts Act, 2015 read with Section 15 of Letters Patent to set aside the common judgment dated 21.08.2020 and amended vide order dated 27.08.2020 in O.A.No.245 of 2020 in C.S(Comm.Div.) No.158 of 2020.

Prayer in O.S.No.199 of 2020 : Original Side Appeals filed under Order 13 Rule 1 of Commercial Courts Act, 2015 read with Section 15 of Letters Patent to set aside the common judgment dated 21.08.2020 and amended vide order dated 27.08.2020 in O.A.No.244 of 2020 in C.S(Comm.Div.) No.158 of 2020.

Prayer in O.S.No.200 of 2020 : Original Side Appeals filed under Order 13 Rule 1 of Commercial Courts Act, 2015 read with Section 15 of Letters Patent to set aside the common judgment dated 21.08.2020 and amended vide order dated 27.08.2020 in O.A.No.243 of 2020 in C.S(Comm.Div.) No.158 of 2020.

For Appellant : Mr.Rajesh Ramanathan

For Respondent : Mr.S.Gopinath
(in all OSAs) for Mr.A.Swaminathan

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SUNDAR.J.,]

This common judgment will govern the captioned 4 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of



brevity] and captioned 4 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity].

2. Owing to the trajectory the hearing took before us [which will be set out infra elsewhere in this judgment/order] it is really not necessary to dilate much on facts in the captioned intra-court appeals. In other words, short facts (shorn of granular particulars) will suffice.

3. Factual matrix in a nutshell is that a partnership firm which goes by the name 'M/s.Narasus Dairy' [hereinafter 'Narasus Dairy' for the sake of convenience] filed a suit vide C.S (Comm.Div.) No.158 of 2020 on the file of Commercial Division of this Court against a Company, namely 'Sri Narasus Coffee Company Pvt. Ltd.,' [hereinafter 'Narasus Company' for the sake of brevity and convenience].

4. The aforementioned suit is a typical trademark/copyright infringement /passing off suit. In other words, it is a suit with prayers for injunction qua alleged infringement of Trademarks, passing off, for delivery of alleged infringing material, accounts and costs; that the plaint is dated 20.06.2020; that along with the plaint, Narasus Dairy took out three applications in O.A.Nos.243, 244 and 245 of 2020 with interim injunction prayers, all under Order XXXIX Rules 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for the sake of brevity] seeking injunction



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qua alleged infringement of Trademarks and copyright; that the lone defendant Narasus Company took out an application in A.No.1508 of 2020 with a prayer for return of plaint; that all the four applications were heard out together by a Hon'ble single Judge presiding over the Hon'ble Commercial Division of this Court; that the Commercial Division in and by a common order dated 21.08.2020 allowed the three injunction applications of the plaintiff/applicant i.e., Narasus Diary and dismissed the return of plaint application of the lone defendant i.e., Narasus Company; that assailing this common order allowing three applications and dismissing one application, the defendant in the main suit i.e., Narasus Company has filed the captioned four intra-court appeals i.e., captioned OSAs along with CMPs thereat; that Mr.Rajesh Ramanathan, learned counsel for appellant i.e., Narasus Company in all four appeals are before us.

5. In the light of earlier proceedings made by this Court in 11.06.2024 listing, Mr.Rajesh Ramanathan made submissions on admission and one of the primary submissions was that Narasus Diary has filed a suit in the Salem District Court on the same cause of action, the same has been transferred to the Original Side of this Court, it has been assigned the number Tr.C.S.No.103 of 2020, this point was raised



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in the pleadings but the same has not been considered vide the 'common order of the Commercial Division dated 21.08.2020' ['impugned order' for the sake of brevity, convenience and clarity]; that in the light of finding *prima facie* case, we issued notice regarding admission in the captioned OSAs/CMPs thereat and Mr.S.Gopinath, learned counsel who is for the plaintiff [Narasus Diary] in the Commercial Division, who was present in Court, accepted notice for the lone respondent in all the 4 captioned OSAs /captioned CMPs thereat; that with the consent of learned counsel on both sides, main OSAs were taken up.

6. This Court having set out short facts imperative for appreciating this order as well as the trajectory the matter has taken before us now proceeds to consider other aspects of the matter.

7. We find that the interim order granted in favour of plaintiff (respondent before us) i.e., Narasus Diary on 21.08.2020 is operating for more than 3 ½ years now and in about two months from now, it will turn 4.

8. As regards transfer of the aforementioned suit from the Salem District to the Original Side of this Court, we are informed that the matter was carried to Hon'ble Supreme Court by Narasus Company unsuccessfully. To be noted, Hon'ble Supreme Court disposed of the



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SLPs in and by an order dated 31.07.2023, which reads as follows:

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ITEM NO. 49 COURT NO. 8 SECTION XII

8 D F H M E COURT OF INDIA
RECORD OF PROCEEDINGS

Petitioner(s) for Special Leave to Appeal (C) No(s). 9522-3523/2020
(Arising out of Impugned final judgment and order dated 15-11-2019
in AM No. 5132/2014 15-11-2019 in AM No. 10255/2018 in C.S. No.
360/2007 passed by the High Court of Judicature at Madras)

SRI NARASUS COPIER COMPANY PVT. LTD. Petitioner(s)
VERSUS
NARASUS SAKARATHY BRICKWORKS PVT. LTD. Respondent(s)

IA No. 64173/2020-CONDONATION OF DELAY IN FILING and IA
No. 64173/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
and IA No. 64174/2020-EXEMPTION FROM FILING AFFIDAVIT
IA No. 64174/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 64173/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 88303/2020 - INTERVENTION APPLICATION
IA No. 78230/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES

Date : 31-07-2023 These matters were called on for hearing today.

CHAIRMAN :
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE ANAVIND KUMAR

For Petitioner(s) Mr. Parijat Krishnan, AGR
For Respondent(s) Mr. S. Sagarathan, Sr. Adv.
Mr. Anish R. Shah, AGR
Ms. Jalpriti S. Jodeja, AGR
Mr. Arman Shreyas, Adv.
Ms. Sushawani Chaudhary, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA No. 88303/2020 - Application seeking Intervention
is dismissed.

WENT This Court finds no infirmity with the impugned order,
however, the three Suits transferred from the file of the

W.P. No. 9522-3523/2020 1 of 2



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13

Salem District Court shall be placed and proceeded along with pending suit in the Madras High Court, at Chennai. The learned Judge dealing with the Chennai suit is requested to complete recording of the oral evidence and defer the hearing of arguments till the proceedings in the three transferred suits are completed. Needless to say, the two sets of proceedings (the Suit at Chennai and that three Suits filed at Salem) shall culminate in separate decrees.

The High Court shall endeavour to complete the proceedings as expeditiously as possible.

The special leave petitions are disposed of in the above terms.

All pending applications are disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

9. Therefore, there is more than one reason to have the main suit expedited. We respectfully follow the order of Hon'ble Supreme Court dated 31.07.2023.

10. The aforementioned two suits have been tagged with T.M.O.PNos.212, 213, 215 and 216 of 2023, which arise out of rectification proceedings which were pending in erstwhile 'Intellectual



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Property Appellate Board' ['IPAB'], Chennai and a judicial order has been made by a Hon'ble Single Judge on 05.02.2024, which reads as follows;

C.S. No.158 of 2020
and
Tr. C.S. No.103 of 2020
and
O.A. No.481 of 2021
and
A. No.1942 of 2020

ABDUL QUDDHOSE, J.

In view of the rectification application pending on the file of the I.P. Division of this Court as per the Notification, these suits are transferred to the file of the I.P. Division of this Court and they are to be tagged along with T.M. O.P. Nos.212, 213, 215 and 216 of 2023.

Post this matter before the I.P. Division of this Court.

05.02.2024

vsi2

11. Therefore, recording of evidence will be in aforementioned two suits i.e., C.S (Comm.Div.) No.158 of 2020 and Tr.C.S.No.103 of 2020 and four TMOPs i.e., T.M.O.PNos.212, 213, 215 and 216 of 2023.

12. At this distant point of time, instead of hearing out the



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intra-court appeals as against interlocutory orders, it would be desirable to have the main suit heard out and completed as we are informed by both sides that pleadings are complete and only issues are to be framed. In this regard, aforementioned learned counsel on both sides submitted that it would be desirable to have Tr.C.S.No.103 of 2020 also to be disposed of along with C.S (Comm.Div.) No.158 of 2020 and aforementioned four T.M.O.Ps. The suggestion to expedite main suits rather than embarking upon a legal drill qua captioned OSAs arising out of interim orders and that the trial and disposal of main suit can be expedited by appointing a dedicated Commissioner for recording oral evidence and marking documents was acceptable to both sides, more so in the light of aforementioned order of Hon'ble Supreme Court.

13. In the light of the narrative thus far and the aforementioned consensus without expressing any view or opinion on the merits of the matter, we make the following order:

i) C.S (Comm.Div.) No.158 of 2020 along with Tr.C.S.No.103 of 2020 and T.M.O.PNos.212, 213, 215 and 216 of 2023 shall now be listed before the IP Division on 28.06.2024 (Friday) for framing issues. Learned counsel before us undertake to have the exercise of filing



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further pleadings, if any and framing issues completed within four weeks therefrom i.e., by 22.07.2024;

ii) Mr.K.V.Babu, former District Judge in Tamil Nadu District Judiciary residing at Old No.19, New No.55, Indira Gandhi Street, K.K.Nagar, Trichy-21 [Mob:9486586677] is appointed as Commissioner for recording evidence i.e., for recording the deposition (oral evidence) and for marking documents;

iii) Learned Commissioner shall hold sittings either in the Arbitration or Mediation Centers, both under the aegis of this Court;

iv) Arbitration and Mediation Centers being adjuncts of this Court, the Directors of the Centers are directed to do the needful and facilitate the sitting as and when a request from the learned Commissioner is received;

v) Expenses including the rent and travel shall be shared by both parties in equal moieties i.e., by Narasus Diary and Narasus Company;



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vi) Learned Commissioner is requested to commence sittings for recording evidence by 01.08.2024 and complete the entire exercise of recording evidence and marking of documents in four weeks therefrom i.e., by 30.08.2024;

vii) Learned Commissioner shall not have any adjudicatory powers and if any objection is raised with regard to evidence being let in and/or any document being marked, the same shall be recorded and will be left to the discretion of the I.P Division to decide while the main suit is being decided;

viii) The learned Commissioner shall send the recorded evidence i.e., deposition and the documents i.e., exhibits in a sealed cover to the I.P Division through the learned Registrar General of this Court;

ix) Hon'ble IP Division is requested to thereafter take up the main suits which is of the year 2020, together with T.M.O.PNos.212, 213, 215 and 216 of 2023, hear out the same as expeditiously as the business of the IP Division would permit *inter-alia* owing to orders of



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Hon'ble Supreme Court dated 31.07.2023 preferably in four weeks therefrom i.e., by 09.09.2024;

x) The interim orders which are subject matter of captioned intra-court appeals will continue to operate till the suit is decided and the same will obviously merge with the suit i.e., whether they continue to operate or stand modified or stands dismissed will depend on the outcome of the suit;

xi) Though obvious we make it clear that IP Division will be deciding the Suits and TMOPs on its own merits and in accordance with law *de hors* the interlocutory judicial orders;

xii) For the sake of specificity, we also make it clear and reiterate that we have not expressed any view or opinion on the merits of the matter;

xiii) Remuneration of the learned Commissioner (for the entire exercise) is fixed at Rs.2,00,000/- [Rupees



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Two Lakhs only] and this shall be borne by both the parties i.e., Narasus Diary and Narasus Company in equal moieties i.e., Rs.1,00,000/- [Rupees One Lakh only] each and this is for the entire exercise spread over four weeks.

Captioned four OSAs and CMPs thereat are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
19.06.2024

Index: Yes/No
Neutral Citation: Yes/No
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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

gpa

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