

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2020

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

O.A.No.258 of 2020

in
C.S.No.163 of 2020

M/s.Arudra Engineering Private Limited
represented by its Managing Director,
Mr.R.Natraj,
Having its office at No.79, Valmiki Street,
Thiruvanmiyur,
Chennai – 600 041.

... Plaintiff

Vs.

M/s.Pathanjali Ayurved Limited
Represented by its Director,
Having its registered office at D-26,
Pushpanjali Bijwasan Enclave,
New Delhi – 110061, India

... Respondent/Defendant

Prayer:- This application filed under Order XIV Rule 8 of O.S Rules R/w. Order XXXIX Rule 1 and 2 of C.P.C., praying to pass an order of interim injunction restraining the respondent, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc., or anyone associated with them from infringing the applicant's registered trademarks bearing the name “Coronil” and from using the objectionable

trademarks and/or deceptive variation of the applicant's aforementioned trademarks singularly or in conjunction with any word/s or monogram/s/logo/s upon and in relation to their products/business in any manner whatsoever pending disposal of the suit.

For Applicant : Mr.P.R.Raman, Senior Counsel
For Mr.C.Seethapathy

ORDER

The suit had been listed after urgent motion had been mentioned.

Heard Mr.P.R.Raman, learned Senior Counsel on behalf of Mr.C.Seethapathy, Mr.A.Umasankar, Mr.Gautam S.Raman, Mr.Gokul Sundar K.R, learned counsels for the applicant/plaintiff.

2.For the sake of convenience, the parties would be referred as plaintiff and defendant.

3.The learned Senior Counsel stated that the plaintiff, a Private Limited Company, registered under the Companies Act, 1956 and incorporated on 04.01.1980 and having its registered office in Chennai, is engaged in the business of chemical cleaning and manufacturing of

Material Handling Systems and Polymeric Epoxies for various factories in India and abroad. The Certificate of Incorporation has been filed as D.No.1 annexed with the plaint.

4. The plaintiff, incidentally, has also registered the trademark 'CORONIL-92 B' as a product of Acid inhibitor for industrial cleaning, chemical preparations for industrial use, as early as 14.06.1993 in Trademark No.599279 and the Certificate in this regard has also filed as a document to the plaint. The said certificate of registration is still valid. It had been extended from time to time.

5. The plaintiff has also filed along with the plaint, the list of customers in this country, as well as in other countries and a perusal of the same shows that the customer companies are situated across the length and breadth of this country and also in Srilanka, Oman, Philipines, Vietnam, Uganda, Malaysia, Singapore and Kuwait. The sales invoices of the plaintiff of the product Coronil has also been filed as a document along with the plaint and it is seen that during the financial year 2015-2016, sales had been effected for a total amount of Rs.10,808,998/-, and during the financial year 2019-2020 for a sum of Rs.6,451,550/-.

6. Pointing out these statistics, the learned senior counsel pointed out that the plaintiff has established substantial reputation in marketing their product Coronil and therefore, they have an inherent and statutory right for its protection of their registered trademark, owing to the extensive clientele they have across the country and also outside the country and also the substantial sales effected using the trade mark Coronil.

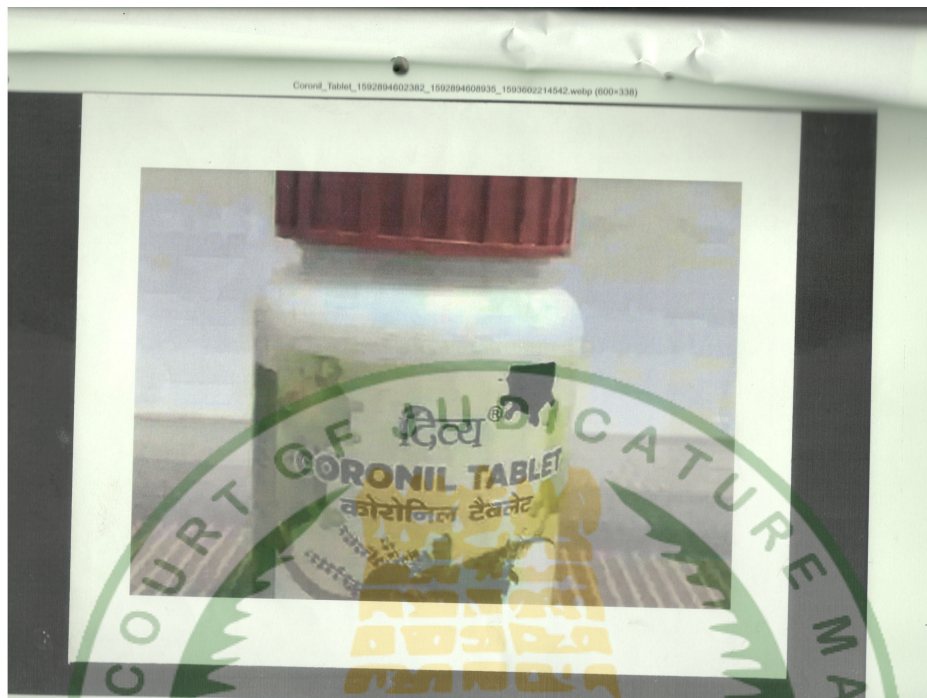
7. The defendant has laid claims to have prepared a medicine and have named it 'Coronil' and has laid claims that successful clinical trials had been conducted for cure of the Corona virus which is prevalent today.

8. The learned Senior Counsel however stated that the details of the said tests are not available and as per reports available, the defendant's product has been banned in the State of Maharashtra and it is also stated that even in Uttarakhand, the State Government had sought details about the effectiveness of the medicine propagated by the defendant. It is also pointed out by the learned senior counsel that several complaints have also been initiated as against the defendant.

9. The registered trade mark of the plaintiff is as follows:-



10. The name under which the defendant has stated that they would market their product is as follows:-



11. Be that as it may, the plaintiff had registered the trade mark owing to the fact that their products which is in liquid form is used by heavy industrial machinery industries to prevent corrosion and to reduce the depreciation in the value of the units during the cleaning process. The list of customer companies shows that huge industrial units like BHEL, NTPC Limited, Reliance industrial Ltd., Indian Oil Corporation and other such companies are the clients of the plaintiff.

12. The learned Senior Counsel placed reliance on Section 29(4) of the Trademarks Act, 1999 and urged that protection has to be granted

whenever a registered trademark is infringed by a person who is not a registered proprietor and uses in the course of his trade a mark identical to the trade mark already registered, irrespective of the fact, whether the business is similar or not. Particular reference is drawn to Section 29(4)(b) of the Trademarks Act, 1999, wherein, it is provided that a registered trademark is infringed by a person who, not being a registered proprietor, uses the registered name even in relation to goods or services which are not similar to those for which the trade mark has been registered.

13. Section 29(4)(b) of the Trade Marks Act, 1999, is reads as follows:

“Sec.29.Infringement of registered trade marks.

.....

.....

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a march which -

(a)

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered.”

14. Quite apart from this, the similarity in the name is obvious. The name used by the defendant is the same. The spelling is same. The learned Senior Counsel stated that since the products of the defendant are not yet marketed to the knowledge of the plaintiff, the plaintiff had not approached the Court earlier. However, the suit was instituted and even after the plaint had been filed, reports have been received that there had been sales effected at Hyderabad. The learned Senior Counsel very fairly stated that though this fact is not pleaded, newspaper reports corroborate this statement and also stated that documents to substantiate that fact will also be filed as additional documents.

15. It is seen that the plaintiff has a registered trademark Coronil and the registration is still subsists. Once the plaintiff has a registered trademark, protection has to be given from infringement. The law is clear on that aspect. The defendant has also claimed that he is going to market his product in the same name 'Coronil'. The defendant can also market their product, but they have to use a different name. They cannot infringe upon the right accrued to the plaintiff owing to the registration of the trademark Coronil as early as 1993, which registration still subsists.

16. In view of these facts, interim injunction is granted restraining the defendant, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc., or anyone associated with them from infringing the applicant's registered trademarks bearing the name "Coronil" and from using the objectionable trademarks and/or deceptive variation of the applicant's aforementioned trademarks singularly or in conjunction with any word/s or monogram/s/logo/s upon and in relation to their products/business in any manner whatsoever till 30.07.2020. The plaintiff is to strictly comply with the stipulations under Order XXXIX Rule 3(a) of C.P.C., and file necessary affidavit in Court regarding compliance on or before 21.07.2020.

17.07.2020

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Index : Yes / No

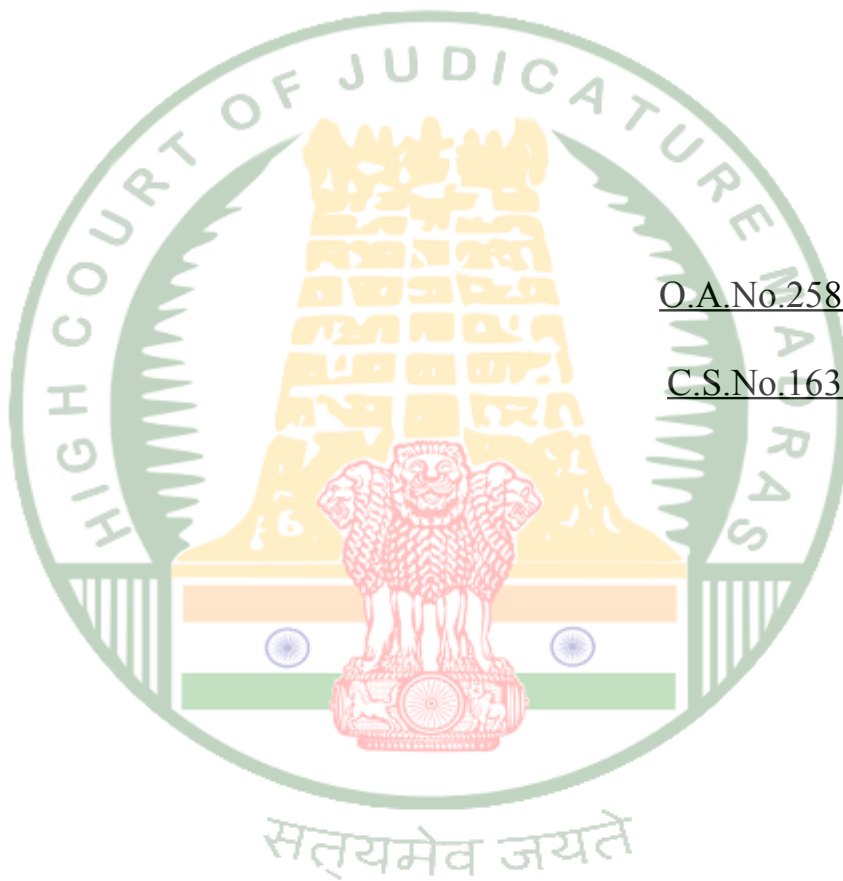
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Note: Issue order copy on 20.07.2020

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C.V.KARTHIKEYAN, J.,

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