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C.M.A Nos.2747 of 2022 and 1763 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

C.M.A Nos.2747 of 2022 and 1763 of 2023

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C.M.P.Nos.21443 & 21448 of 2022 in C.M.A.No.2747 of 2022

&

C.M.P.No.17297 of 2023 in C.M.A.No.1763 of 2023

C.M.A Nos.2747 of 2022

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindu
5. M/s.Shri Varalakshmi Company
(Now known as Shri.Varalakshmi Sago Foods Pvt. Ltd.,)
All at:
No.3, Komarapalayam, Mallur
Rasipuram Taluk, Namakkal District
Tamil Nadu – 636 203

... Appellants

Vs.

1. Varalakshmi Starch Industries Pvt. Ltd.,
No.127/1 Gandhi Road
Hastampatty
Salem- 636 007

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2. V.Anbalagan

... Respondents

Civil Miscellaneous Appeal filed under Section 104 of the Code of Civil Procedure, 1908 to set aside the fair and decretal order dated 27.09.2022 in I.A.No.1 of 2022 in COS No.22 of 2022 on the file of the Commercial Court, District Judge, Salem.

For Appellants : Mr.Suhirith Parthasarathy

For Respondents : Mr.Arun C Mohan

C.M.A.No.1763 of 2023

Varalakshmi Starch Industries Pvt. Ltd.,
No.127/1 Gandhi Road
Hastampatty
Salem- 636 007

... Appellant

Vs.

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindu
5. M/s.Shri Varalakshmi Company
(Now known as Shri.Varalakshmi Sago Foods Pvt. Ltd.,)
No.3, Komarapalayam, Mallur
Rasipuram Taluk, Namakkal District
Tamil Nadu – 636 203

6. V.Anbalagan

... Respondents

Civil Miscellaneous Appeal filed under Section 13 of the Commercial Courts Act, 2015 to set aside the condition for curtailing the use of the trade name of 'Varalakshmi' in launching new products by the Appellant in common order dated 27.09.2022 passed in I.A.No.1 of 2022 in C.O.S.No.22 of 2022 to the extent as per the grounds stated above.

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For Appellants : Mr.Arun C Mohan
For Respondents : Mr.Suhirith Parthasarathy

COMMON JUDGMENT

[Order of the Court was made by M.SUNDAR, J.,]

This common judgment will now govern the captioned two main 'Civil Miscellaneous Appeals' ['CMAs' in plural and 'CMA' in singular for the sake of brevity] and two captioned 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity] thereat.

2. Considering the nature of the order which we propose to make, we would not dilate much on facts, nonetheless we deem it appropriate to set out a thumbnail sketch of facts which i.e., facts that are imperative for appreciating this order.

3. A suit being Commercial Original Suit No.22 of 2022 [Originally C.O.S.No.37 of 2022 on the file of Principal District Judge, Salem (CNR No.TNSA23-000042-2022)] vide a plaint dated 02.01.2022 is now pending on the file of 'Commercial Court (District Judge Cadre), Salem' [hereinafter 'said Commercial Court' for the sake of convenience and clarity].

4. The aforementioned 'Commercial Original Suit No.22 of 2022' shall



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hereinafter be referred to as 'said main suit' for the sake of brevity and convenience.

5. Said main suit is a typical trademark infringement suit with prayers for injunction, delivery of offending material and accounts. To be noted, the usual costs and residuary limbs also form part of the prayer.

6. The products are 'a variety of sago/sabudana and other tapioca products' [hereinafter 'said products' for the sake of convenience]. Pending suit, the plaintiffs took out I.A.No.1 of 2022 *inter alia* under Order XXXIX Rules 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for the sake of brevity] seeking injunction restraining the use of alleged offending marks. Suffice to say that said Commercial Court neither acceded to the prayer in entirety nor dismissed the application but made an order saying that the first defendant (D1) shall not introduce any new product in the market until the question as to who is entitled to use of the word 'Varalakshmi' is decided and made a further order saying that *status-quo* till disposal of suit shall be maintained. A scanned reproduction of the decretal order dated 27.09.2022 is as follows:



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**IN THE COURT OF THE COMMERCIAL COURT, DISTRICT JUDGE,
SALEM**

Present: **Tmt.A.Deepa, B.A., M.L.,**
District Judge,
Commercial Court, Salem

Tuesday, the 27th day of September 2022
(2022 திசம்பர் மூன்று, சபைதிரு விருதம், புரட்சி திங்கள் 10th day)

I.A. No.1/2022
in
Commercial Original Suit No. 22/2022
(C.O.S.No. 372/2022 of Principal District Judge, Salem)
(CNR.NO. TNSA23-000942-2022)

14 NOV 2022

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sandu
All the above are residing at No.3, Kamarapalayam, Mallur, Rasipuram Taluk,
Namakkal District, Tamil Nadu - 636 203.

5. M/s Sri Varalakshmi Company, registered with the Register of Firms on
03/06/2005 with registration No 147/2005, and having its address at No.3,
Kamarapalayam, Mallur, Rasipuram Taluk, Namakkal District, Tamil Nadu -
636 203

Petitioners/ Plaintiffs

vs.

1. Varalakshmi Starch Industries Pvt. Ltd., a private limited company incorporated
under the Companies Act, 1956, and having its registered address at No.127/1,
Gandhi Road, Hastampetty, Salem - 636 007

2. V Anbalagan son of Late Mr VaradarajaGounder having his address at No.127/1,
Gandhi road, Hastampetty, Salem - 636 007

Respondents / Defendants

I.A. 1/2022 in CO.S.22/2022

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FILED BY: [Signature]



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Date of petition : 17.02.2022

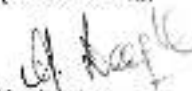
Court fee paid : Rs. 20/-

Petition filed by the plaintiffs under Or.39 R.1, 2 and Sec.151 CPC seeking ad-interim injunction to restrain the 1st defendant from using the Trade Marks registered with the plaintiffs.

This petition came for final hearing before this court in the presence of Thiru.B.Vikram, Advocate for the Petitioners / Plaintiffs and Thiru.K.S.Mohamed Mohideen, Advocate for the Respondents / Defendants and on perusal of available material records as well upon hearing both and having stood over for consideration on this day, this court doth order and delivered the following the decretal order

- 1 that the petition be and is hereby ordered that unless and until the use of the word "Varalakshmi", who is entitled to is decided, the 1st respondent must not introduce new products in the market, with this word ;
- 2 that a status quo is hereby ordered till the disposal of the suit , and
- 3 that there be no order as to cost.

Given under my hand and the seal of this court the 27th day of September 2022.


District Judge,
Commercial Court, Salem.



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7. The five plaintiffs as well as D1 have preferred the captioned appeals i.e., CMAs saying they are aggrieved by the impugned decree. Therefore, captioned CMAs are cross CMAs. To be noted, we are referring to the 'impugned fair order and decretal order' together as 'impugned order' for convenience.

8. Today Mr.Suhirith Parthasarathy, learned counsel for the appellants/plaintiffs in C.M.A.No.2747 of 2022 and Mr.Arun C Mohan, learned counsel for the appellant / D1 in C.M.A.No.1763 of 2023 are before us.

9. Both learned counsel submit in one voice in unison that in the suit in the said Commercial Court pleadings are complete and filing of proof affidavit on the side of the plaintiffs is the stage.

10. The issue on hand would essentially mean a legal drill which will require this Court to go into multitude of issues that have been raised qua the alleged offending mark in the main suit. Therefore, we are of the considered view that taking into account the nature of the suit, nature of the CMAs, nature of the interim order as well as the overall pendency in the said Commercial Court (to be noted, we have gone into the Data Grid qua said



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Commercial Court as well as the Justice Clock and ascertained that only 105 suits {all less than one year} are pending in said Commercial Court as of today), it would be appropriate to have the main suit expedited. The reasons are, i) a decision in the main suit would serve the purpose of the parties better than appeals arising out of interlocutory orders are decided and ii) there is a huge overlap qua the two legal drills. In this view of the matter, the question regarding maintainability of the appeals in the light of proviso to Section 13(1A) of CCA is left open. This question will be considered in another matter where a legal tussle / contest ensues.

11. We have also taken into account the obtaining position that interim order is operating partly in favour of the plaintiffs and partly in favour of D1 as it injuncts D1 from introducing new products and it permits D1 *status-quo* as regards the present market i.e., *status-quo* as on the date of the impugned order (27.09.2022). This has also weighed in our mind in making this order.

12. The following order is made:

- i) The said Commercial Court is requested to expedite Commercial Original Suit No.22 of 2022 and dispose of the



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same in accordance with the procedure qua CCA and of course the substantive law qua Trade Marks Act, 1999 and other applicable legislations/Statute on its own merits and in accordance with law as expeditiously as the Board would permit but in any event within 16 weeks from today i.e., on or before 21.10.2024;

ii) Interim order made by the said Commercial Court i.e., order dated 27.09.2022 in I.A.No.1 of 2022 in Commercial Suit No.22 of 2022 which is being referred to as 'impugned order' will continue to operate till the disposal of the suit;

iii) Law is well settled that any observation made in an interlocutory order will have no bearing qua the main suit. Nonetheless as the matter has travelled to Division Bench by way of an appeal, we deem it appropriate to say that none of the observations or dispositive reasoning or discussion of the said Commercial Court in the impugned order dated 27.09.2022 in I.A.No.1 of 2022 will have any bearing in the



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main suit being decided. In other words, said Commercial Court shall decide the main suit on its own merits and in accordance with law as set out supra based on the documentary/oral evidence, written arguments and other material before it i.e., suit file before it;

iv) This order shall not be construed as one that has examined the impugned order on merits and sustained the same as merely to balance the rights of parties, we have said that impugned order will continue till the disposal of the suit as it neither allows nor dismisses injunction application but gives some interim relief/benefit to both sides {as alluded to supra};

iv) As regards the captioned CMPs, a Hon'ble predecessor Division bench had stayed the proceedings in the said Commercial Court vide order dated 13.12.2022 and another Hon'ble Bench on 04.03.2024 made it clear that the interim stay would not apply to mediation but as we are informed that mediation was resorted to but the same did not



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fructify into a settlement it will suffice to make it clear that the interim order of stay stands vacated and the road is clear for said Commercial Court to proceed with the suit.

Captioned two CMAs and captioned two CMPs are disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

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

02.07.2024

Index : Yes / No

Neutral Citation : Yes / No

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

gpa

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