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C.S. (Comm.Div.) No.189 of 2022 and A.No.4870 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **31.01.2024**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm.Div.) No.189 of 2022 and A.No.4870 of 2023

M/s.Vasanta Bhavan Hotels India Private Limited,
represented by its Director Anand Krishnan

.. Plaintiff

Vs

Pugal'n Vasanta Bhavan

.. Defendant

Prayer: Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of High Court Original Side Rules and Sections 134 & 135 of the Trademarks Act, 1999 prays for judgment and decree:

a)granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infrining the plaintiff's Trademark and Trading style "VASANTA BHAVAN" by using the offending Trademark and Trading style "PUGAL'N VASANTA BHAVAN" or any other mark or marks which are similar or in anyway deceptively similar to or a colourable imitation of the plaintiff's Trademark "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's Trademark and Trading style "VASANTA BHAVAN" by using the offending Trademark and Trading



style "PUGAL'N VASANTA BHAVAN" or any other mark or marks which are similar or in anyway deceptively similar to or a colourable imitation of the plaintiff's Trademark "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 trademark "PUGAL'N VASANTA BHAVAN" and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant;

d)directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trademark "PUGAL'N VASANTA 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 : No appearance

JUDGMENT

This suit has been filed for infringement and passing off.

2.The plaintiff states that Late Mr.Muthukrishnan, father of M.Ravi and grandfather of Mr.Anand Krishnan had commenced hotel business in the year 1974 under the name "VASANTA BHAVAN". The plaintiff states



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that they are engaged in the business of running chain of hotels at Chennai and all over the world. The plaintiff states that they are also running restaurants along with the prefix "Namma Veedu Vasanta Bhavan". The essential features of the plaintiff's trademark is "VASANTA BHAVAN".

3. According to the plaintiff, on account of the long, continuous and extensive usage of the unique trademark "VASANTA BHAVAN", tremendous amount of goodwill and reputation have been accrued in favour of the plaintiff's trademark "VASANTA BHAVAN". The plaintiff also states that several articles have been published in a wide variety of magazines in circulation in the State of Tamil Nadu about the plaintiff's reputation. According to the plaintiff, their trademark "VASANTA BHAVAN" is a well known mark in the restaurant field. They also claim that they are having various branches in India as well as in abroad. The list of branches is also disclosed in paragraph No.7 of the plaint. The plaintiff states that they have invested a substantial sum of money to promote their restaurants, running in the name "VASANTA BHAVAN". They have also disclosed their sales turnover from the year 2003-04 to 2020-21 in paragraph No.9 of the plaint. As seen from the same, their turnover runs to Rupees Seven Hundred Crores



approximately. The plaintiff also claims that by the long and continuous usage, the trademark "VASANTA BHAVAN" has acquired a secondary meaning to denote and connote the product of the plaintiff, which assures to the public a unique taste and standard in the food preparations. The plaintiff has obtained registration of its trademark and trading style "VASANTA BHAVAN" and a certificate of registration has also been issued on 15.07.2021 for the mark "VASANTA BHAVAN". The legal usage certificate dated 19.04.2022 has also been issued by the Trademark Registry in favour of the plaintiff. The Legal Usage Certificate, discloses that the plaintiff's trademark "VASANTA BHAVAN" has been used since 30.10.1974 and the Trademark registration is valid till 15.07.2031. The Registrar of Trademarks has also issued a Certificate of Registration in favour of the plaintiff on 27.01.2012 for the mark "Namma Veedu Vasanta Bhavan". A Legal Usage Certificate dated 19.04.2022 has also been issued in favour of the plaintiff for the mark "Namma Veedu Vasanta Bhavan".

4. According to the plaintiff, it came to their notice that the defendant had commenced adopting identical or deceptively similar trademark and



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trading style "PUGAL'N VASANTA BHAVAN" in respect of their hotel business. According to the plaintiff, the defendant has adopted the identical trademark and trading style "PUGAL'N VASANTA BHAVAN" to deceive the general public and to make them believe that the food preparation served at the defendant's place has a connection with the plaintiff's restaurant and the defendant is associated with the plaintiff. According to the plaintiff, if the defendant is allowed to continue the illegal acts in adopting the plaintiff's trademark "VASANTA BHAVAN", it will cause irreparable loss and hardship to the plaintiff. The plaintiff came to know about the usage of the plaintiff's trademark by the defendant in March 2022.

5.The plaintiff has also issued a Cease and Desist Notice on 12.04.2022, which has been duly received by the defendant. However, no reply has been sent to the same. According to the plaintiff, despite the issuance of the Cease and Desist Notice, the defendant is continuing to use the plaintiff's trademark "VASANTA BHAVAN". In such circumstances, this suit has been filed.

6.The defendant was set exparte by this Court on 30.03.2023. Till date, no application has been filed to set aside the exparte order. Since the



defendant was set exparte in this suit, exparte evidence was let in by the plaintiff before the learned Additional Master III. A proof affidavit has also been filed by the plaintiff's Authorised Signatory Mr.Jayaprakash reiterating the contents of the plaint, filed in support of this suit. Before the learned Additional Master III, the following documents were marked as Exs.P1 to P39 on the side of the plaintiff:

Ex.P1 is the authorization letter dated 26.04.2023.

Ex.P2 is the copy of the paper advertisement in the Hindu paper dated 06.04.1984.

Ex.P3 is the copy of the paper advertisement in Maalai Malar dated 15.07.1987.

Ex.P4 is the original letter issued by Krishna Agro Industries Corporation in the name of the Vasanta Bhavan dated 15.12.1987.

Ex.P5 is the original receipt issued by Krishna Agro Industries Corporation in the name of the Vasanta Bhavan dated 14.12.1987.

Ex.P6 is the original receipt issued by Krishna Agro Industries Corporation in the name of the Vasanta Bhavan dated 15.12.1987.

Ex.P7 is the copy of the paper advertisement in the Hindu paper dated 20.10.1989.

Ex.P8 is the original advertisement bill issued by Amudha Surabhi dated



10.11.2004.

Ex.P9 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P10 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P11 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P12 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P13 is the original advertisement bill issued by Maalai Malar dated 17.03.2005.

Ex.P14 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P15 is the original advertisement bill issued by Maalai Malar dated 13.04.2005.

Ex.P16 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P17 is the original advertisement bill issued by Maalai Malar dated 18.04.2005.

Ex.P18 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P19 is the original advertisement bill issued by Maalai Malar dated 24.03.2005.

Ex.P20 is the original advertisement bill issued by Maalai Malar dated



19.05.2005.

Ex.P21 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P22 is the original advertisement bill issued by Maalai Malar dated 25.05.2005.

Ex.P23 is the paper cutting advertisement for Vasantha Bhavan.

Ex.P24 is the original certificate issued by the Tamil Nadu Food Safety and Drugs and Administration Department dated 23.01.2018.

Ex.P25 is the photo copy of the Lease Deed dated 26.10.1974.

Ex.P26 is the certified copy of the Board Resolution dt. 31.12.2021.

Ex.P27 is the photo copy of the Legal use certificate dt. 19.04.2022.

Ex.P28 is the photo copy of the Chartered Accountant Certificate dt. 08.08.2022.

Ex.P29 is the photo copy of the Inauguration photo of the plaintiff hotel.

Ex.P30 is the photo copies of the Inauguration photo of the plaintiff hotel.

Ex.P31 is the print out of the Trade mark registration certificate dt. 23.12.2021.

Ex.P32 is the print out of the ISO Certificate issued in the name of the



Vasantha Bhavan dt. 22.08.2018.

Ex.P33 is the photo copy of the Paper advertisement.

Ex.P34 is the photo copy of the Paper advertisement.

Ex.P35 is the office copy of the Legal Notice issued by the plaintiff dt. 12.04.2022.

Ex.P36 is the print out of the Legal use Certificate dated 19.04.2022.

Ex.P37 is the photo copy of the photograph of the plaintiff hotel.

Ex.P38 is the photo copy of the photograph of the defendant hotel.

Ex.P39 is the photo copy of the Comparison chart of the plaintiff and defendant hotel.

7.As seen from the exhibits, it is clear that the plaintiff has been using the trademark "VASANTA BHAVAN" ever since 1974. They have also obtained registration of the trademark "VASANTA BHAVAN" under Class 43 and the Trademark Registration Certificate dated 23.12.2021 has been marked as Ex.P31. The Legal Usage Certificate dated 19.04.2022 has also been issued by the Trademark Registry on 19.04.2022 in favour of the plaintiff. The plaintiff has also filed documents, which have been marked as



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exhibits to prove that they have incurred huge amount of expenditure towards advertisement costs for promoting their restaurants, running under the registered trademark "VASANTA BHAVAN". The plaintiff has also issued a Cease and Desist Notice to the defendant on 12.04.2022, which has been marked as Ex.P35, after coming to know that the defendant has adopted the plaintiff's trademark "VASANTA BHAVAN". No reply has been received from the defendant for the Cease and Desist Notice dated 12.04.2022 issued by the plaintiff. The plaintiff has filed documents, which have been marked as Exs.P37 to P39 to prove that the defendant has blatantly copied the plaintiff's trademark "VASANTA BHAVAN". The colour scheme of the plaintiff has also been copied by the defendant as seen from Exs.P37 to P39. The plaintiff is having several restaurants all over India and in abroad. The list of the same has also been disclosed in the plaint. The name of the defendant's restaurant is "PUGAL'N VASANTA BHAVAN". The trademark "VASANTA BHAVAN" has acquired a secondary meaning on account of its long and continuous usage since 1974 as seen from the Legal Usage Certificate, which has been marked as Ex.P36 on the side of the plaintiff. The prefix "PUGAL'N" has alone been added to the well known trademark of the plaintiff's "VASANTA BHAVAN" by the



defendant, which will amount to infringement and passing off of the plaintiff's trademark "VASANTA BHAVAN".

8.Through Exs.P1 to P39 as well as from the plaint averments as well as from the proof affidavit filed by the plaintiff's Authorised Signatory, the suit claim has been proved by the plaintiff.

9.Learned counsel for the plaintiff is not pressing prayer (c) and (d) in the plaint. The same is recorded.

10.For the foregoing reasons, this suit is partly decreed by granting the following reliefs in favour of the plaintiff against the defendants:

a)A judgment and decree for permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infrining the plaintiff's Trademark and Trading style "VASANTA BHAVAN" by using the offending Trademark and Trading style "PUGAL'N VASANTA BHAVAN" or any other mark or marks which are similar or in anyway deceptively similar to or a colourable imitation of the plaintiff's Trademark "VASANTA BHAVAN";



b) A judgment and decree for permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing-off the plaintiff's Trademark and Trading style "VASANTA BHAVAN" by using the offending Trademark and Trading style "PUGAL'N VASANTA BHAVAN" or any other mark or marks which are similar or in anyway deceptively similar to or a colourable imitation of the plaintiff's Trademark "VASANTA BHAVAN";

11. The defendant is directed to pay the costs of the suit to the plaintiff.

12. Learned counsel for the plaintiff is not pressing A.No.4870 of 2023. Accordingly, A.No.4870 of 2023 is dismissed as not pressed.

31.01.2024

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List of Witness examined on the side of the Plaintiff:-

(PW1) Mr.Jayaprakash

List of the Exhibits marked on the side of the Plaintiff:-

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ABDUL QUDDHOSE, J.

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