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O.S.A. (CAD) No.89 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A. (CAD) No.89 of 2022
and
C.M.P. No.9845 of 2022 in O.S.A. (CAD) No.89 of 2022

Geoscope Exim Private Limited
Flat No.B3, Ceebros Building,
No.32, Cenotaph Road, Teynampet,
Chennai – 600 018
Rep. By its Senior Manager,
Mr.P.Prakash

.. Appellant

Vs

1.SNJ Distillers Private Limited,
Old No.47, New No.99, Canal Bank Road,
C.I.T.Nagar, Nandanam,
Chennai – 600 035.

2.M/s.Sree Balaji Traders
Rep. By its Partner Ms.G.Shanthi,
18/37A-6, R.K.S.Building, Paramathi Road,
Namakkal – 637 001.

.. Respondents

Prayer : Appeal filed under Section 13 of The Commercial Courts Act, 2015 read with Order XXXVI Rule 9 of the Original Side Rules to set aside the impugned order dated 08.06.2022 passed in O.A.No.94 of 2022 in C.S. (Comm Div.) No.27 of 2022.



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For Appellant : Mr.Arun C.Mohan
along with
Ms.Swabhhi Tyagi

For Respondents : Mr.R.Rajarajan
along with
Mr.D.Nandhagopal
for R1 and R2

JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

Captioned intra-court appeal i.e., 'Original side Appeal' (hereinafter 'OSA' for the sake of brevity) is directed against an interlocutory order dated 08.06.2022 made in O.A.No.94 of 2022 in C.S. (Comm Div.) No.27 of 2022 by the Hon'ble Commercial Division of this Court. This '08.06.2022 order' shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

2. In the appeal today, Mr.Arun C.Mohan, learned counsel along with Ms.Swabhhi Tyagi, learned counsel for the sole appellant (applicant/plaintiff before the Commercial Division) and Mr.R.Rajarajan along with Mr.D.Nandhagopal for R2 (M/s.Sree Balaji Traders) are before us. To be noted, R1 has been duly



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served and the name of R1 together with full and complete address as in the short and long cause titles is shown in the cause list.

Today, Mr.R.Rajarajan, learned counsel submits that he would accept notice for R1 also. This submission is recorded and therefore Mr.R.Rajarajan will now be counsel for both respondents. To be noted, we are informed that R1 is D1 before the Commercial Division in the main suit and D1 has been set exparte in the main suit but this really does not matter as regards the captioned OSA is concerned in the light of Order XLI Rule 14 of 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience and clarity] and the judgment in **Gnanasoundari and another Vs. G.Vijayakala and others** reported in **(2023) 6 MLJ 135**. To be noted, *Gnanasoundari* has been referred to a Larger Bench but as of today, it holds the field.

3. Owing to the limited legal perimeter within which captioned OSA should now perambulate, short facts (shorn of elaboration) will suffice. Factual matrix in a nut shell is that one 'Geoscope Exim Private Limited' (hereinafter 'Geoscope' for the sake convenience and clarity) filed a suit vide plaint dated 07.02.2022 with prayers for permanent injunction qua alleged infringement and alleged passing off as regards trademark



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'HOBBS' qua liquor products; that there are other limbs of prayers as regards damages, delivery of alleged offending material, rendition of accounts and costs (to be noted, there is also usual residuary limb of prayer); that pending suit, plaintiff took out an application in O.A.No.94 of 2022 with a prayer for injunction qua passing off; that this application after full contest was disposed of vide impugned order directing accounts to be maintained as regards revenue and profits earned from the sale of alcoholic beverages with the alleged offending mark; that not satisfied with this order, applicant/plaintiff is on appeal before us; that we are informed by the learned counsel on both sides that the disposal of the main suit is in the anvil as the main suit is now listed for arguments on 02.09.2024 before Hon'ble Commercial Division; that in the light of the advanced stage of main suit and considering that the defendants have been directed to maintain accounts of profits, we deem it appropriate to dispose of captioned appeal by making a simple order which will be set out infra.

4. We are of the considered view that the parties will do well to have the main suit argued on 02.09.2024 rather than contest in this appeal and create an avoidable tributary. Both learned counsel fairly agreed to have the main suit heard out rather than a contest



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in the captioned appeal. This common submission is recorded.

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5. The sequitur is, we would now be leaving it to the Hon'ble Commercial Division to decide the main suit but before we do that, we deem it appropriate to record one aspect of the hearing today owing to the submission made by learned counsel for appellant. Learned counsel for appellant Mr.Arun C.Mohan drew our attention to a portion of paragraph 10 of the impugned order which reads as follows:

'10..... What cannot be denied, however, is that there is some similarity between the two registered word marks, HOBSONS and HOBBS, but such similarity should be balanced against the fact that the word mark HOBBS is registered. Even in a passing-off action, in my view, this is relevant though not controlling criterion and should be reckoned along with other aspects. The fact that the two products are sold at different price points is an additional factor that works in the Defendants' favour.'

6. Adverting to the aforesaid portion of the impugned order, learned counsel submitted that even in a passing off action,



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registration of the defendants' mark is a relevant factor and this according to learned counsel runs contrary to a catena of authorities. Learned counsel for respondents pointed out that vide impugned order, Hon'ble Commercial Division has made it clear that registration of the defendants' mark would not be the controlling criteria and that it should be reckoned along with other aspects. It was pointed out that this means that registration of the defendants' mark is only one of the determinants and not the sole determinant. Considering the advanced stage of the suit coupled with the consensus between the two counsel to have the main suit heard out, we deem it appropriate to not to express any view or opinion on this submission and leave it open to the Hon'ble Commercial Division to take a call. We also hasten to add that there is one more reason as to why we refrain from expressing any view or opinion on this and that reason is, any observation made in an interlocutory order will have no impact on the decision qua the main suit. The law is well settled on this aspect of the matter.

7. In the light of the narrative thus far, we leave it open to Hon'ble Commercial Division to decide the main suit which we are sure will be done as expeditiously as the Board of the Hon'ble Commercial Division would permit and though obvious we also



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make it clear that all questions including the aforementioned point are left open for the Hon'ble Commercial Division to decide the matter on its own merits and accordance with law.

8. Ergo, sequitur is, captioned OSA is disposed of as closed albeit with the aforementioned observation. Consequently, captioned CMP is disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
13.08.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To

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



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

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