

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.S(Comm.Div.).No.223 of 2019

M/s.Matrimony.com Limited,
No.94, TVH Beliciaa Towers,
Tower-2, 10th Floor,
MRC Nagar, Mandaveli,
Chennai-600 028.

Rep.by its General Manager-Legal & Regulatory,
Mr.S.Ravichandran

... Plaintiff

Vs.

Silicon Valley Infomedia Private Limited,
321, Patel Avenue, Opp. Grand Bagawati,
S.G.Road,
Ahmedabad-380 059.

... Defendant

Prayer: The Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C, and Sections 27, 28, 29, 134 & 135 of Trade Marks Act 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act No.4 of 2016, praying for

(a). A permanent injunction restraining the defendant, by

C.S.No.223 of 2019

themselves, their directors, partners, men, servants, agents, broadcasters, representatives, advertisers, franchisees, licensees and / or all other persons acting on their behalf from in any manner infringing and / or enabling others to infringe plaintiff's registered trademarks BHARATMATRIMONY and / or its variants by using the identical trademark BHARATMATRIMONY as part of the Domain name or in any other manner whatsoever;

(b). A permanent injunction restraining the defendant, by themselves, their directors, partners, men, servants, agents, broadcasters, representatives, advertisers, franchisees, licensees and / or all other persons acting on their behalf from in any manner diverting the plaintiff's business to themselves by using Google's search engine in which the plaintiff's trademark **BHARATMATRIMONY** and domain name **BHARATMATRIMONY.ORG** and / or its variants, by using as domain name and / or as meta tags and thereby passing off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

(c). A permanent injunction restraining the defendant, themselves, their partners, successors-in-business, servants, agents, representatives, assigns and all other persons claiming under them and through them from using or redirecting to the domain name www.bharatmatrimony.org or any other domain name that is identical and / or deceptively similar to that of the plaintiff's domain name www.bharatmatrimony.com in any manner whatsoever;

(d). The defendant be directed to surrender to the plaintiff for destruction all compact discs, master copy, advertising materials, pamphlets, brochures, etc. which bears the plaintiff's registered trademarks and / or any other variants which is phonetically and / or deceptively identical and / or similar to the plaintiff's registered trademarks or in any other form whatsoever;

(e). Award damages of Rs.10,00,000/- for infringing and / or for passing off and / or for enabling others to infringe and / or pass off the plaintiff's trademarks and domain names;

(f) A preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark BHARATMATRIMONY and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts;

(g) For costs of the suit.

For Plaintiff : Mr.Arun C.Mohan

For Defendant : No appearance

JUDGMENT

(Case has been heard through video conference)

The suit is filed for injunction restraining the defendant, men and agent from infringing the plaintiff's registered trademark BHARATMATRIMONY and its variant.

2. The sum and substance of the plaint is that, the plaintiff's company incorporated under the Companies Act, having its registered office at Chennai, is a pioneer in using the Internet as a platform for matrimonial alliance. They are in the business since 2001.

3. Being the leading matrimony portal, the plaintiff enjoys tremendous goodwill through out India and abroad. The plaintiff's Internet business started in the year 1997, having its domain name as www.bharatmatrimony.com. As the business growing, the plaintiff had registered several other domain names based on language and religion to cater the needs of the regional customer. While so, in order to protect the mark and enjoy exclusively, the plaintiff has registered the domain name www.bharatmatrimony.com as early as on 27.12.1999. The said registration is valid and subsisting till date. In order to take advantage of the reputation

C.S.No.223 of 2019

and wide acceptance by the public, the defendant herein had adopted the identical mark of the plaintiff for its online business. The said adoption www.bharatmatrimony.org with intention to ride its goodwill and reputation. The said adoption is not honest, but with malafide intention to cause deception and confusion to the users in order to gain illicit benefit. When the plaintiff came to know this unauthorized use and wrongful exploitation the name used for the plaintiff's trademark by the defendant, notice dated 15.06.2018 was served on the defendant to cease and desist from adopting the mark which is identical that of the plaintiff's trademark BHARATMATRIMONY. Since the defendant has failed to restrain itself from deceptively, illegally adopting the plaintiff's trademark, the present suit is filed for the following relief:-

(a). A permanent injunction restraining the defendant, by themselves, their directors, partners, men, servants, agents, broadcasters, representatives, advertisers, franchisees, licensees and / or all other persons acting on their behalf from in any manner infringing and / or enabling others to infringe plaintiff's registered trademarks BHARATMATRIMONY and / or

its variants by using the identical trademark BHARATMATRIMONY as part of the Domain name or in any other manner whatsoever;

(b). A permanent injunction restraining the defendant, by themselves, their directors, partners, men, servants, agents, broadcasters, representatives, advertisers, franchisees, licensees and / or all other persons acting on their behalf from in any manner diverting the plaintiff's business to themselves by using Google's search engine in which the plaintiff's trademark BHARATMATRIONY and domain name BHARATMATRIONY.ORG and / or its variants, by using as domain name and / or as meta tags and thereby passing off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

(c). A permanent injunction restraining the defendant, themselves, their partners, successors-in-business, servants, agents, representatives, assigns and all other persons claiming under them and through them from using or redirecting to the domain name www.bharatmatrimony.org or any other domain name that is identical and / or deceptively similar to that of the plaintiff's domain name www.bharatmatrimony.com in any manner

whatsoever;

(d). The defendant be directed to surrender to the plaintiff for destruction all compact discs, master copy, advertising materials, pamphlets, brochures, etc. which bears the plaintiff's registered trademarks and / or any other variants which is phonetically and / or deceptively identical and / or similar to the plaintiff's registered trademarks or in any other form whatsoever.

4. From the Registry record, this Court finds that on 28.03.2018, the interim injunction was granted being *prima facie* satisfied about the alleged infringement of copyright by the respondent/defendant. Thereafter, the interim order was extended from time to time. Service on the defendant was effected on 14.05.2019. Sufficient time was granted to the defendant to file written statement, however, the defendant failed to file his written statement within the time line prescribed under the provisions of the Commercial Courts Act. Hence, on 09.01.2020, the right of the defendant to file written statement got forfeited. The interim order granted on 28.03.2019

was made absolute. The plaintiff was directed to marshal his witness before the Additional Master IV for recording the evidence. Accordingly, Mr.S.Ravichandran working as a Associate vice President, Legal & Regulatory of the plaintiff at Chennai, has filed in lieu of chief examination and mounted the witness box, through him, 25 exhibits were marked.

5. According to the learned counsel for the plaintiff, the plaintiff is in the business of matrimonial alliance through online since 1997, in the name and style of www.bharatmatrimony.com, would submit that the word mark BHARATMATRIMONY was registered on 02.02.2005 with the trademark Registry and certificate was issued on 14.10.2006 which is marked as Ex.P3. The said word mark registration is in respect of class 16 for use in relation to matrimony services etc. Likewise, the plaintiff got registration in class 99 for the word matrimony on 12.04.2007 for the following services, legal user certificate issued by the trademark is marked as Ex.P4.

WEB COPY

“42.Marriage bureaux, horoscope matching and other matrimonial services, services to facilitate on-line marriages, verification services,

profile references, match making services, astrology, wedding directory, matrimony tool bar.

35.Commercial information agency, complete yellow pages portal, information directory, database listing, event listing, all relating to matrimonial services.”

The plaintiff created the domain name www.bharatmatrimony.com on 27.12.1999 and two other sites. The print out of web page extract of www.bharatmatrimony.org is marked as Ex.P.22.

6. The learned counsel for the plaintiff after referring these documents submitted that any person intend to search BHARATMATRIMONY invariably made open the domain www.bharatmatrimony.org, which is ported by the defendant and Ex.P.23- the screen shot of the defendant's company www.siliconinfo.com using the domain name www.bharatmatrimony.org will prove the adoption of the identical mark by the defendant for their domain name.

7. This Court, on perusing Ex.P.23 satisfies that the user name

C.S.No.223 of 2019

BHARATMATRIMONY, which has been used by the plaintiff since 1997 and the domain name www.bharatmatrimony.com since 1999 has been dishonestly adopted by the defendant for its domain name, while its trade name is www.siliconinfo.com. When the defendant was served cease and deceit notice through e-mail dated 25.06.2018, it appears that the defendant has not responded to justify the adoption of the domain name www.bharatmatrimony.com. Even after institution of the suit and receipt of the suit summons, though the defendant has entered appearance through the learned counsel viz., J.Pachaiyappan and Santha Laxmi, they have not chosen to file any written statement or cross examination of the plaintiff's witness to press the suit end. The defendant accepts Ex.P.3, Ex.P.4, Ex.P.22 and Ex.P.23 are the documents, which establish that the plaintiff is the prior user of the mark BHARATMATRIMONY, have valid registration for the same and for the very same service.

8. The defendant has adopted the domain name www.bharatmatrimony.org, which is squarely prohibited under Section 29 of the Trademark Act as infringement. Under Section 29(3), if the identical

mark used for identical service, the Court shall presume the infringement. Here it is a case where the identical mark for identical service is adopted by the defendant and no justification has come forward from the defendant, despite affording opportunity. Therefore, the suit is allowed in respect of the injunction relief sought against infringement. As far as the relief sought for damages, the evidence let in by the PW.1 does not disclose element of specific damages except fact open for inference.

9. In such circumstances, this Court is of the view that the plaintiff is entitled for the relief (a), (b), (c) and (d) alone. For want of evidence, particularly, there is no evidence to indicate that the defendant has gain profit, the relief sought under the prayer (e) and (f) are declined.

10. As a result, the suit is allowed with costs in respect of the prayer (a), (b), (c) and (d). The relief sought under the prayer (e) and (f) are declined.

rpl

Index : Yes/No.

Internet :Yes/No.



WEB COPY

C.S.No.223 of 2019

DR.G.JAYACHANDRAN, J.
rpl



06.10.2021

WEB COPY