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O.S.A. (CAD) Nos.138 & 139 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	12.11.2024
Judgment pronounced on	18.11.2024

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A. (CAD) Nos.138 & 139 of 2024
and C.M.P.Nos.24707 & 24708 of 2024

Massey Ferguson Corp
4205, River Green Parkway, Duluth,
30096, United States of America
Represented by its
Power of Attorney
Rohit Kohli
(Power of Attorney recognised vide
order of Court dated 28.10.2024 made
in CMP Nos.23982 of 2024 in
OSA(CAD) (SR) No.141989 of 2024 by RSKJ & CSNJ)

... Appellant

Versus

Tractors and Farm Equipment Limited,
77, Nungambakkam High Road,
Chennai-600 034,
Represented by its
Authorised Signatory
Mr.C.P.Sounderarajan

... Respondent



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(Cause Title accepted by order of Court
dated 28.10.2024 made in CMP No.23979
of 2024 in OSA (CAD)(SR) No.141989 of 2024
by RSKJ & CSNJ)

Prayer : Appeals under Order 36 Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent and the provisions of Section 13(1) of the Commercial Courts Act, 2015 to set aside the order dated 17.10.2024 passed by this Court in OA.No.745 of 2024 in C.O.S.(Comm. Div) No.190 of 2024.

For Appellant

: Mr.R.Sankaranarayanan,
Senior Advocate,
Mr.R.Parthasarathy, Senior
Advocate,
Mr.Suhrith Parthasarathy
Rishabh Gupta
Shreya Gupta Abhijeet
Sadikale
Prachi Gupta for
M/s.Allwin Godwin Akhila

For Respondent

: Mr.C.A.Sundaram, Senior
Advocate,
Mr.Krishna Srinivasan,
Senior Advocate for
M/s.S.Ramasubramaniam
and Associates in
OSA(CAD) No.138 of 2024
Mr.A.L.Somayaji, Senior



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Advocate
Mr.Krishna Srinivasan,
Senior Advocate
Mr.P.S.Raman, Senior
Advocate for
M/s.S.Ramasubramaniam
and Associates in OSA
(CAD) No.139 of 2024

COMMON JUDGMENT

(Delivered by Justice Senthilkumar Ramamoorthy)

Background

An agreement dated 31.10.1960 was entered into between Massey Ferguson Limited (MFL), a company incorporated in Canada, and Amalgamations (Private) Limited, a company incorporated under the Indian Companies Act, 1913. This agreement envisaged the formation of a joint venture company by and between the two parties thereto in the name and style of “Tractors and Farm Equipment Limited” and is hereafter referred to as the JV Agreement. Pursuant to the JV Agreement, such company was incorporated and is the respondent herein. The JV Agreement envisaged the execution of a technical assistance agreement as per the template set out as



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Appendix II thereto. Such Technical Assistance Agreement was executed on 18.09.1961.

2. On 17.03.1978, a Trademark Users Agreement (the 1978 TM Agreement) was executed by and between MFL and the respondent herein. The 1978 TM Agreement recognised that MFL was the registered proprietor of the trademarks bearing the registration numbers mentioned in the schedule thereto. It also provided for the use of such trademarks by the respondent herein. On the same date, an Agreement for the Sale of Technical Information and Know-how was entered into between Massey Ferguson Services N.V. Netherlands Antilles and the respondent herein. This was followed by the execution of the Trademark Registered User agreement dated 18.03.1994 (the 1994 TM Agreement) between Massey Ferguson Corp (Delaware) Inc. (MFC Delaware) and the respondent herein, which was effective from 30.07.1991. Like the 1978 TM Agreement, the 1994 TM Agreement was also in respect of the use of trademarks of MFC Delaware by the respondent herein. Clause 9 of the said agreement enables no fault



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termination by either party by giving six months notice in writing to the other. A letter agreement dated 03.08.2007 was executed thereafter by and between AGCO Corporation(AGCO), a company incorporated in Georgia, USA, and the respondent herein. This agreement was to provide protection in case a competitor of the respondent acquires not less than a threshold stake in AGCO. Various other agreements were also entered into by the appellant or the AGCO group with the respondent, but it is not necessary to set out those details for present purposes.

3. The business relationship between the parties, thus, commenced with the JV Agreement and continued without interruption for a period in excess of six decades. After disputes arose between the parties, a termination notice dated 26.04.2024 (First Termination Notice) was issued by the appellant/Massey Ferguson Corp to the respondent to terminate the 1994 TM Agreement by invoking clause 8 thereof. It also provided that the appellant reserves its rights to terminate the said agreement prior to the date of termination specified therein in case of any breach by the respondent. Around the same time, it appears that a similar termination notice was issued in respect of another agreement. In those circumstances,



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initially the respondent and TAFE International LLC, Turkey filed C.O.S.No.2 of 2024 before the Principal District Judge, Dindigul, and obtained an ad-interim order of *status quo ante* against AGCO International GmbH and AGCO. This was challenged by the defendants by filing C.R.P.(PD)(MD) Nos. 1830 to 1833 of 2024. By order dated 08.08.2024, the parties were referred to arbitration and pre-arbitration mediation. Such mediation is in progress before a retired Judge of the Supreme Court of India.

4. Thereafter, the respondent filed COS No.117 of 2024 before the Commercial Court at Egmore, Chennai seeking a declaration that the First Termination Notice is invalid and a permanent injunction restraining the defendants therein, i.e. Massey Ferguson Corp and AGCO, from in any manner interfering with the plaintiff's right to use the brand/trademarks Massey Ferguson (MF) in India. By order dated 30.04.2024 in I.A.No.5 of 2024 in the said suit, the Court directed parties to maintain *status quo* as on 25.04.2024. By subsequent order dated 10.06.2024, the *status quo* order was extended until 02.07.2024. The respondent filed an interim application for amendment of the plaint and such application was allowed. Eventually,



the plaint was returned for presentation before the jurisdictional court.

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5. The respondent filed a second suit before the Commercial Court at Egmore, Chennai bearing C.O.S.(Sr.) No.464 of 2024 seeking a declaration that the appellant abandoned its rights in the MF trademarks in India. The respondent also filed applications to cancel the appellant's registrations in respect of the MF trademarks. In those circumstances, a second termination notice dated 27.09.2024 (the Second Termination Notice) to terminate the 1994 TM Agreement with immediate effect was issued by the appellant. Meanwhile, by order dated 16.08.2024, the plaint was returned for presentation before the appropriate court on the basis that the suit is in respect of intellectual property rights.

6. After unsuccessfully challenging the order dated 16.08.2024 in C.M.A. No.2335 of 2024, the second suit was re-filed before this Court and re-numbered as C.S. (Comm. Div.) No.190 of 2024. The respondent filed two applications in the suit. In O.A.No.744 of 2024, the respondent prayed for an interim injunction restraining the appellant herein from holding out or representing that it is the owner, proprietor, rights holder of the MF



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brands/trademarks, including by amending appellant's website or that of AGCO, the parent company of the appellant, pending disposal of the suit. In O.A.No.745 of 2024, the respondent prayed for an interim injunction restraining the appellant from interfering with the respondent's use of the MF brands/trademarks pending disposal of the suit. After hearing the appellant herein, albeit without awaiting its counter affidavit, an ad-interim order dated 17.10.2024 was issued granting orders of interim injunction, as prayed for, in both the above mentioned applications. The present appeals are directed against these two orders.

Counsel and their contentions

7. Oral arguments on behalf of the appellant were advanced by Mr.R.Sankaranarayanan, learned senior counsel, and Mr.R.Parthasarathy, learned senior counsel, assisted by Mr.Suhrith Parthasarathy. Oral arguments on behalf of the respondent were advanced by Mr.C.Aryama Sundaram, learned senior counsel, and Mr.P.S.Raman, learned senior counsel. Supplementary arguments were advanced by Mr.A.L.Somayaji, learned senior counsel, and Mr.Krishna Srinivasan, learned senior counsel.



8. The contentions on behalf of the appellant may be summarized as under:

(i) Without giving an opportunity to file a counter, an unreasoned order was issued.

(ii) The JV Agreement, the 1978 TM Agreement, and the 1994 TM Agreement recognized the appellant herein or its predecessors-in-interest as the registered proprietors of the MF brands/trademarks. In each of the above agreements, the respondent herein is permitted to use the trademarks either as a permitted user or registered user.

(iii) The 1994 TM Agreement provides for no fault termination by issuing a six month notice. Such notice was issued on 26.04.2024 and the six month period expired on 25.10.2024.

(iv) As a result of the order issued in O.A.No.744 of 2024, the registered proprietor of the relevant trademarks has been restrained from holding itself out or representing that it is the owner, proprietor, rights holder. A trial is required to decide the issue of abandonment of the MF brands/trademarks, but a conclusion on abandonment was recorded at the pre-trial stage. Such order is *ex facie* invalid and liable to be interfered with.



(v) Clause 11 of the 1994 TM Agreement imposes an obligation on the respondent not to do anything which impairs the rights of the proprietor in the trademarks forming the subject of these appeals. In flagrant breach of the stipulation, the respondent has filed cancellation applications before the Registrar of Trade Marks in Mumbai, New Delhi and Kolkata and also filed applications for registration of deceptively similar trademarks before the Registrar of Trademarks, Chennai. Therefore, the appellant was constrained to issue the Second Termination Notice to terminate the 1994 TM Agreement with immediate effect.

(vi) The appellant also filed a civil suit (C.S.(Comm. Div.) No.193 of 2024) before this Court seeking *inter alia* an order of permanent injunction against the respondent herein to restrain the use of the trademarks specified in Schedule I to the 1994 TM Agreement. Although applications for interim relief were filed in the said suit, only notice was ordered in such applications while extending ad-interim relief to the respondent herein in its suit.

(vii) The respondent would continue to be in a position to manufacture and sell tractors and allied equipment even if the orders of ad-interim injunction were to be vacated. The restriction would be limited to



the use of appellant's trademarks. Consequently, the balance of convenience is in favour of vacating the ad-interim orders and the respondent has failed to establish that irreversible injury would be caused unless ad-interim relief is granted.

9. The contentions on behalf of the respondent may be summarized as under:

(i) The appeals are not maintainable either under Section 13 of the Commercial Courts Act, 2015 (the Commercial Courts Act) or Clause 15 of the Letters Patent. In support of this contention, the judgments of Division Benches of this Court in *The Special Tahsildar No.III, Land Acquisition v. Rangasamy Reddiar (Rangasamy Reddiar)*, 1988-1-L.W.-38; *R.Kishore Kumar v. Durairajan and another*, 2022 SCC OnLine Mad 7023, and *Green Peace Constructions Pvt. Ltd. represented by its Managing Director v. R.Sivakumar and Others*, 2011-1-L.W.17 were relied upon.

(ii) Pursuant to the JV Agreement, the respondent was incorporated. After incorporation, the JV company has manufactured tractors and allied equipments for more than 60 years. About 95% of the products manufactured by the JV company carry MF brands/trademarks.



(iii) Although the 1960 JV Agreement, the 1978 TM Agreement and the 1994 TM Agreement refer to a limited number of products, the respondent has manufactured and marketed about 500 products bearing the MF brands/trademarks.

(iv) Except the 1994 TM Agreement, the other agreements, including the 1960 JV Agreement, have admittedly not been terminated. The 1994 TM Agreement is confined to about five products. Therefore, even if such agreement were to be terminated, the respondent cannot be prevented from using the MF brands/trademarks in view of the 1960 JV Agreement continuing to subsist and the use of these brands/trademarks on numerous products with the knowledge of consent of the appellant .

(v) Although the 1978 TM Agreement and the 1994 TM Agreement provide for supervision of quality of products by the appellant or its predecessors-in-interest, including by ensuring adherence to specifications, the respondent functioned without any supervision. In fact, the respondent applied for and obtained multiple patent and design registrations in respect of these tractors and allied products with the full knowledge and consent of the appellant. Consequently, the licensing was naked and the licensor has abandoned its rights over the MF brands/trademarks.



(vi) Admittedly, the appellant does not manufacture tractors or any other allied equipments in India. Since the suit and interim orders are limited to the use of MF brands/trademarks in India, these ad-interim orders do not affect the business of the appellant in any manner. On the contrary, the respondent is carrying on business in India on a very large scale by employing thousands of people. The respondent's products are primarily intended for use in agriculture. If the respondent is prevented from using the MF brands/trademarks in relation to these products, irreversible injury would be caused.

10. In response to the contention that these appeals are not maintainable, it was submitted on behalf of the appellant that the judgment of this Court in *Rangasamy Reddiar* was in the context of an ad-interim *ex parte* order. By pointing out that such judgment relied upon an earlier judgment of the Division Bench of this Court in *Abdul Shukoor Sahib v. Umachander and Others*, 1976 SCC OnLine Mad 57, it was further submitted that this judgment makes it clear that an appeal does not lie against an *ex parte* unreasoned order because the aggrieved party has a remedy under Order 39 Rule 4 of the Code of Civil Procedure. Since the present order was issued after hearing the arguments of the contesting



parties, it was contended that it qualifies as an order against which an appeal lies under Section 13 of the Commercial Courts Act. As regards the contention on abandonment of the MF brands/trademarks as a result of naked licensing, by relying on the judgment of the US Court of Appeals for the Fifth Circuit in *Taco Cabana International v. Two Pesos, Inc.* 932 F.2d.113 (1991), it was contended that an inference of abandonment cannot be drawn when parties had a close working relationship and no decline in quality standards is demonstrated.

Discussion, analysis and conclusion

11. At the outset, the objection with regard to the maintainability of the appeals is dealt with. Section 13 of the Commercial Courts Act provides for appeals against final decrees and orders in respect of which an appeal is maintainable under Order 43 of the Code of Civil Procedure, 1908 (the CPC). An appeal lies under Order 43 Rule 1 of the CPC against an order granting an interim injunction in an application under Order 39 of the CPC. The only aspect that warrants a brief discussion is whether such appeal would be maintainable against an ad-interim order. As discussed earlier, by



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virtue of orders impugned herein, the appellant, which asserts proprietorship over the MF brands/trademarks has been restrained from holding itself out as the owner/proprietor thereof. The appellant has also been restrained from interfering with the respondent's use of the said trademarks. Moreover, the appellant was not provided an opportunity to file a counter and the order does not contain reasons to justify the conclusions. Given the impact of the orders and in view of the such orders falling within the scope of Section 13 of the Commercial Courts Act, we conclude that these appeals are maintainable.

12. The next question to be considered is whether interference with the impugned orders, whether by way of modification or otherwise, is called for at this juncture. We are acutely conscious that the challenge is to ad-interim orders. In the plaint, the respondent herein has set out the entire history of the relationship between the parties and provided details of the range of products manufactured and sold by the respondent under the MF brands/trademarks. We note that the assertion by the respondent that it has used the MF brands/trademarks for about six decades has not *prima facie*



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been refuted by the appellant. Indeed, on a *prima facie* examination of the materials on record, the said assertion is liable to be accepted at least for interlocutory purposes. It also appears *prima facie* that the agreements placed on record do not embrace all the products manufactured and marketed by the respondent under the MF brands/trademarks.

13. In C.O.S No.117 of 2024, an *ex parte* order dated 30.04.2024 was issued directing the appellant herein to maintain *status quo* as on 25.04.2024. Such order continued in force until the plaint was returned by the Commercial Court, Egmore, Chennai for re-presentation before the competent court. Consequently, the time limit of six months stopped running while such order was in force. By virtue of impugned order dated 17.10.2024, the appellant was restrained from interfering with the respondent's use of the MF brands/trademarks until the applications are disposed of and this order is in force as on date. We notice that the appellant and the respondent have initiated action against each other after 25.04.2024, in the form of the Second Termination Notice or the application for cancellation of trademark registrations, respectively. From a business perspective, however, as on date, the appellant has not entered the



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Indian market directly or indirectly (through a licensing agreement or the like), and the respondent continues to manufacture and sell tractors and other farm equipment by applying the MF brands/trademarks thereto. Effectively, the situation on ground has not changed since 25.04.2024. Mediation proceedings are also ongoing and the possibility of an amicable and wholesale resolution of the dispute cannot be ruled out. Considering all these aspects, at this juncture, the interest of justice warrants the preservation of the *status quo* outlined above so as to ensure that irreversible changes do not occur.

14. Turning to the relief granted in O.A.No.744 of 2024, the effect of the order is to restrain the appellant herein from holding itself out as the owner, proprietor or rights holder of MF brands/trademarks. Even proceeding on the basis that such order is confined to the territory of India, we find *prima facie* that the appellant or its predecessors-in-interest were referred to as the proprietor(s) of the MF brands/trademarks in the 1960 JV



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agreement, the 1978 TM Agreement and the 1994 TM Agreement. It is also common ground between the parties that several of these trademarks were registered by the appellant or its predecessors-in-interest and the respondent has sought cancellation of such registrations before the jurisdictional Registrar of Trade Marks in pending proceedings. One of the rights conferred by registration is the exclusive right to use the relevant trademarks. In these facts and circumstances, the order issued in O.A. No.744 of 2024 is *ex facie* unjustified and notwithstanding its ad-interim nature, interference is warranted. Any apprehension on the part of the respondent that the appellant would apply the MF brands/trademarks to similar goods in India would be effectively addressed by directing the parties to maintain *status quo*. In these circumstances, notwithstanding the issuance of the First and Second Termination Notices and the expiry of the six month period specified in the former, we are inclined to direct the parties to maintain *status quo* until disposal of these applications.

15. For reasons aforesaid, the impugned orders are modified by directing the parties to maintain *status quo* until the original applications are heard and disposed of by the learned single Judge. For the avoidance of



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doubt, we hasten to add that the observations made herein are tentative and solely intended for the purpose of disposing of these appeals. Hence, we have not delved much into the various rival submissions. All rights and contentions are kept open.

16. OSA (CAD) Nos.138 & 139 of 2024 are disposed of on the above terms. There shall be no order as to costs. Consequently, the interim petitions are also closed.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY, J.)
18.11.2024

Index : Yes/No
NC : Yes/No
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Pre-delivery Judgment made in

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