



O.A.Nos.447 & 448 of 2023 in
C.S.(Comm.Div.)No.116 of 2023

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O.A.Nos.447 & 448 of 2023
in
C.S(Comm.Div.)No.116 of 2023

RESERVED ON : 02.08.2023

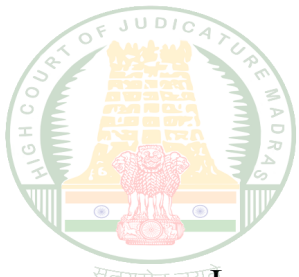
DELIVERED ON: 22.09.2023

P.T.ASHA, J.,

The suit in which the interlocutory applications arise has been filed alleging infringement of the plaintiff's/applicant's trademarks by the defendants/respondents.

2. In the suit the applicant has taken out two applications for the following reliefs:-

O.A.Nos.447 and 448 of 2023 are filed to grant AD INTERIM INJUNCTION restraining the Respondents, their Directors, Partners, servants, assignees, agents, and anyone claiming through the Respondent from using or providing any kind of service using the



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Impugned Trademarks including the trademarks "**GEETHAM**",
'GEETHAM VEG'. **'SANGEETHAM'**, or any **GEETHAM** or
'SANGEETHA' formative marks, or any variations thereof including
geetham, logo, logo, which may be in any way identical, partly
identical or deceptively similar to Respondent's prior, well known and
registered trademarks of the Applicant in any media and in any
manner in relation to any business carried on by the Respondents
including in respect of Respondents websites, domain names, web or
mobile applications, online sales or marketing platforms, webpages or
social media pages; and from using the same in name boards, domain
names, invoices. letter heads. digital communication and visiting
cards or by using any other trade mark/name which is in any way
identical partly identical/ deceptively similar to the Applicant's
Sangeetha Trademarks or from in any manner infringing the
Applicant's registered Trade Marks referred herein.

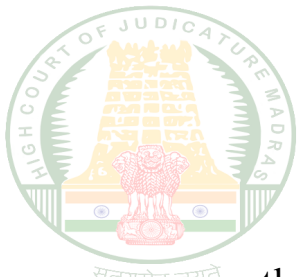


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For the foregoing reasons this Hon'ble Court may be pleased
Permanent Injunction restraining the Respondents, their Directors,
Partners, servants, assignees, agents, or any one claiming under the
Respondents from using the Impugned Trademarks or providing any
kind of service using the Trademarks '**GEETHAM**', '**GEETHAM
VEG**', '**SANGEETHAM**', or any **GEETHAM** or **SANGEETHA**
formative marks, or any variations thereof including geetham, logo,
logo, logo, which may be in any way identical, partly identical or
deceptively similar to our client's prior, well known and/or registered
trademarks of the Applicant in any media and in any manner in
relation to any business carried on by the Respondent including in
respect of Respondents websites, domain names, web or mobile
applications, online sales or marketing platforms webpages or social
media pages; and from using the same in name boards, domain names,
invoices, letter heads, digital communication and visiting cards or by
using any other trade mark/name which is in any way identical / partly

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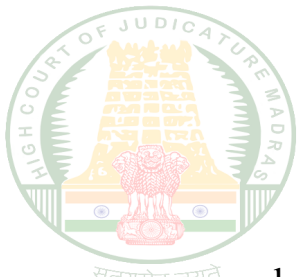
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partly identical/ deceptively similar to the Applicant's Sangeetha Trademarks or from in any manner infringing the Applicant's registered Trade Marks referred herein.

Applicant's Case:-

3. The facts which have given rise to the above suit and the interlocutory applications are herein below set out:-

3.1. The applicant is engaged in the business of providing services relating to hotels, restaurants and other allied services under the name of **SANGEETHA/Sangeetha Veg** since the year 1985. The first restaurant under the name and mark **SANGEETHA** was opened in 1985, at which point in time the applicant was a partnership firm. The second restaurant was opened in 1990 and thereafter the **SANGEETHA** restaurant has garnered immense popularity and reputation owing to the consistency maintained in the quality of their



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products and services rendered under their name and mark.

3.2. During the initial few years, the business was being run as a family business by the founders Mr.P.Suresh and Mr.P.Rajagopal. In the year 2001, i.e., on 22.11.2001, they had constituted a Partnership Firm in the name of **Sangeetha Caterers and Consultants**. In the year 2015, i.e., on 01.04.2015, the said firm was converted into a Limited Liability Partnership under the name **Sangeetha Caterers and Consultants LLP** (which is the present name of the applicant). The applicant company is registered with the Registrar of Companies, Chennai with Mr.P.Suresh and Mr.P.Rajagopal as Designated Partners.

3.3. The applicant would submit that for the past 3 decades and 8 years, the founders have invested considerable time, energy and money into developing the brand **SANGEETHA/SANGEETHA Veg**



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Hotels. The applicant is currently carrying on business in over 29 locations in Chennai and the suburbs and about 21 units abroad in countries like Belgium, France, The United Kingdom, the USA, Qatar, Bahrain, UAE, Malaysia and Hong Kong. It is the contention of the applicant that they have been able to retain their unique reputation and credibility only on account of the their sustained efforts in maintaining the quality of food and services rendered by them. The applicant has also adopted the traditional methods of cooking and thereby retaining the authenticity of their products.

3.4. The applicant has registered the following trademarks, SANGEETHA, SANGEETHA Veg, SVR SANGEETHA, SANGEETHA Vegetarian Restaurant, SANGEETHA EXPRESS, SVR, (denoting the mark - "Sangeetha Veg Restaurant") with a logo of a musical instrument over the letter S.

3.5. The applicant would submit that though their marks have



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been registered subsequently, however, even before the registration of the mark they had carved a name for themselves in the hospitality business. The applicant has also filed for registration of trademarks in the countries like the USA, UK, Bahrain, UAE, Canada, Saudi Arabia, Kuwait, Australia, Qatar, Hong Kong, EU, Malaysia. The applicant has set out in great detail their marks and their unique features in the affidavit filed in support of the applications as also in their plaint.

3.6. Taking note of the applicant's reputation and success of their SANGEETHA chain of restaurant, the 5th respondent who represents respondents 1 to 3 herein had approached the applicant's partner Mr.P.Suresh for a franchise to operate the SANGEETHA Restaurants. The Directors of respondents 1 to 3 had assured the applicant that they would operate the restaurant keeping in mind the standard and quality which is being maintained by the applicant. The 1st franchise agreement was entered into with the 2nd respondent on

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08.10.2009 for operating Sangeetha Restaurant at Velachery.
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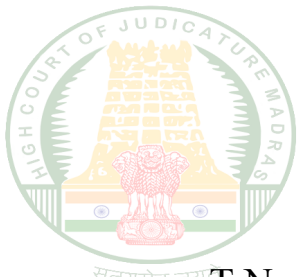
Thereafter, over a period of time on the request of the 5th respondent and the Directors of the respondents 1 to 3, the applicant had entered into the following franchise agreement which are set out herein below:-

i.Franchise agreement dated 17.06.2011 with the 2nd respondent for operating SANGEETHA Veg Restaurant in OMR (Thoraipakkam area).

ii.Franchise agreement dated 11.09.2013 with the 2nd respondent for operating SANGEETHA Veg Restaurant in Medavakkam, Chennai.

iii.Franchise agreement dated 16.07.2014 with the 1st respondent for operating SANGEETHA Veg Restaurant in TCS, Siruseri, Chennai.

iv.Franchise agreement dated 03.11.2014 with the 3rd respondent for for operating SANGEETHA Veg Restaurant in



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T.Nagar, Chennai.

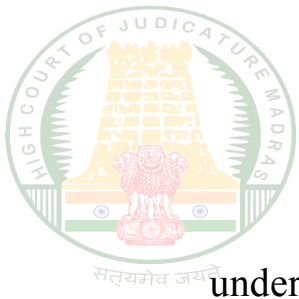
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v.Franchise agreement dated 08.06.2018 with the 1st respondent
for operating SANGEETHA Veg Restaurant at in Navallur, Chennai.

3.7. As per the terms of the franchise agreement, respondents 1 to 3 were under an obligation to maintain the standards that have been prescribed by the franchisor, namely, the applicant herein. The menu, recipes etc were also taken from the applicant's chain of restaurants. Respondents 1 to 3 have been provided extensive insight and knowledge into the nuances of running the business by the applicant so as to ensure that the respondents maintains the high quality of the products and services that are being rendered under the trade name Sangeetha for which they are well-known.

3.8. Over a period of time, the applicant came to learn the downside in running the franchises units. They have discovered lapses in quality, pricing and other non compliances. The Franchisees had

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undertaken not to directly or indirectly either by themselves or through organizations commence or pursue any business which may directly or indirectly compete with the business of the Franchisor/Applicant during the validity of the agreement and up to a period of 5 years after the expiry or termination of the agreement.

Despite giving such a categoric undertaking, the applicant would submit that they had come to know that the respondents 1 to 3 had started running a competing business in the name of Udupi Ruchi during the period 2016. Further, under the name of this organization, respondents 1 to 3 had made substantial investments in other competing businesses such as Sri Family Biznet Pvt.Ltd., Sri Nuthatch Nutricare Technologies through 2nd respondent company. As this was in violation of the terms of the Franchise Agreement, the applicant immediately took it up with the Directors of respondents 1 to 3 who admitted that the same was in aberration and violation of the franchise agreement.



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3.9. The applicant also came to learn that other than these businesses, the 5th respondent under the name of close family members of the Directors had opened competing businesses. That apart, the applicant also came to know about several instances of breach and violation of the franchise agreement by respondents 1 to 3. The applicant had set out the breaches in para no.12 of the affidavit filed in support of the above applications.

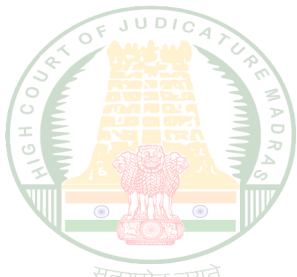
3.10. The applicant would submit that they had tried to resolve the disputes with the respondents 1 to 3 amicably. However, the same could not be achieved and by February 2022, the 5th respondent representing respondents 2 and other Directors had requested for shifting the SANGEETHA Veg Restaurant franchise at Medavakkan to a new location. This request was not found feasible by the applicant for several reasons and the same was also communicated to the Directors of the 2nd respondent.



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3.11. On 08.03.2022, the applicant and the respondents had a meeting with regard to the shifting of the Medavakkam unit to a new location. When the matter was discussed on 08.03.2022, the applicant had categorically informed that it was not possible to shift the location of the Medavakkam unit and when the request of the respondents was not acceded to by the applicant/franchisor, the respondents expressed their intention to start a new unit by themselves at Medavakkam. The applicant had immediately pointed out to the respondents that such a move during the pendency of the franchise agreement would be violative of the franchise agreement. The applicant had made it clear that they could do so only after surrendering the applicant's franchise from all units. The applicant would submit that there was no response to this suggestion and the applicant had forwarded the minutes of the meeting held on 08.03.2022 by email dated 08.04.2022. On 11.04.2022, the applicant received a response by email from the 2nd respondent indicating their decision to move out of the franchise agreement by changing the name of the restaurants not only by the 2nd

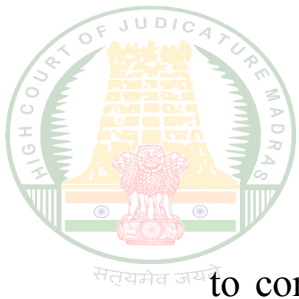


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respondent but also by the respondents 1 and 3. Such a decision had been taken without consulting or taking the consent of the Directors of the 1st respondent.

3.12. The parties once again had a meeting on 19.04.2022, in a attempt to resolve the differences, however, the same could not be resolved and it was decided mutually that the franchise agreement would be terminated and the final date of closure was decided as 31.05.2022. The modalities of the closure was also set out by their email dated 27.05.2022. This email was sent to each of the franchisees, namely, respondents 1 to 3. However, a response was received from the 5th respondent by email dated 31.05.2022 stating that they were willing to surrender, however, there were certain conditions that had not been expressed or construed as waiving off of their rights and liabilities under the franchise agreement. It was made clear by the applicant that on the termination of the franchise agreement, the respondent shall cease to use the applicant's name and

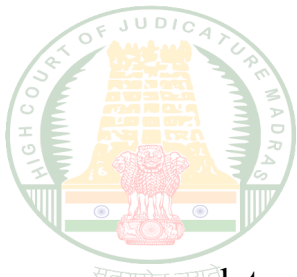


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to continue operating the restaurant business by the respondents in total violation of the terms of the franchise agreement. The applicant would submit that the respondents even earlier had attempted to create correspondence to make it appear that the applicant was agreeable to their operating restaurant under the changed names.

3.13. As per the terms of the agreement, the respondents 1 to 3 herein were prohibited from directly or indirectly or through associations commenced or pursue business which directly or indirectly compete with the business of the applicant for the period of 5 years from the expiry or termination of the agreement, its extensions or renewals. The applicant came to learn that in violation of undertakings surviving terms of the franchise agreement, respondents 4 and 5 had applied for registration of trademarks which included the marks like SANGEETHAM, GEETHAM, GEETHAM Veg. etc., which is nothing but a deceptively similar mark of the applicant. In fact, the applications had been made on 19.04.2022 on the very same



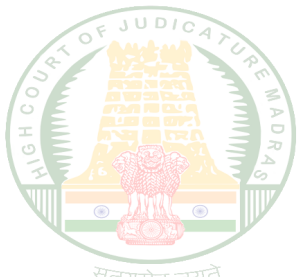
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date when the decision to terminate the franchise agreement had taken place. Therefore, it is clear that the decision to ride on the goodwill of the applicant was taken much before the franchise agreement had been brought to an end.

3.14.The materials used for promotion also very clearly indicated the deception played on the part of the respondents. While promoting the opening of their restaurant, they had stated as follows:-

“Everything is the same except the name - same place, same ambiance, same team, same test, same service, same quality”. Such advertisement and promotional materials were clearly giving out to the general public that it was the applicant who was adopting a new name. In fact, one such advertisement was ***“Only the name has changed, everything else remains the same”*** and another ***“Chennai's Sangeetha outlets popular for Ghee Podi Dosas will be Rebranded as Geetham, Chennai's all time favorite Sangeetha is***



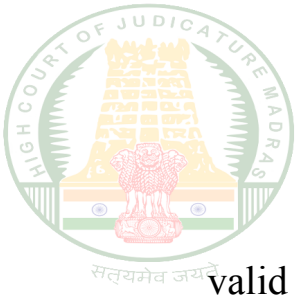
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named Geetham Now".
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3.15.The applicant would submit that the respondents have commenced their business from the very next day of the termination of the franchisee agreement in the very same location. This coupled with the promotion and advertisements made by them is giving out to the general public that it is the applicant who is continuing the operations.

3.16. The applicant had also opposed the trademark applications made by the respondents and the same is pending disposal.

Thereafter, the applicant had issued a Legal Notice dated 10.01.2023 to the respondents asking them to cease and desist from all the acts of infringement and passing off of the Sangeetha Trademarks belonging to the applicant and demanded other compliances for protection of the intellectual property belonging to the applicant and other ancillary demands. The respondents had received the legal notice and issued a reply notice dated 24.01.2023 where they have simpliciter denied the



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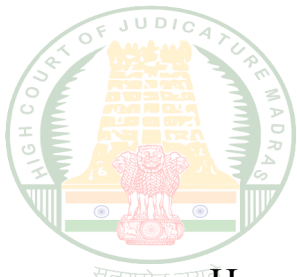
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valid claims and contentions of the applicant apart from making baseless claims to justify their act of blatant violation. The respondents by their act is causing great damage to the applicant's goodwill which they have nurtured since 1985. Therefore, they have come forward with the suit C.S.(Comm. Div.No.116 of 2023 in which the above two interlocutory applications have been filed. The applicant would submit that balance of convenience is in their favour and the respondents have to be injuncted.

Respondents' Case:

4. The respondents have entered appearance through counsel and had filed a common counter inter alia admitting that they had requested for shifting of the Medavakkam branch only on account of the ongoing CMRL constructions which was affecting the business.

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However, the applicant had denied this genuine request for shifting the unit. The parties had met on 08.03.2022 at the office of the applicant where the respondents had expressed their intention to start a new unit at Medavakkam on their own. At that point in time, the applicant had informed the respondent that if they start the unit they would have to surrender the Sangeetha franchise from all the units. Since the units had other investors, they have requested time to discuss and revert.

4.1. The respondent would submit that the minutes of the meeting dated 08.03.2022 would clearly show that the applicant had permitted the respondents to start their own business even while the agreement was subsisting subject to their surrendering the subsisting franchises. Accordingly, on 31.05.2022, the franchises were surrendered. The respondent would submit that even the minutes of the meeting dated 19.04.2022 would also indicate that the applicant had not recorded any objection or dissent to their request.



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4.2. The respondents would submit that in March 2022, the trademark **Geetham** and other trademarks and device marks were coined and they have come into physical operation in 6 outlets from 01.06.2022. That apart, a partner of the 1st respondent was also a Director in the 1st respondent company from 07.05.2014 to 31.05.2022 and continues as a shareholder. The respondent's franchises outlets are situate at Navalur, Chennai and Siruseri. In Chennai it is under Rasnam foods Pvt. Ltd (1st respondent herein). The respondents would submit that they had sought to have their trademark registered which was opposed by the applicant. The applicant has opposed all the marks that have been applied for by the respondents. Apart from opposing the trademarks, the applicant had also issued a legal notice dated 10.01.2023, to which a reply dated 24.01.2023 was issued by the respondents and the respondents had also received the rejoinder of the applicant on 06.03.2023. Now, the respondents have been served with this suit notice.



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4.3. The respondents would claim that the opening of the website in the name of the Sangeetha had been mooted only by the respondents and the same was registered in the name of the 1st respondent on 09.06.2016. This name is being renewed periodically. The website that was originally coined was <http://www.sangeethaveg.com>. Another website, www.sangeethavegonline.com was started with effect from 21.07.2020. The respondents would submit that it is their hard work that has enhanced the goodwill of the applicant. Their first outlet at Velachery which was handed over to them on 08.10.2009 is an example of how their services, quality management and innovative marketing ideas had improved the client base. The respondents would also submit that after seeing the hard work of the respondents, the applicant themselves came forward and requested them to open other outlets. These outlets were opened on 11.09.2023, 08.06.2018, 17.06.2011, 03.11.2014 and 16.07.2014 in Medavakkam, Navalur, OMR, T. Nagar and Siruseri respectively.

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4.4. The respondent would further submit that the allegations in the applications that the franchise outlets were not being run properly is belied by the fact that the applicant have themselves come forward with a request to open 6 other outlets. The respondents would submit that if they were not conducting the franchise business properly, then the applicant would not have entrusted six more outlets to them. The respondents would go on to state that Udupi Ruchi was started in the year 2016 and the investments were made in the said business by the 2nd respondent. All of this was well within the knowledge of the applicant.

4.5. The website www.sangeethaveg.com was being operated from 09.06.2016 to 2019 by the 2nd respondent and the website operating fees for this website was being paid by the 2nd respondent. Thereafter, the applicant had taken over the website from the 2nd

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respondent. The respondents would further submit that having asked the respondents to surrender the franchise agreement, it does not lie in the mouth of the applicant to impose and implement the non-compete clause of 5 years. The opening of the restaurant was very much within the knowledge of the 1st respondent and the applicant. In fact, the non-compete clause for 5 years was never the subject matter of discussions in the minutes of meetings held between the parties.

4.6. The respondent had further pleaded delay on the part of the applicant in approaching the Court since the business had been started by them as early as on 01.06.2022, whereas, the applicant has initiated proceedings only now. The respondents would further submit that the marks of the applicant and their marks are totally distinct both phonetically as well as visually. The applicant having themselves permitted the respondents to start a business cannot now seek to complain that there is an infringement of the trademarks.



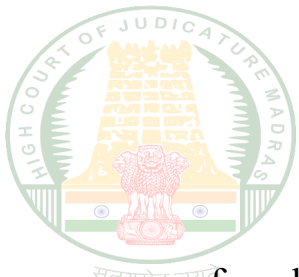
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4.7. They would further submit that none of their promotional materials are misleading and allegation to the contrary was strongly refuted. They would also submit that they have no control over the Swiggy and the Zomato. They would submit that their advertisement was only that the applicant's restaurant has been re-branded as Geetham. Therefore, they would seek to have the applications dismissed.

Arguments:-

5. Extensive arguments have been advanced on either side on these interlocutory applications. Mr.A.K.Sriram, learned senior counsel appearing on behalf of the counsel for the applicant would primarily rests his case on the ground that the adoption of the mark Geetham with its various variants by the respondents is clearly a case of deception. To support this argument, the learned Senior counsel would take the Court through the brief history of the founding of the applicant's company and the induction of respondents 1 to 5 as



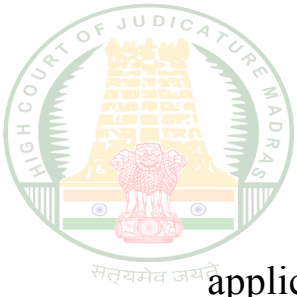
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franchisees of the applicant.

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5.2. He would submit that the applicant's company had been formed in the year 1985 as a partnership firm. This was later converted into a limited liability partnership and the same has been registered with the Ministry of Corporate Affairs. He would submit that the applicant had obtained registrations in respect of the name Sangeetha, Sangeetha Veg Restaurant, SVR etc., both as a word mark as well as a device mark. It is also his case that the applicant is not only having its mark registered within India but also in countries outside India.

5.3. He would submit that the applicant had entered into a franchise agreements with the respondents 1 to 3 to operate the Sangeetha Restaurant. On 08.10.2009 the 1st agreement was entered into with the 2nd respondent for operating a SANGEETHA Restaurant at Velachery. Thereafter, on 17.06.2011 once, again the



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applicant had entered into a franchise agreement with the 2nd respondent for operating the restaurant at OMR (Thoraipakkam area), Chennai. On 11.09.2013, once again an agreement was entered into between the applicant and the 2nd respondent for operating the restaurant at Medavakkam. On 16.07.2014, the 1st respondent and the applicant had entered into a franchise agreement in respect of the unit at TCS ,Siruseni. On 03.11.2014, the franchise agreement was entered into with the 3rd respondent for running the restaurant at T.Nagar, Chennai. On 08.06.2018, once again a franchise agreement was entered into with the 1st respondent for running the restaurant at Navallur.

5.4. He would submit that all these franchise agreements had contained a specific clause that after the termination of the franchise agreement, the franchisee/respondents would not operate another unit with reference to the same business for a minimum period of 5 years.

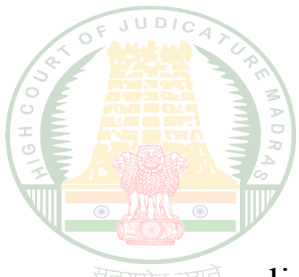


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5.5. He would submit that the applicant came to learn that the franchisee had wanted to start a separate unit. On coming to know about the same there was a meeting amongst the representatives of the applicant and the franchisees on 08.03.2022 and the applicant had made it clear that if the respondents wanted to open another unit they can do so only after surrendering the franchise. The respondents had sought time to revert with the decision on this. The applicant had made it clear that they were not going to give consent for the respondents to run a competing business.

5.6. He would submit that several rounds of discussions have taken place between the applicant and the respondents and it was informed by the 5th respondent on 11.04.2022 that the respondents had decided on a name change and had also decided to re-locate their unit. Thereafter, the parties had mutually agreed to close the units and the closure date was arrived at on 31.05.2022. and therefore, with effect from 01.06.2022, the respondents had nothing to do with the

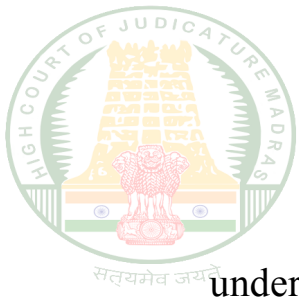


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applicant or its trademarks.
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5.7. It is the case of the learned Senior Counsel that even before the discussions between the parties had taken place with reference to the surrendering of the franchise agreement, the respondents had already made an application to register their marks with the name "Geetham". All these, when the parties have entered minutes of the meetings wherein the respondents had clearly and categorically agreed that they would not use the trademark, trade name, signboard, packing materials, menu card, or any other materials which have the Trademark, trade name of the Franchisor, and had agreed to immediately withdraw from circulation all articles or objects or such other things exhibiting the said trademarks. The franchisees were also directed to hand over all the Menu cards, Name/Signboard, Packing materials etc., and also the vehicles relating to the Franchisor, namely, the applicant with the name Sangeetha/Sangeetha Veg Restaurant and variation thereof. They had also clearly and categorically

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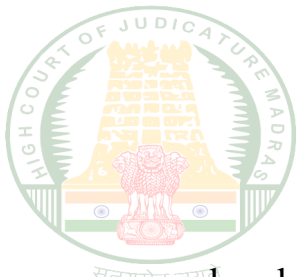


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undertaken that they will not use, authorize or seek registration of the brand name/trade name Sangeetha or any other variations which are similar or confusingly or deceptively similar to the brand name of the applicant. Despite this categoric assurance, it is the contention of the learned Senior counsel that the respondents with a malafide intent has adopted the word 'Geetham' which is nothing but a part of the applicant's name Sangeetha. He would submit that this is a clear indication that the respondents wanted to cash in upon the goodwill earned by the applicant.

5.8. He would further submit that after the adoption of this name, the same has caused confusion in the minds of the general public particularly in the online platform. In the online platform when one types out the word Geetham, the pictorial depiction that is downloaded is that of the applicant's restaurant which clearly gives out to the general public that the respondents' restaurant is that of the applicant. Further, before commencing operation, the 5th respondent

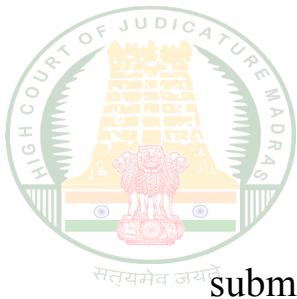


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has been giving out advertisement/flyers impliedly conveying that the
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name Geetham is nothing but a new name of the applicant.

5.9. The learned Senior counsel would submit that some of the news articles for promotion and advertisement would read that ***"Only the name has changed, everything else remains the same"***. He would submit that even after the cease and desist notice was issued by the applicant, the respondents continue to misuse the applicant's trademark.

5.10. He would also submit that the applicant has already filed necessary applications opposing the issue of the trademark in the name of the respondents before the Trademark Registry and this opposition has been done immediately. He would submit that the trademark of both the applicant and the respondents are phonetically, visually and aurally similar except for the word SAN. He would



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submit that clause 29 C of the Trademarks Act would be applicable to the instant case. He would also submit that the respondents were attempting to deliberately mislead their advertisement. Therefore, the applicant has come forward with the suit in question and they have been advised of fair chance of success.

5.11. The learned counsel for the applicant would rely upon the following judgments :-

i) (2004) 3 SCC 90 - Midas Hygiene Industries (P) ltd. and Another Vs. Sudhir Bhatia and Othes.,

ii) 2021 SCC OnLine Bom 2233 - Meher Distilleries Private Limited Vs. SG Worldwive Inc. and Another and

iii) (2022) 5 SCC 1 - Renaissance Hotel Holdings Inc. Vs. B.Vijaya Sai and Others.

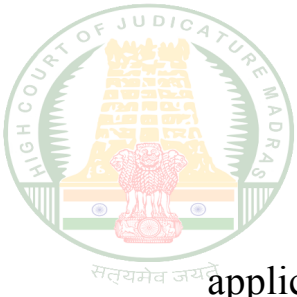


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6. Per contra, Mr.A.Ramesh Kumar, learned counsel appearing on behalf of the respondents would contend that there is absolutely no similarity in the mark. He would submit that the suit itself is delayed since Mr.P.Suresh, the partner and founder of the applicant company was a Director in the 1st respondent company and continues to be a shareholder and Geetham restaurant was started in June 2022. He would further submit that the applicant have already opposed the trademarks applied by the 5th respondent and the said proceedings are pending before the Trademark Registry and therefore the suit filed for the very same issue is not maintainable.

6.1. He would submit that when the cease and desist notice had been issued as early as on 10.01.2023, the respondents have suitably replied to the same on 24.01.2023 and the applicant has not taken steps till May 2023 to move the suit. He would submit that mark adopted by the respondents is nowhere similar to the mark of the



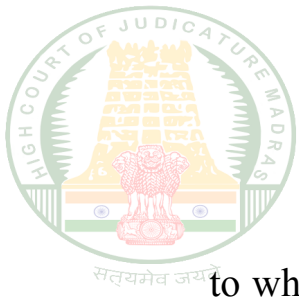
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applicant. He would submit that the suit itself is misconceived. He would further contend that the applicant have themselves permitted the respondents to open a new unit and the same has also been done only with their tacit approval and having done so, the applicant is now trying to contend that the opening of the unit by the respondents is wrong and that the mark is similar to that of the applicant. He would rely on the un-reported judgement of this Court in *C.S.No.325 of 2019-M/s.Sangeetha Caterers and Consultants LLP Vs. M/s.Hotel Sangeethaa Pure Veg* and the judgments of the Delhi High Court reported in *2019 (77) PTC68 (Del) - Luxembourg Brands S.A.R.L. and Ors. Vs. G.M.Pens International Pvt. Ltd.* He would also contend that there is no irreparable loss or hardship that has been pleaded or which would result to the applicant.

Discussion:-

7. This Court is called upon, at this juncture, to only consider as



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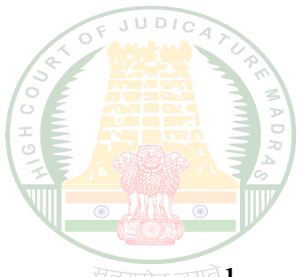
to whether the applicant had made out a prima facie case for the grant of an ad-interim injunction till the disposal of the suit. This Court has to therefore consider and appreciate:-

(a) if the Applicant has proved their right to the trademark Sangeetha/Sangeetha Veg Restaurant and all the other variants which have been registered in the name of the Applicant;

(b) if the Respondents have adopted a mark which is similar to that of the Applicant and such adoption is contrary to the terms of the agreement between the parties and is deceptive and an infringement of the Applicant's registered mark; and

(c) if by such adoption the Respondents have created a confusion in the minds of the public that Geetham is only a new avatar of the Applicant's restaurant, Sangeetha.

7.1. The Applicant has produced the legal use certificate to

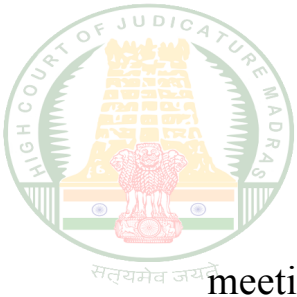


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show their ownership to the mark "Sangeetha" and other similar marks. The Respondents have also not denied the ownership of the Applicant to these marks. It is their contention that their mark "Geetham" has no similarity to the Applicant's Trademark "Sangeetha".

7.2. The applicant has come forward with a suit and the applications stating that the adoption of the name Geetham by the respondents is visually, phonetically and aurally similar to the applicant's trademark Sangeetha. They would also contend that this adoption is deceptive and dishonest and that apart the adoption of the applicant's name by the respondents has already caused confusion in the minds of the people. The allegation that the adoption of the mark Geetham is dishonest appears to be have some force from the fact that although the applicant had made an application for registration of the mark Geetham as early as in the month of March 2022, the respondents have not made any mention about the same in any of the



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meetings that have been held thereafter. In fact, in the minutes of the meeting dated 27.05.2022 it has been made clear that the respondents will not use the trade name, trademarks, signboard etc., with effect from 01.06.2022 and further that they will not use a trademark similar to the trademark Sangeetha or any of its other variations which are similar or confusingly or deceptively similar to the brand name of the applicant. This is also confirmed by the email of the respondents dated 27.05.2022, wherein they have un-conditionally accepted these two clauses. Even, at this juncture, the respondents have not made it known to the applicant that they had already applied for the name Geetham. The name Geetham is but a variant of the word Sangeetha and therefore contrary.

7.3. The respondents' contention that they were permitted to open a new unit appears to be incorrect from a mere reading of the minutes of the meetings dated 08.03.2023. The relevant portion of the minutes of the meeting dated 08.03.2023 would read as follows:-

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"When RSM expressed their intention to start a new unit at Medavakkam on their own, it was made very clear that if a new unit is to be started, than they have to surrender the Sangeetha franchise from all units including RSM, Rasnam and Prasnam wherein they are directors.

Since, three of the units had other investors, it was suggested that they discuss with them and get back to us with the final outcome and plan of action"

This would clearly show that the applicant had clearly and categorically expressed their refusal to grant permission for setting up a new unit by the respondents and the respondents had sought time to revert after having their discussion with their directors. Therefore, there is an attempt to suppress the true facts which clearly is an act of deception.

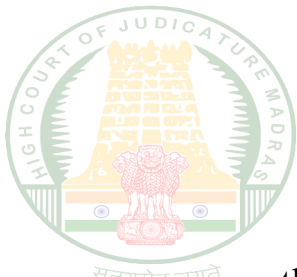


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7.4. Further, in their promotional materials, the respondents had given out that it was only a name change and that in all other respects it remains the same. This by itself would give out to an unwary customer that Sangeetha had re-named itself as Geetham. That some of the customers have believed this to be true is evident from some of the reviews that have been downloaded where the customers have expressed satisfaction about the hospitality and food of the respondents by calling it the Sangeetha chain of restaurants. Therefore, the apprehension of the applicant that the general public would be misled into believing that the respondent is nothing but old wine in a new bottle stands prima facie proved.

7.5. Another defense that is raised by the Respondents is delay. Their contention is that after the cease and desist notice on 10.01.2023 and the reply on 24.01.2023, the suit has been moved in May 2023. This defense lacks merits in as much as the Applicant after collating the evidence has approached the Vacation Court in the



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month of May 2023 i.e; within 4 months of the notice. This cannot be termed as inordinate delay. Useful reference can be made to the dicta laid down by the Hon'ble Supreme Court in its judgment reported in ***(2004) 3 SCC 90 - Midas Hygiene Industries (P) ltd. and Another Vs. Sudhir Bhatia and Others.*** would be applicable to overcome the defense of delay taken by the Respondents. The Hon'ble Supreme Court has observed as follows:-

"5. The law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest."

"6. In this case it is an admitted position that

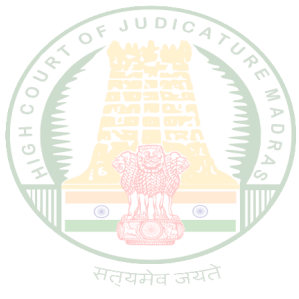


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the Respondents used to work with the Appellants. The advertisements which had been issued by the Appellants in the year 1991 show that at least from that year they were using the Mark LAXMAN REKHA on their products. Not only that but the Appellants have had a Copyright in the Marks KRAZY LINES and LAXMAN REKHA with effect from 19th of November, 1991. The copyright had been renewed on 23rd of April, 1999. A glance at the cartons used by both the parties shows that in 1992 when the Respondent first started he used the mark LAXMAN REKHA in cartons containing colours red, white and blue. No explanation could be given as to why that carton had to be changed to look almost identical to that of the Appellant at a subsequent stage. This prima facie indicates the dishonest intention to pass off his goods



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as those of the Appellants."

7.6. Therefore, the applicant is entitled to the injunction as prayed for on the following grounds:-

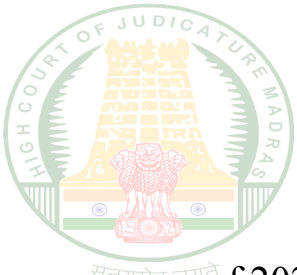
i) Prima facie the infringement of the Applicant's mark by the Respondents has been established;

ii) There is a suppression and deception on the part of the Respondents;

iii) The adoption of the word "Geetham" coupled with the Respondents' advertisement have caused confusion in the minds of the public;

iv) There is no inordinate delay in approaching the Court.

8. Therefore, the applicant has made out a *prima facie* case for grant of an ad interim injunction and the balance of convenience is also in favour of the applicant. Accordingly, the O.A.Nos.447 and 448



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of 2023 are allowed.

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22.09.2023

Index : Yes/No
Speaking order/non-speaking order
Neutral Citation:Yes/No

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