



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

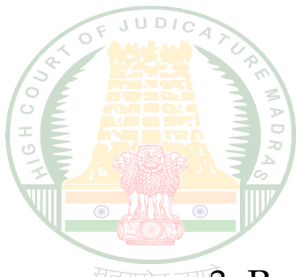
**A.No.1920 of 2025 in
C.S.(Commercial) No.52 of 2024**

1. S.Sudhakar
2. S.Dhinakar
3. M/s.T.M.Karuppiah Nadar Sons
No.84, M.C.Road,
Old Washermenpet,
Chennai-600 021.
Represented by its Partner
S.Sudhakar

... Applicants/Plaintiffs

vs.

1. M/s.Leela Udhyog,
No.37/22/1, Kalupur Lat Bazar,
Opp. Chokha Bazar, Kalupur,
Ahmedabad-380 001
Gujarat
Represented by its Partner
Rajendra Rameshchandra Jain
2. Rajendra Rameshchandra Jain
Partner and Person in-charge
M/s.Leela Udhyog
No.37/22/1, Kalupur Lat Bazar,
Opp. Chokha Bazar, Kalupur,
Ahmedabad-380 001
Gujarat



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3. Rameshchandra Manoharlal Jain

Partner

M/s.Leela Udhyog

No.37/22/1, Kalupur Lat Bazar,

Opp. Chokha Bazar, Kalupur,

Ahmedabad-380 001

Gujarat

4. Vihal Hastimal Jain

Partner and Person in-charge

M/s.Leela Udhyog

No.37/22/1, Kalupur Lat Bazar,

Opp. Chokha Bazar, Kalupur,

Ahmedabad-380 001

Gujarat

...Respondents/
Defendants Nos.1-4

5. R.V.Traders,

No.37/22/1, Kalupur Lat Bazar,

Opp. Chokha Bazar, Kalupur,

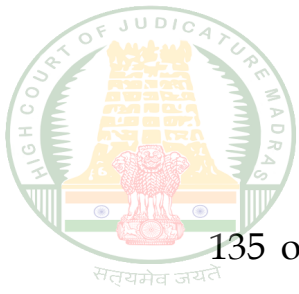
Ahmedabad-380 001

Gujarat

... Respondent/
Defendant No.5

Prayer in A.No.1920 of 2025 : Application is filed under Order XIV Rule 8 and Order XIII A of the Code of Civil Procedure prayed to summarily decide and decree the present suit filed by the plaintiffs as prayed for.

Prayer in C.S.No.52 of 2024: Plaint filed under Order IV Rule 1 of O.S.Rules read with Order 7 Rule 1 CPC read with Sections 51, 55, 58 and 62 of the Copyright Act, 1957 and Section Sections 27, 134 and



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135 of the Trade Marks Act, 1999, prayed to pass a judgment and decree for:

a) A permanent injunction restraining the defendants, their men, servants, agents, assigns, subsidiaries or any anyone claiming through or under them or acting under their directions, from in any manner whatsoever infringing the plaintiffs' copyright contained in their TOWER label, filed herewith as **Plaint Document No.3**, by manufacturing, selling, offering for sale, stocking, advertising, exporting, importing either directly and/or indirectly any goods and in particular any food or allied products including Dhall varieties under the “Eiffel TOWER” Label, filed herewith as **Plaint Document No.9**, or any other label which is identical with and/or deceptively similar and/or a substantial reproduction of the plaintiffs' TOWER label filed as **Plaint Document No.3**

b) Permanent injunction restraining the defendants, their distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner manufacturing, selling, offering for sale, stocking, advertising, exporting, importing either directly and/or indirectly any goods and in particular any food or allied products including Dhall varieties using the trademark “Eiffel TOWER” or the label filed as **Plaint Document No.9**, either per se or in combination with any other mark either in English or any other language which is identical with or deceptively similar



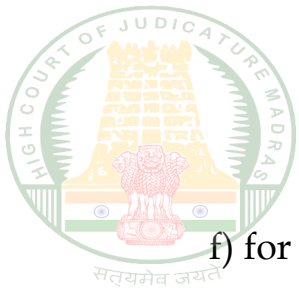
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to the plaintiffs' trademark 'TOWER' or the TOWER Label filed as **Plead Document No.3** so as to pass off the defendants products as and for the products of the plaintiffs or in any other manner whatsoever connected with the plaintiffs;

c) The defendants be ordered to surrender to plaintiffs for destruction all packed goods, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark “Eiffel TOWER” or the offending label filed as **Plead Document No.9** either per se or in combination and/or any other mark either in English or any other language which is identical with or deceptively similar to the plaintiffs' mark 'TOWER' or label filed as **Plead Document No.3**;

d) A preliminary decree be passed in favour of the plaintiffs directing the defendants to render account of profits made by use of trademark “Eiffel TOWER” or mark/label “Eiffel TOWER” filed as **plead Document No.9**, either per-se or in combination and/or any other mark either in English or any other language and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants, after the latter have rendered accounts;

e) The defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as special damages for acts of passing off and infringement of copyright committed by them;



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f) for costs of the suit;

g) pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiffs : M/s.Madhan Babu
J.Sujith Aswanth,
Ms.Muthusrinithi

For D1 to D4 : Mr.Ashrat Khan, Mr.G.Mohanraj

For D5 : No appearance

JUDGMENT

The suit was filed seeking remedies in respect of alleged infringement of the plaintiffs' copyright in the TOWER label and in respect of alleged passing off by use of a label deceptively similar to the TOWER label of the plaintiffs.

2. By this application, the plaintiffs seek a summary judgment and decree. As documentary evidence in support of the application, the plaintiffs have relied upon the typed set of documents filed along with the plaint dated 28.02.2024 and typed set of documents filed



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along with the reply statement dated 13.11.2024. Defendants 1-4 have relied upon typed set of documents filed along with the written statement dated 11.03.2024 and typed set of documents dated 21.04.2025. In spite of suit summons being served on the 5th defendant on 19.03.2024, the said defendant did not enter appearance and contest the suit or this application. Therefore, this application is proceeded with in the absence of the 5th respondent/5th defendant.

3. The contentions of learned counsel for the plaintiffs may be summarized as under:

(i) The plaintiffs adopted and used the word mark TOWER since 1996. Invoice dated 18.03.1996 is referred to in support of this submission.

(ii) An application for registration of the said word mark was filed on 03.09.2023 by asserting use since 18.03.1996. The said application is pending.

(iii) The logo containing a pictorial depiction of the TOWER



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with the word TOWER was commissioned by the plaintiffs and the work was created in February, 2011. An e-mail of 21.02.2011 is relied upon in this regard.

(iv) The plaintiff commissioned an artistic work containing the various elements of its label, except the device and word TOWER in 2017. An e-mail of 03.07.2017 from Design Concepts attaching the label/artistic work is relied upon in support of this submission.

(v) The plaintiffs also commissioned the composite artistic work containing a pictorial depiction of a tower with the word TOWER written below in February, 2020. The e-mail of 21.02.2020 from Idea Graph is relied upon in support of this submission.

(vi) The plaintiffs' turnover from sale of dhall under the trade mark TOWER was about Rs.183.45 crore in financial year 2022-23, as evidenced by certificate dated 01.06.2023 from P.Vigneshkumar, Chartered Accountant. The said certificate also discloses the turnover from financial years 2014-15 to 2022-23.

(vii) The first defendant - firm was constituted under Deed of



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Partnership dated 05.09.2020. The Food Safety and Standards Association of India (FSSAI) licence was issued to the firm in the year 2022, as evidenced by the detailed report in that regard. Therefore, the defendants could not have used either the mark or label before 2022.

(viii) The evidence of use submitted by the defendants is in the form of invoice dated 10.01.2011, which was issued by R.V.Food Products, and not by the defendants. The only other document relating to alleged use by the defendants is communication dated 13.08.2023 from Elite Engravers Private Limited in relation to the sale of engraved gravures cylinders for Eiffel Tower Dal. These documents are clearly subsequent to documents evidencing adoption/creation and use by the plaintiffs.

(x) On comparison of the label used by the plaintiffs with that used by the defendants, it is evident that the defendants' label is a copy of all the essential features of the plaintiffs' label.

(xi) In the plaint, the plaintiffs asserted that the defendants had



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agreed to forthwith discontinue and desist from using the impugned marks and label. However, the defendants not only continued using the impugned marks and labels but proceeded to lodge a caveat before the Commercial Court at Ahmedabad. The suit was preceded by notice dated 24.10.2023. Since such notice did not elicit a reply, further notice dated 19.02.2025 was also issued. The alleged reply dated 11.11.2023, which has been included at pages 121 to 124 of the typed set of the defendants, was never received by the plaintiffs. The said reply appears to have been created for purposes of defending the suit and this application. These acts establish the *mala fide* intention of the defendants. In these circumstances, the plaintiffs are also entitled to special damages.

4. In support of these contentions, learned counsel for the plaintiffs relied on the judgment of this Court in *ITC Limited v. Ganesh Flour Mills and another*, 2015 SCC OnLine Mad 14273, particularly paragraphs 70 to 80 thereof, with regard to copying of



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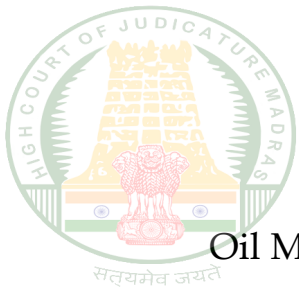
the essential features of the proprietor's trademarks/trade dress. He also relied upon paragraph 25 of the judgment of this Court in *Mohan Goldwater Breweries Private Limited v. Khoday Distilleries Private Limited*, MANU/TN/0555/1976.

5. The contentions of learned counsel for defendants 1-4 in response may be summarized as under:

(i) This Court does not have jurisdiction because the said defendants carry on business only in the State of Gujarat.

(ii) The trade marks and artistic work used by defendants 1-4 are distinguishable from those used by the plaintiffs. The details set out in paragraph 4 of the written submissions, which includes a depiction of the label of defendants 1-4, clearly reveals that the said defendants' label is not a copy of the plaintiffs' label.

(iii) The application filed by the plaintiffs for registration of the word mark TOWER was opposed by three persons, including Liberty



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Oil Mills Ltd (Liberty Oil) and Ajmer Food Industries Private Limited (Ajmer Food). Liberty Oil stated in its notice of opposition that it had adopted and commenced commercial use of the trade mark “TOWER” on or about February, 1995. Likewise, Ajmer Food stated in its notice of opposition that the “TOWER BRAND” was conceived and adopted through its predecessors on 01.01.1972. Hence, the plaintiffs are not the persons who first adopted and used the trade mark TOWER or its variants.

(iv) Defendants 1-4 have registered the artistic work, as evidenced by the extract dated 28.12.2023.

6. An application for summary judgment is required to be considered on the basis of Rule 3 of Order XIII-A of the Code of Civil Procedure, 1908 (the CPC), which is applicable to commercial disputes. Rule 3 is set out below:

"3. Grounds for summary judgment-The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that



- (a) the Plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and*
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.'*

7. In *Godaddy.com v. Puravankara Projects Limited*, 2022 (91) PTC 440 (Mad), I had formulated the following principles for the adjudication of an application for summary judgment :

" (i) The applicant should discharge the burden of establishing that the counter party has no real prospect of succeeding on the claim, including a part thereof, or successfully defending the claim, or a part thereof, as the case may be. The adjective 'real' is used to indicate that such prospect is not 'illusory', 'theoretical or statistical' or 'imaginary' or 'fanciful'.

(ii) Rule 6 of Order XIII-A confers wide latitude on the court to pass a range of orders in an application for summary judgment either on the whole



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or part of the claim. The types of order specified in Rule 6 are illustrative and not exhaustive.

(iii) If the Court concludes that the counter party could probably succeed, as regards the whole of the claim, the application is liable to be dismissed. If the court considers the success of the counter party probable as regards a part of the claim, or, in respect of some of the reliefs claimed, but not the remainder, the application may be considered as regards the remainder.

(iv) If the court concludes that it is really possible but not probable that the counter party could succeed, a conditional order may be passed. Although Rule 7 of Order XIII-A uses the word 'possible', it does not mean statistical or theoretical possibility but real possibility.

(v) Once the applicant satisfies the requirement of clause (a) of Rule 3 of Order XIII-A, it becomes necessary for the court to consider whether there is any other compelling reason to direct parties to record oral evidence. Since the conjunction 'and' is used between clauses 'a' and 'b' of Rule 3, the requirements should be construed as cumulative.



(vi) *The obligations imposed by Rules 4 and 5 on the parties to plead their respective cases and produce all material evidence in relation thereto does not shift the burden of proof. Instead, it is a procedural device to enable the court to meaningfully consider whether the whole or part of the suit claim may be disposed of summarily.*

(vii) *The scope of Order XIII-A is wider than Order XII, Rule 6 CPC, which is triggered only on the basis of admissions. It is also far wider than Order VII Rule 11 CPC because the court goes well beyond the plaint and examines all the evidence placed before it. However, such application is maintainable in the limited window after summons' are served but before issues are framed.*

(viii) *In the ultimate analysis, Order XIII-A facilitates fulfilment of two salient but often undervalued objectives of a fair and just dispute resolution system, namely, expeditious disposal and equitable and proportionate allocation of the limited resources of the public court system. It represents a paradigm shift from a blinkered trial-is-the-only-method approach to the adjudication of civil suits to a*



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more balanced approach, which preserves the trial process wherever appropriate and necessary.”

8. In light of the defences raised by defendants 1-4, the first question that falls for consideration is whether this Court has jurisdiction. The plaintiffs lodged the suit for relief in respect of alleged infringement of copyright and passing off. After service of notice and in the presence of learned counsel for defendants 1-4, interim orders were granted in the applications for interim injunction on 11.03.2024. On instructions, at the hearing on 05.11.2024, learned counsel for defendants 1-4 stated that they have stopped using the trade mark “Eiffel Tower” in relation to the sale of dhall. By recording the said statement, the applications for interim injunction were allowed by making the interim injunction absolute. A.No.1214 of 2024 for joinder of cause of action was allowed later by order dated 05.11.2024 after recording that the respondents do not have a serious objection. The jurisdictional objection should be considered in this backdrop.



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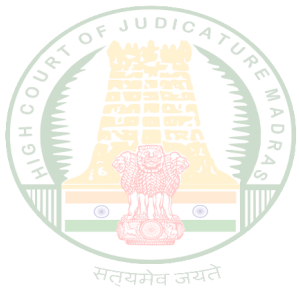
9. As regards remedies in relation to infringement of copyright or any other rights under the Copyright Act, 1957 (the Copyright Act), in a departure from the CPC and the Original Side Rules of this Court, by virtue of Section 62(2) of the statute, the suit may be instituted in any District Court within the local limits of whose jurisdiction the person or persons instituting the suit reside, carry on business or personally work for gain. All the plaintiffs carry on business within the local limits of this Court and, therefore, this Court clearly has jurisdiction in respect of remedies under the Copyright Act. Even with regard to passing off, although these defendants filed a written statement in March-April 2024 raising an objection on the ground of jurisdiction, as noticed above, when the plaintiffs had filed A.No.1214 of 2024 for joinder of cause of action, the application was allowed by order dated 05.11.2024 after recording that the respondents do not have a serious objection. In these circumstances, by taking into account the fact that this Court



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has subject matter jurisdiction and the objection is limited to territorial jurisdiction, this defence is rejected.

10. Turning to the merits of the application, the first question that arises for consideration is with regard to the prior user of the relevant trade mark and artistic work. The plaintiffs have placed on record invoice dated 18.03.1996. This invoice pertains to the sale of toor dhal and urad dhal under the trade mark 'TOWER' by the 3rd plaintiff. Defendants 1-4 have relied upon invoice dated 10.01.2011 issued by R V Food Products. Neither the written statement nor the counter to this application contains any explanation as to how defendants 1-4 are entitled to rely upon an invoice of R V Food Products. Even otherwise, on perusal of the dates of the respective invoices, it is abundantly clear that the plaintiffs' use precedes use by the defendants by a considerable margin.



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11. The next aspect that warrants consideration is with regard to the creation of the artistic work in the plaintiffs' label. The plaintiffs have relied upon e-mails issued by the person who was commissioned by the plaintiffs to create these artistic works. As regards the label comprising the pictorial depiction of the TOWER with the word TOWER written below, an email of 21.02.2011 from Idea Graph is relied upon. As regards the composite label at page 87 of the typed set dated 13.11.2024, e-mail of 21.02.2020 from Idea Graph is relied on. Copyright in these artistic works would, consequently, subsist from the date of creation in the plaintiffs as the authors, i.e. persons who commissioned the work. This should be compared with evidence relating to the claim of defendants 1-4 in respect of the copyright. Learned counsel for the plaintiffs pointed out that the first defendant firm was constituted under Deed of Partnership dated 05.09.2020. He also relied upon the grant of licence by the FSSAI in the year 2022. These documents indicate that defendants 1-4 would have commenced business after the licence



was granted in 2022. The said defendants, however, rely upon the registration granted by the Registrar of Copyrights on 28.12.2023.

This aspect warrants close consideration.

12. On perusal of Section 55 of the Copyright Act, it is evident that all remedies relating to the infringement of copyright in a work are available to the owner of the copyright. When this provision is compared and contrasted with the corresponding provision in other intellectual property statutes, such as Section 134 of the Trade Marks Act 1999, it is noticeable that it is not a requirement under the Copyright Act that the person suing for infringement should be the registered proprietor. Instead, the requirement is that the person suing should be the owner of the copyright in the relevant work. Under Section 48 of the Copyright Act, the register of copyrights is *prima facie* evidence of the particulars entered therein. The extract from the register of copyrights at page 36 of the typed set filed by defendants 1-4 indicates that the author of the artistic work is Mr.Jain



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Rajendra Rameshchandra, Partner of M/s.Leela Udyog. It also mentions that the year of publication of the work is 2020. As is noticeable from the text of Section 48, the particulars constitute *prima facie* and not conclusive evidence.

13. Under Rules 4 and 5 of Order XIII-A of the CPC, the respondent in an application for summary judgment is entitled to file a reply to the application along with documents in support thereof.

The said provisions are as under:

“4. Procedure. (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in clauses (a) to (f) mentioned hereunder: -

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must, -

(i) include such documentary evidence in its application,



and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:-

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (1) mentioned hereunder in addition to any other matter that the respondent may deem relevant:-

(a) the reply must precisely-

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must-

(i) include such documentary evidence in its reply;

(ii) identify the relevant content of such documentary evidence on which the



respondent relies: (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be,

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence will be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.-(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:-

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:-

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:-



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(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served”

In spite of being provided an opportunity to file documents in relation to the creation of the alleged artistic work at page 1 of the typed set dated 11.03.2024 of defendants 1-4, no evidence was forthcoming from the said defendants. The plaintiffs, on the other hand, as discussed earlier, have filed the partnership deed dated 05.09.2020 and particulars of the FSSAI licence issued in the year 2022. When these documents are examined in the factual context of the plaintiffs' documents relating to evidence of creation of the artistic work in the label, the *prima facie* evidence raised by the registration stands rebutted.

14. In order to succeed in an action for passing off, the plaintiffs are required to establish the classical trinity of misrepresentation, reputation and goodwill and injury thereto. The plaintiffs have filed invoices issued between 18.03.1996 and 21.06.2023 in relation to the



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sale of dhall under the 'Tower' trade mark. A certificate from P.Vigneshkumar, Chartered Accountant, containing details of turnover from sale of dhall under the brand name “TOWER” is also on record. The turnover for financial year 2014-15, as per the said certificate, was Rs.56,47,76,255/-. The certificate reveals that the turnover increased thereafter to about Rs.183.45 crore in financial year 2022-23. The documents and details provided by the plaintiffs evince substantial and significant use. Consequently, it may be concluded that the plaintiffs have established acquisition of goodwill and reputation.

15. A comparison of the plaintiffs' label with that of the defendants is contained at page 174 of the plaintiffs' typed set dated 28.02.2024. Under the Copyright Act, the question for consideration is whether the defendants' label may be said to be identical to or a substantial copy of the plaintiffs' label. The two labels are set out below:



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PLAINTIFF

DEFENDANT



16. As is evident from the above, both the labels use about three colours - blue, red and yellow. In both labels, against a blue background, there is a pictorial depiction of a tower in red with the



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word 'TOWER' written below in red. Both labels also contain a stylised rectangular block in the middle in yellow with dhaal written in multiple languages. Except for minor differences - such as the missing word dhaal in Malayalam in the defendants' label, the use of the word 'Eiffel' above the word 'TOWER' in the defendants' label, and the use of the name of the first defendant firm at the lower end of the defendants' label - it appears that all essential features have been copied. The only reasonable conclusion is that the defendants' label is a substantial copy of the plaintiffs' label, thereby infringing the plaintiffs' copyright. The use of such label constitutes a misrepresentation, which is likely to cause injury to the plaintiffs. Thus, all elements of passing off stand established.

17. Under Rule 3 of Order XIII-A of CPC, an applicant-plaintiff for summary judgment is liable to succeed if such applicant establishes that the defendant does not have a real prospect of succeeding in the defence provided there is no other compelling



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reason not to allow the claim without a trial. Both in the counter and in course of oral arguments, defendants 1-4 have not been able to establish that they have a real, as opposed to illusory, prospect of successfully defending the claim. Hence, the plaintiffs are entitled to reliefs claimed in respect of copyright infringement and passing off in clauses (a) to (d) of paragraph 36 of the plaint.

18. The one remaining aspect is with regard to the plaintiffs' claim for special damages. A sum of Rs.25 lakhs has been claimed as special damages and the plaint contains assertions that the defendants' conduct in agreeing to desist from using the impugned mark and label and thereafter resiling from such commitment by continuing to use the same and lodging a caveat is evidence of *mala fide* intention. By further asserting that loss was caused as a result of such conduct, the plaintiffs submit that they are entitled to special damages. On this aspect, in my view, it is necessary to record oral evidence since it is not possible to determine whether the plaintiffs



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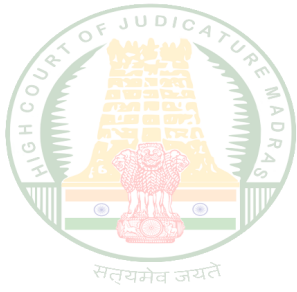
are entitled to special damages and, if so, the quantum thereof without going through the process of trial. Rule 6 of Order XIII-A enables the Court to consider and allow an application for summary judgment in relation to the whole or part of the claim. Therefore, deferring consideration of this claim does not preclude the passing of a summary judgment in relation to the rest of the reliefs claimed in the suit.

19. For reasons set out above, this application is disposed of and the suit is summarily decreed in respect of prayers at clause (a), (b), (c) and (d) of paragraph 36 of the plaint. As the successful party, the plaintiffs are entitled to costs. However, in view of the adjudication of the claim for special damages being deferred, this aspect may be more appropriately determined while disposing of the claim for special damages.

20.09.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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SENTHILKUMAR RAMAMOORTHY J.

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**A.No.1920 of 2025 &
C.S.(Commercial) No.52 of 2024 & A.No.2350 of 2024
OP(CR) No.2 of 2024**

08.07.2025