



WEB COPY



CONT. P.(MD). No.2240 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2024
Delivered on: 02.08.2024

CORAM

The Hon`ble Mr.Justice A.A.NAKKIRAN

Cont.P.No.2240 of 2023
in C.S.No.1133 of 2007

1.Mr.A.D. Padmasingh Isaac
Proprietor,
Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai – 600 040.

2.M/s Aachi Masala Foods Private Limited
No.6, Ground Floor,
15th Street, Anna Nagar, “G” Block,
Chennai – 600 040,
rep. By its Director
Mr.Ashwin Pandian

... Petitioners

Vs

Mr.S.Pandian
Proprietor, Abhi Masala
No.3A, New South Street,
Udayarkudi, Kattumannar Koil,
Cuddalore – 608 301,
Tami Nadu and also at
Abinaya Cottage Industries



CONT. P.(MD). No.2240 of 2023

54, Kalam Nagar, West Street,
Kattumannar Koil,
Cuddalore District,
Tamil Nadu,
And also at
Abhinaya Cottage Industries
9, Pavadithoppu,
Pallanchanallor,
Cuddalore District,
Tamil Nadu.

... Respondent/Defendant

PRAYER :- Contempt Petition is filed under Section 11 of the Contempt of Courts Act, 1971, to punish the Respondent for the wilful disobedience of the Judgment and Decree dated 29.04.2010 passed by this Court in C.S.No.1133 of 2007.

For Petitioners : Mr.Gladys Daniel for
M/s C.Daniel
For Respondent : Mr.G.Pugazhenth

ORDER

This contempt petition is filed to punish the respondent for the wilful disobedience of the Judgment and Decree dated 29.04.2010 passed by this Court in the above civil suit.



CONT. P.(MD). No.2240 of 2023

2. The learned counsel for the petitioner submits that the first petitioner is the proprietor of the Trade Mark Aachi. The Trade Mark Aachi has now become a common house hold name. The petitioners are presently dealing in over 400 different products with the said Trade Mark. The subject matter of the proceeding is in respect of the petitioners' label mark 'Aachi Masala Kulambu Chilly Powder'. In 2007, the petitioners came across the respondent's goods under the Trade Mark Kulambu Milagai preparation (chilly powder) bearing the mark Abhi Masala in the same colour scheme and get up which is a blatant infringement of the petitioners' registered trade mark Aachi Masala. The two trade marks are visually, deceptively similar. Thus, the petitioners are aggrieved by the use of the label. Hence, the petitioners had filed C.S.No.1133 of 2007 before this Court for permanent injunction. In the said suit, this Court directed the respondent/defendant to surrender all the packing materials, cartons, advertisement materials and hoardings letter-heads, visiting cards, office stationery and all other materials containing / bearing the name ABHI and packets in the color scheme and get up as shown in Doc.No.2 or other deceptive similar trade mark used in the



CONT. P.(MD). No.2240 of 2023

pouches and packets in respect of masalas. Further, this Court directed the respondent/defendant to render an account of profits made by them by the use of the impugned trade mark and get up as shown in doc.No.2 on the goods referred and to pay the profits found to have been made by the respondent/defendant, after the respondent/defendant has rendered accounts. Further, this Court directed the respondent/defendant to pay the costs of the suit.

3. It has been further submitted that in December 2020, the petitioners came to know that despite the order of permanent injunction, the respondent/defendant was continuously violating the Judgment and Decree dated 29.04.2010. The respondent/defendant is trying to circumvent the said Judgment and Decree. Hence, the first petitioner had issued a contempt notice to the respondent/defendant on 26.07.2021. On receipt of the notice, the respondent/defendant discontinued the use of the impugned trade mark in his business. Subsequently, the respondent/defendant has once again resumed the sale of the impugned goods under the impugned trade mark Abhi Masala in June 2023. Hence, the petitioners have sent a second contempt notice to the respondent on



CONT. P.(MD). No.2240 of 2023

19.07.2023. Though the said contempt notice has been duly served on the respondent/defendant on 21.07.2023, till date, the petitioners have not received any response from the respondent/defendant. Till now, the respondent/defendant continues to use the impugned trade mark. Thus, the respondent/defendant is continuously violating the Judgment and Decree dated 29.04.2010. Hence, the petitioners have filed the present contempt petition.

4. The learned counsel for the respondent/defendant submits that since the defendant has not contested the suit and not filed the Written statement, the Ex-parte Judgement and Decree was passed on 29.04.2010. Further, the respondent started a new business independently for manufacturing and selling of Abhi Masala Kulambu Chilli Powder using improved design of label of Trade Mark with difference from the label used during the year 2007 and the Trade mark of the respondent is not similar and having distinctive characters comparing with the petitioner's trade mark label. Hence, the present contempt petition is liable to be dismissed.



WEB COPY



CONT. P.(MD). No.2240 of 2023

A.A. NAKKIRAN, J.

skn

Cont.P.No.2240 of 2023
in C.S.No.1133 of 2007

02.08.2024

1