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Civil Suit (Comm.Div.) No.236 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Civil Suit (Comm.Div.) No. 236 of 2023

M/s.Vasanta Bhavan Hotels India Private Limited
Represented by its Director
Mr.Anand Krishnan
Having its office at No.34
Developed Plots (South Phase)
Industrial Estate, Guindy,
Chennai – 600 032.

... Plaintiff

Vs.

Hotel Jain Vasantha Bhavan
No.474 + R26, Gingee – Tindivanam Road
Kalayiyur, Tamil Nadu – 604 206.

... Defendant

Plaint has been filed under Order VII Rule I of the Code of Civil Procedure read with Order IV, Rule 1 of High Court Original Side Rules and Sections 134 and 135 of the Trade Marks Act, 1999, and plaint numbered as C.S.(Comm.Div.) No.236 of 2023 praying for judgment and decree as follows :

a) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in



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any manner infringing the plaintiff Trade Mark and Trading style **"VASANTA BHAVAN"** by using the offending Trade Mark and Trading style **"HOTEL JAIN VASANTHA BHAVAN"** or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff's Trade Mark **"VASANTA BHAVAN"**.

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** the plaintiff Trade Mark and Trading style **"VASANTA BHAVAN"** by using the offending Trade Mark and Trading style **"HOTEL JAIN VASANTHA BHAVAN"** or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff's Trade Mark **"VASANTA BHAVAN"**.

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 **"HOTEL JAIN VASANTHA BHAVAN"** and directing payment of such profits to the plaintiff by way of damages for



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infringement committed by the defendant.

d) directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trade Mark "**HOTEL JAIN VASANTHA BHAVAN**" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks etc., bearing the offending Trademark for destruction.

e) directing the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian

For Defendant : Set *ex-parte* on 03.06.2024

J U D G M E N T

The suit has been filed seeking for (i) permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff Trade Mark and Trading style "**VASANTA BHAVAN**" by using the offending Trade Mark and Trading style "**HOTEL JAIN VASANTHA BHAVAN**"



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or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff's Trade Mark **"VASANTA BHAVAN"**; (ii) permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner **Passing-off** the plaintiff Trade Mark and Trading style **"VASANTA BHAVAN"** by using the offending Trade Mark and Trading style **"HOTEL JAIN VASANTHA BHAVAN"** or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiff's Trade Mark **"VASANTA BHAVAN"**; (iii) 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 **"HOTEL JAIN VASANTHA BHAVAN"** and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant; (iv) directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trade Mark **"HOTEL JAIN VASANTHA BHAVAN"** with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes,



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brochures, printing blocks etc., bearing the offending Trademark for destruction; and for costs.

2.1. It is the case of the plaintiff/Company that one Late Muthukrishnan, who is the father of M.Ravi and grandfather of Anand Krishnan, entered into the hotel business in the year 1974 under the name and style "VASANTA BHAVAN" and they are running chain of Hotels in all over the world mainly in Tamil Nadu and they are also running restaurants along with the prefix "Namma Veedu Vasanta Bhavan" also. The essential feature of the plaintiff's trademark is "VASANTA BHAVAN". On account of long, continuous and extensive use of their unique trademark, tremendous amount of goodwill and reputation had accrued in favour of the plaintiff's trademark for the past 50 years. Further, several newspapers/magazines have carried articles about the plaintiff's Hotel and they have also invested a substantial sum of money in order to create the awareness among the public with regard to the high-quality hotel "VASANTA BHAVAN".



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2.2. It is stated that the trademark and trading style "VASANTA BHAVAN" has acquired the secondary meaning to denote and connote the product of the plaintiff, which assures the public a unique taste and standard in the food preparations. Further, the Registrar of Trademarks, Government of India, Mumbai had issued the certificate of registration on 15.07.2021 for the mark "VASANTA BHAVAN" in the name of the plaintiff/Company. The plaintiff has also obtained the legal usage certificate, dated 19.04.2022 from the Trademark Registry, Intellectual Property Building, Guindy, Chennai. It is clearly mentioned in the said certificate that the plaintiff's trademark was used since 30.10.1974 and the said registration is valid till 15.07.2031. It is further stated that plaintiff has also obtained certificate of registration on 27.01.2012 for the trademark "NAMMA VEEDU VASANTA BHAVAN" and also obtained Legal usage certificate on 19.04.2022, in which, it was clearly mentioned that the plaintiff's trademark "NAMMA VEEDU VASANTA BHAVAN" was used since 30.10.1974 and the said registration is valid till 27.01.2032. It is further stated that some unscrupulous traders, wanting to take illegal advantage and enrich themselves at the popularity and



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reputation of the plaintiff, are now resorting to adopt the said trademark and trading style "VASANTA BHAVAN" or "VASANTHA BHAVAN" or "VASANTHAM" for their hotels and restaurant business. Except the plaintiff no one has any right to use the said trademark and/or trading style.

2.3. It is the case of the plaintiff that they came to know that the defendant is dishonestly using the mark as "HOTEL JAIN VASANTHA BHAVAN", which is deceptively similar to that of the plaintiff's trademark and trading style. The defendant adopted the identical trademark and trading style "HOTEL JAIN VASANTHA BHAVAN" only to deceive the general public and to make them believe the food preparations served at the defendant's place, has the connection with the plaintiff's hotel and the defendant is associated with the plaintiff. The defendant has no manner of right to adopt and use the said offending trademark and/or trading style as "HOTEL JAIN VASANTHA BHAVAN". If the defendant is allowed to continue the illegal acts in adopting the plaintiff's celebrated trademark and vend food preparations



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under the offending trademark, the plaintiff would be put to irreparable loss, hardship and injury. Apart from the loss, the plaintiff's also fear that their well-earned reputation would be spoiled by the substandard foods being served at the defendant's business premises. It is further stated that the acts of the defendant also constitute criminal offences under the Trademark Act, 1999.

2.4. It is the further claim of the plaintiff that the defendant has made a clear attempt to pass-off their goods as that of the plaintiff's, by adopting the mark "HOTEL JAIN VASANTHA BHAVAN", which is visually, structurally, phonetically and deceptively identical to that of the plaintiff's trademark "VASANTA BHAVAN". Hence, the plaintiff has sent a Cease and Desist notice, dated 06.04.2023 and the same was received by the defendant on 19.04.2022. However, the defendant neither sent a reply notice nor had taken steps to change their hotel's name. The defendant is infringing the plaintiff's trademark, which is not permissible under law and hence, the plaintiff has filed the present suit for injuncting



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the defendant from using the infringing trademark "HOTEL JAIN VASANTHA BHAVAN".

3. Since the defendant has not filed written statement, the defendant was set *ex-parte* by this Court on 03.06.2024.

4. On the side of the plaintiff, the Authorized Signatory of the plaintiff/Company, Mr.R.Jayaprakash, was examined as P.W.1 and he has reiterated the averments made in the plaint and also marked 45 documents as Exs.P1 to P45.

5. Heard the learned counsel appearing for the plaintiff and perused the materials available on record.

6. On a perusal of the plaint averments and also Proof Affidavit of the plaintiff and documents marked on behalf of them, this Court finds that the suit claim is proved by the plaintiff, and hence, the plaintiff is entitled to the decree as sought for in the plaint. Accordingly, the suit is



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decreed as prayed for, with costs. Consequently, connected pending applications, if any, are closed.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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List of Witness examined on the side of the plaintiffs

R.Jayaprakash - PW1

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan	26.10.1974
2.	P2	Printout of the Paper advertisement in Dinamani of the inauguration of plaintiff's restaurant at Egmore, Chennai	30.10.1974
3.	P3	Photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan	19.10.1979
4.	P4	Printout of the Paper advertisement in The Hindu Paper	06.04.1984
5.	P5	Photocopy of the Lease Deed to run	04.10.1984



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		the restaurant named Vasanta Bhavan	
6.	P6	Printout of the Paper Advertisement in Maalai Malar	15.07.1987
7.	P7	Photocopy of the receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan	14.12.1987
8.	P8	Photocopy of the receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan	15.12.1987
9.	P9	Photocopy of the letter received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan	15.12.1987
10.	P10	Printout of the Paper Advertisement in The Hindu	20.10.1989
11.	P11	Photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan	15.10.1989
12.	P12	Photocopy of the plaint filed by M.S.Tourist Homes Private Limited	02.01.1995
13.	P13	Photocopy of the Vasanta Bhavan inauguration advertisement	19.09.1997
14.	P14	Printout of the Incorporation Certificate of plaintiff	07.11.2003
15.	P15	Photocopy of the advertisement bill issued by Amudha Surabhi	10.11.2004
16.	P16	Printout of the advertisement for Vasanta Bhavan in Dinamalar Newspaper	01.01.2005
17.	P17	Printout of the advertisement for Vasanta Bhavan in Dinamalar Newspaper	13.02.2005
18.	P18	Printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper	16.03.2005
19.	P19	Printout of the advertisement for Vasanta Bhavan in Maalai Malar	17.03.2005



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		Newspaper	
20.	P20	Photocopy of the advertisement bill issued by Maalai Malar	17.03.2005
21	P21	Printout of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper	13.04.2005
22	P22	Photocopy of the advertisement bill issued by Maalai Murasu	13.04.2005
23.	P23	Printout of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper	18.04.2005
24.	P24	Photocopy of the advertisement bill issued by Maalai Murasu	18.04.2005
25.	P25	Printout of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper	24.03.2005
26.	P26	Photocopy of the advertisement bill issued by Maalai Murasu	24.03.2005
27.	P27	Photocopy of the advertisement bill for Vasanta Bhavan in Maalai Murasu Newspaper	19.05.2005
28.	P28	Printout of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper	25.05.2005
29.	P29	Photocopy of the advertisement bill issued by Maalai Murasu	25.05.2005
30.	P30	Printout of the advertisement for Vasanta Bhavan in The Hindu Newspaper	02.07.2005
31.	P31	Printout of the advertisement for the plaintiff Hotel dated 2005	
32.	P32	Printout of the advertisement for the plaintiff Hotel dated 2005	
33.	P33	Photocopy of the certificate issued in the name of the plaintiff by Tamil	23.01.2018



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		Nadu Food Safety and Drugs and Administration Department	
34.	P34	Printout of the ISO Certificate issued in the name of Vasanta Bhavan	22.08.2018
35.	P35	Photocopy of the Trademark Registration Certificate in the name of Vasanta Bhavan	23.12.2021
36.	P36	Board Resolution	06.06.2024
37.	P37	Printout of the Legal usage Certificate in the name of Vasanta Bhavan	19.04.2022
38.	P38	Printout of the Legal usage Certificate in the name of Namma Veedu Vasanta Bhavan	19.04.2022
39.	P39	Photocopy of the Certificate issued by the Chartered Accountant with regard to the turnover from 2003 to 2021	08.08.2022
40.	P40	Photocopy of the Cease and Desist notice sent by the plaintiff to the defendant	06.04.2023
41.	P41	Photocopy of the Inauguration Photo of the plaintiff Hotel by Actor Rajinikanth	
42.	P42	Photocopy of the plaintiff Hotel "Vasanta Bhavan" by politicians, celebrities and businessman	
43.	P43	Printout of the photograph of the plaintiff Hotel	
44.	P44	Printout of the photograph of the defendant Hotel	
45.	P45	Photocopy of the Comparison chart of plaintiff and defendant Hotel.	

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