



O.S.A.No.190 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	23.03.2026
Pronounced on	16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A.No.190 of 2018
and C.M.P.No.9918 of 2018

Tamanna Santhosh Bhatia

...Appellant

Vs.

1.M/s.Power Soaps Limited,
Rep., by its Managing Director,
RS.No.94/1, Sembiapalayam Village,
Embalam Main Road,
Korukadu Post,
Puducherry- 605 110.

2.M/s.J. & D Communication Pvt. Ltd.,
59, G.N.Shetty Road,
T.Nagar,
Chennai- 600 017.

...Respondents

Prayer: Appeal filed under Order XXXVI Rule 1 O.S. Rules read with Clause 15 of the Letters Patent, against the judgment and decree dated 07.04.2017

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passed in C.S.No.284 of 2011 on the file of Original Side of this Court.

For Appellant : Mr.V.Manohar

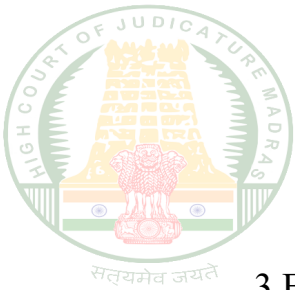
For Respondents : Mr.P.V.Balasubramaniam, Senior Advocate
for Mr.M.R.Gokul Krishnan for R1

JUDGMENT

K. GOVINDARAJAN THILAKAVADI,J.

The Original Side Appeal is filed challenging the order 07.04.2017 passed by the learned Single Judge in C.S.No.284 of 2011.

2.The above suit has been filed by the plaintiff seeking a judgment and decree directing the defendants to pay a sum of Rs.1,00,00,000/- (Rupees One Crore only) towards damages for unauthorized use and exploitation of the plaintiff's image, reputation and personality rights, and for a consequential relief of permanent injunction restraining the defendants from in any manner using the plaintiff's photographs, videos or likeness for commercial purposes.



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3.For the sake of convenience, the parties herein are referred to as arrayed in suit.

4.The sum and substance of the case of the appellant/Plaintiff is that, the appellant/plaintiff is a well-known and reputed multi-lingual film actress enjoying wide popularity and goodwill among the public. She has established a significant reputation in the advertisement field, and her presence carries substantial commercial value. The defendants approached the appellant/plaintiff with a proposal to promote the products of the first defendant by engaging her as their brand ambassador. Taking into account her popularity and market value, the defendants offered an honorarium, and pursuant to negotiations, an agreement dated 07.10.2008 was entered into between the appellant/plaintiff and the first defendant, in the presence of the second defendant. The said agreement was valid for a period of one year, i.e., up to 06.10.2009. In terms of the agreement, the appellant/plaintiff promoted the products of the first defendant, and it is the specific case of the appellant/plaintiff that owing to her appearance in the advertisements, the sales and market reach of the first defendant's products increased manifold. Despite such benefit, when the defendants sought extension of the agreement, the plaintiff declined to continue. It is the categorical case of the appellant/plaintiff that upon expiry of the

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agreement, the first defendant had no manner of right, authority, or consent to use her image or likeness. However, during the last quarter of 2010, when the appellant/plaintiff was engaged in negotiations with M/s. Wipro Limited (Consumer Care and Lighting Division) for endorsement of their products, she was shocked to learn that the first defendant, being a competitor, continued to use her photographs and videos for promotion of their products without authorization.

4.1.Immediately upon such knowledge, the appellant/plaintiff issued oral warnings to the defendants and also took up the matter through the second defendant, their agent. Despite such warnings, the first defendant clandestinely continued to exploit the appellant/plaintiff's image through various media, including television commercials, print publications, and product packaging, particularly in respect of soaps manufactured during November 2010 to February 2011. Such unauthorized use has seriously prejudiced the appellant/plaintiff's commercial interests and affected her professional engagements with other entities. As the defendants failed to desist from such acts, the appellant/plaintiff issued legal notices dated 18.01.2011 and 01.02.2011. The reply dated 09.02.2011 sent by the first defendant was evasive

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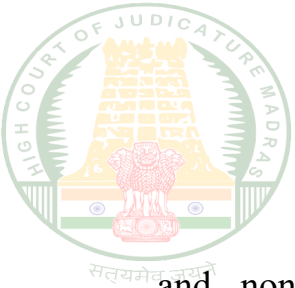


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and contained untenable denials. The continued unauthorized exploitation of the appellant/plaintiff's image amounts to infringement of her rights, violation of contractual obligations, and unlawful commercial enrichment at the expense of the appellant/plaintiff. Despite repeated demands, the defendants failed to take corrective measures, hence the aggrieved appellant/plaintiff filed the Civil Suit in C.S.No.284 of 2011 for damages.

5.The claim of the appellant/plaintiff was resisted by the first defendant stating that the first defendant submits that the suit is not maintainable either in law or on facts. All allegations contained in the plaint are denied by the first defendant contending that the appellant/plaintiff should be put to strict proof of the same. The first defendant contended that the appellant/plaintiff is not a highly reputed or influential personality as alleged. It is submitted that the appellant/plaintiff was engaged under an agreement dated 07.10.2008 for a consideration of Rs.1,00,000/- per annum. The said agreement was not executed in the presence of the second defendant, as falsely alleged, but was negotiated through an intermediary, namely N.D. Communication Private Limited, and not J & D Communication Private Limited. The suit is therefore bad for misjoinder



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and non-joinder of necessary parties. It is further submitted that the appellant/plaintiff had expressly permitted the first defendant to use her photographs in connection with trademark registration and promotional activities, both in India and abroad, during the subsistence of the agreement. The products of the first defendant have an established reputation in the market owing to their quality, and their growth trajectory has been consistent, independent of any celebrity endorsement.

5.1.The first defendant further submits that they are not aware of any negotiations between the appellant/plaintiff and M/s. Wipro Limited and denies that the said entity is a competitor of the first defendant. The allegation that the first defendant continued to use the appellant/plaintiff's photographs after expiry of the agreement is denied. It is submitted that necessary instructions were issued to all advertising agencies and associates not to use the appellant/plaintiff's images beyond the contractual period. If at all any unauthorized use has occurred, the same may have been by third-party service providers without the knowledge or authorization of the first defendant, for which the first defendant cannot be held liable. The first defendant, being fully



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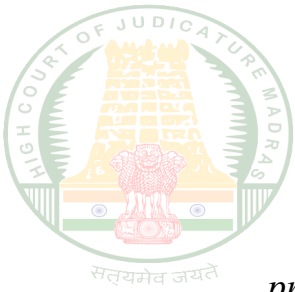
aware of intellectual property rights, has not committed any breach of the agreement. The present suit has been filed by the appellant/plaintiff with an intention to unjustly enrich herself by claiming exorbitant and baseless damages.

5.2. There is no cause of action for the suit. The appellant/plaintiff has not suffered any loss, monetary or otherwise, on account of any alleged act of the defendant. The claim for damages is speculative, excessive, and devoid of merit. Hence, the first defendant prayed for dismissal of the suit with costs.

6. Based on the above pleadings, the following issues were framed by the learned Singe Judge:

“ 1. Whether the plaintiff is entitled to a decree of damages of Rs.1 Crore for exploitation of her popularity for the business of the first defendant in breach of the agreement dated 07.10.2008?

2. Whether the plaintiff is entitled to a decree of injunction restraining the defendants from publicizing, advertising or using the advertisement materials with her



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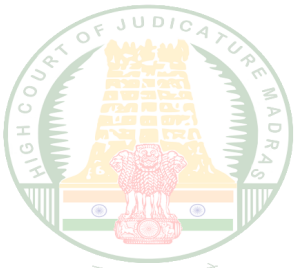
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presence in their products, wrappers and sales promotions etc., including advertisements in medias?”

7.The learned Single Judge upon considering the materials on record dismissed the suit in C.S.No.284 of 2011 against which the present original side appeal is preferred.

8.The learned counsel for the appellant/plaintiff would submit that, the appellant/plaintiff is a popular actress and in view of her popularity and potential, the 1st respondent/defendant had approached her through the 2nd respondent/defendant, their advertising agency to endorse, promote and support their products as the brand Ambassador. In view of the same, an agreement dated 07.10.2008 was entered between the appellant/plaintiff and the 1st respondent/defendant in the presence of the 2nd respondent/defendant herein, with clear terms that the said agreement will have effect only till 6th October 2009.

9.The learned counsel further submits that the appellant/plaintiff was called upon to act in the advertisement videos and photo shots to promote the



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products of the 1st respondent/defendant in the commercial world. Seeing the increase in the volume of business of the 1st respondent/defendant, they expressed their intention to continue the agreement for further periods, which was refused by the appellant/plaintiff and the agreement got expired on 06.10.2009.

10.However, even after the expiry of one year from the stipulated period in the agreement, the respondent/defendant had been advertising their products using her pictures/name by telecasting in multiple channels, materials published in journals and the wrappers used in their products even after the period of expiry of the agreement and in particular during November 2010 to February 2011 and also carried out with the presence of the appellant's profile. Hence, the appellant/plaintiff was constrained to issue a notice to the 1st respondent/defendant on 18.01.2011 setting out the violations and misdeeds committed by them with an indication of compensation claim. Despite the notice, again on 1st February 2011 said notice, the respondents/defendants continued to commit breach of contract and therefore again on 2011, another notice was sent in this regard, for which the 1st respondent/defendant gave an evasive reply on 19.02.2011, contending that they are not responsible for the

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said exploitation of the appellant/plaintiff's appearance in their products. Hence, the above suit was filed by the appellant/plaintiff for damages and permanent injunction. However, the learned Single Judge without taking into consideration of the relevant materials on record erroneously dismissed the suit, warrants interference by this Court.

11. On the other hand, the learned counsel for the respondents/defendants would contend that, the 1st defendant had given instructions to the advertisement Associates and Agents not to use the pictures of the appellant/plaintiff after expiration of the agreement. The 1st defendant's product being a popular product, there were many service providers to earn their visibility could have committed certain acts for which the 1st defendant cannot be mulcted with. The product of the 1st defendant being the market leader in the soap segment there are many infringers and criminals, who slavishly imitate, wrappers and circulate the fake and counterfeit products. The 1st defendant never had any working arrangements with one India Mart. It reiterated that on expiry of the agreement all the advertisements having picture of the appellant/plaintiff were withdrawn and suitable directions were given to the advertisement Agency. Therefore, there is no violation of the agreement. The intention of the appellant/plaintiff is

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only to extract money from the 1st defendant despite they have not committed any act which warrants penalizing them and on the other side the appellant/plaintiff had not suffered any loss or damages. The learned Single Judge upon appreciating the materials on record, found that no safe credence could be attached to the documents relied upon by the appellant/plaintiff, rightly dismissed the suit, warrants any interference by this Court.

12.Heard on both sides and records perused.

13.It is the specific case of the appellant/plaintiff that the continued unauthorized exploitation of the appellant/plaintiff's image by the 1st defendant amounts to infringement of her rights, violation of contractual obligations, and unlawful commercial enrichment at the expense of the appellant/plaintiff, the 1st defendant is liable to pay damages.

14.On the other hand, the contention of the 1st defendant is that it had given instructions to their Advertisement Associates and Agents not to use the pictures of the appellant/plaintiff after the expiration of the agreement. The 1st

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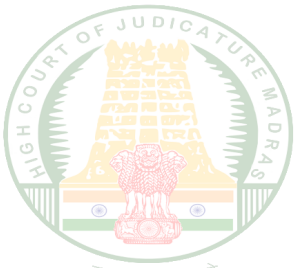


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defendant had not advertised or published the picture or photo of the appellant/plaintiff. Further, the product of the 1st defendant being the market leader in the soap segment, there are many infringers to circulate the fake and counterfeit products, for which the 1st defendant is not responsible.

15.To claim damages, the appellant/plaintiff must prove the existence of an agreement, violation of that agreement, resulting quantifiable losses. Using an actress photographs on cosmetic products after the expiry of an endorsement agreement constitute a clear violation of her personality rights, right to publicity and right to privacy. Such acts amounts to unauthorized commercial exploitation enabling the actress to file a law suit for damages and permanent injunction. However, the burden lies on the plaintiff to produce the best evidence, such as the products themselves showing the photos were used for promoting the products and the defendants have nexus for using the pictures/photos of the actress without her permission after the expiry of the endorsement agreement.

16.It is not in dispute that there was an agreement entered between the

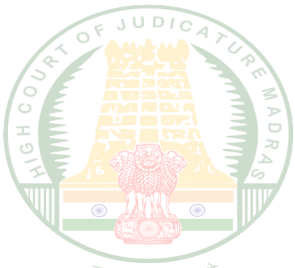


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appellant/plaintiff and the 1st defendant on 07.10.2008 for a period of one year, through which the 1st defendant engaged the appellant/plaintiff, a well known film actress, as their brand Ambassador. Admittedly, the said agreement expired on 06.10.2009. It is for the appellant/plaintiff to establish that, the 1st defendant continued to use her photographs and videos for their products without her permission, thereby the 1st defendant had acted in breach of the agreement.

17. During the course of evidence, the appellant/plaintiff has rested her claim for damages mainly relying upon Exs.P.8 & P.9 and also Ex.P.7 respectively. However, nothing is whispered in the plaint with regard to the above documents. According to the appellant/plaintiff, she had purchased the soap products from a shop at Tambaram and found that the 1st defendant was using her pictures/photographs in the wrappers of the soap products, after the time limit stipulated in Ex.P2 agreement. She would contend that only through Ex.P.9 she had purchased the soap products of the 1st defendant's company and found in the wrappers of the soap product, marked as Ex.P.8 series her pictures/photographs. According to the appellant/plaintiff, Ex.P.9 is a bill for purchasing the soap products. But Ex.P9 found to be an estimate of Isaiah Agencies at Tambaram West, Chennai - 45 dated 12.02.2011, addressed to

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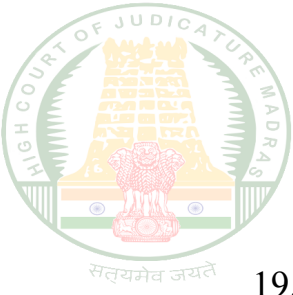
Nadesan Stores. Therefore, no product can be purchased under Ex.P.9 as contended by the appellant/plaintiff. There is no indication in Ex.P.9 that the same was issued to the appellant/plaintiff for purchasing the soap products of the 1st defendant. Hence, the appellant/plaintiff failed to establish that the soap product were purchased under Ex.P.9. Moreover, the father of the appellant/plaintiff examined as P.W.1 has categorically stated in his evidence that Ex.P.9 was given to him by his friend Thangadurai. The said Thangadurai was not examined on the side of the appellant/plaintiff to speak about Ex.P.8 and Ex.P.9. Therefore, the appellant/plaintiff is not directly associated with Ex.P.9. Admittedly, it is only on the basis of Ex.P.9, the wrappers of the soap products were marked as Ex.P.8 series and when it is found that the appellant/plaintiff failed to establish that Ex.P.9 is related to Ex.P.8 series, no link could be attached between the above documents. Further, the appellant/plaintiff failed to establish that the wrappers marked as Ex.P.8 series actually contained the soap products of the 1st defendant and the wrappers along with soap products of the 1st defendant had been purchased under Ex.P.9, the above wrappers cannot be the foundation for holding the appellant/plaintiff's claim. Without proving Ex.P.9, Ex.P.8 series have no evidentiary value. Moreover, the 1st defendant seriously denied that Ex.P.8 series have no nexus to



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the products of the 1st defendant's company, while so, the appellant/plaintiff ought to have established that the 1st defendant had been instrumental in the existence of the photos and pictures of the appellant/plaintiff in Ex.P.8 series of wrappers, after the expiry of Ex.P.2 agreement. Even in the pre suit notice issued by the appellant/plaintiff nothing is mentioned about Ex.P8 & P.9 and also there is no specific averments in the plaint with regard to the above documents. As rightly pointed out by the learned Single Judge, the basis for the appellant/plaintiff's claim for damages under Exs.P8 & P.9 cannot merit acceptance.

18.Further, it is also not established by the appellant/plaintiff that India Mart had the authority of the 1st defendant to publish Ex.P.7, containing the pictures/photographs of the appellant/plaintiff. Ex.P7 found to be a computer generated copy dated 21.02.2011 from Internet, uploaded by India Mart. Merely on the basis of Ex.P.7 alone, it cannot be held that the 1st defendant was responsible for the photographs/pictures of the appellant/plaintiff contained therein.



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19. Therefore, Ex.P.7 to P.9 cannot be construed as concrete evidences to substantiate the appellant/plaintiff's claim. On a lack of concrete evidence, the claim of the appellant/plaintiff would fail.

20. Therefore, we are unable to accept the arguments of the learned counsel for the appellant / plaintiff that the 1st defendant has committed breach of agreement and that the appellant/plaintiff is entitled for the reliefs claimed in the suit. This Court also finds that the learned Single Judge has rightly held that the appellant/plaintiff is not entitled for the reliefs claimed in the plaint. We do not find any infirmity in the said findings of the learned Single Judge.

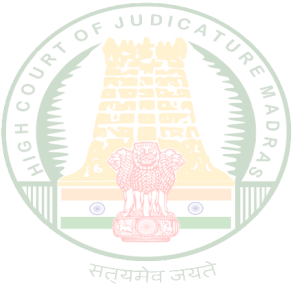
21. In fine, this original side appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

(P.V.J.) (K.G.T.J.)

16.04.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn

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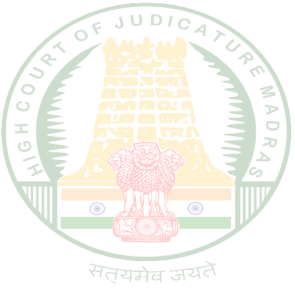


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To

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vsn

Pre-delivery judgment made in
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