

In the Court of the Principal District Judge, Madurai
Present: Thiru. S. Sivakadatcham, B.Sc., M.L.,
Principal District Judge, Madurai

Monday, this the 27th day of January, 2025

I.A.No.1/2024 in O.S.No.126/2019

Periyasamy Servai Chandran
Proprietor of SMAART HOME FURNITURE

...Petitioner/Defendant

/vs/

1.A. Ganesan

2. A. Venkat Annamalai

Partners of SMART HOME GRAND

...Respondents/Plaintiffs

This petition coming on 09.12.2024 for hearing before me in the presence of M/s H.Arumugam & K.Selvam, Advocates for the petitioner and of Thiru S.M.Arunkumar, Advocate for the respondents and upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

ORDER

The petitioner has filed this petition under Order 13 Rule 3 & 4 and sec.151 of CPC to eschew the documents marked as Ex.A.1 to Ex.A.9.

2. The averments set out in the affidavit filed along with petition are briefly as follows:-

The respondents filed the suit for permanent injunction restraining the petitioner from infringing their registered trade mark namely 'SMART HOME GRAND' and for other reliefs. The petitioner pleaded about the non-maintainability of the suit in his written statement. The respondent has not disclosed any particulars about the registration of firm and no document has also been produced for the

same. P.W.1 examined in chief and through him Ex.A.1 to Ex.A.26 were marked. Out of them Ex.A.10 to A.26 all other documents are photocopies. The documents were marked with petitioner's objection. However, the petitioner was advised to file petition to eschew those documents. Hence, this petition is filed.

3. The learned respondent/plaintiff's counsel has endorsed as "I have no counter" on 09.12.2024.

4. The point for determination;

Whether this petition is allowable or not?

5. Both sides have not adduced either oral evidence or documentary evidence. Heard both sides.

6. Point:

The petitioner has filed this petition to eschew documents Ex.A.1 to Ex.A.9 as the same are not admissible in evidence. The respondent/plaintiff has filed the suit seeking for (a) restraining the defendant, his men, agents from in any infringe the register trade mark name of the plaintiffs by using adopting or copying the word 'SMART HOME GRAND' either individually or collectively; (b) restraining the defendant his men agents or successor from in any way to start new business at any place in Tamilnadu in the name and style of 'SMART HOME FURNITURE' or by using or infringing deceptively or cunningly pronounced as either by collective words or individual word of the plaintiffs registered trade name and mark 'SMART HOME GRAND' or "SMART HOME" or 'SMART' or 'HOME' till disposal of the suit; (c) to grant mandatory injunction directing the defendant to close all the shops running business in the name and style of 'SMART HOME FURNITURE' or

directing the defendant to remove the name and style of the business ‘SMART HOME FURNITURE’ especially at Madurai and anywhere at Tamilnadu and (d) directing the defendant to render true and proper accounts of the business being carried by infringing the plaintiffs’ registered trade name. The case was posted for P.W.1 cross examination. At this juncture, the petitioner/defendant has filed this petition to eschew the documents Ex.A.1 to Ex.A.9, which were marked during the course of P.W.1’s chief with subject to objection. The main contention raised by the petitioner that the respondent’s firm is not registered one and since these documents are Xerox copies, so they are to be eschewed. On perusal of plaint, it is averred that the plaintiffs are doing business in the name of style as SMART HOME GRAND dealing with all types of furniture, furnishing accessories, lighting, all home interior products throughout Tamilnadu. It is further stated that by way of giving good products and classical materials in Tamilnadu it is considered by general public that home furniture means and interior home decoration by fitting furniture accessories means ‘SMART HOME GRAND’ and the respondent/plaintiff established their trade name and the word SMART HOME and the symbol have closely associated with respondent’s commercial origin and the trade name and the symbol got a reputed name among the public. It is also averred that the petitioner is doing the same business of furnitures under the name and style of SMAART HOME FURNITURE having office at No3., New Natham Road, Iyer Bungalow, Madurai. So, the plaintiff is seeking the reliefs of restraining the defendant, his men, agents from in any infringe the register trade mark name of the plaintiffs by using adopting or copying the word ‘SMART HOME GRAND’ either individually or collectively;

(b) restraining the defendant his men agents or successor from in any way to start new business at any place in Tamilnadu in the name and style of ‘SMART HOME FURNITURE’ or by using or infringing deceptively or cunningly pronounced as either by collective words or individual word of the plaintiffs registered trade name and mark ‘SMART HOME GRAND’ or “SMART HOME” or ‘SMART’ or ‘HOME’ till disposal of the suit; (c) to grant mandatory injunction directing the defendant to close all the shops running business in the name and style of ‘SMART HOME FURNITURE’ or directing the defendant to remove the name and style of the business ‘SMART HOME FURNITURE’ especially at Madurai and anywhere at Tamilnadu and for accounts. The petitioner/defendant in his written statement stated that the respondent is running SMART HOME GRAND, but billing the business in the name of Meenu Enterprises and the plaintiff is not a genuine and so the defendant denied the documents. It is further stated that the respondent is doing business from the year 2009 and they registered their trade name as SMAART HOME FURNITURES and there is no illegality in the name and their registration number is 2591733.

7. P.W.1 examined in chief through proof affidavit, along with proof affidavit Ex.A.1 to Ex.A.26 were marked. Out of those documents, Ex.A.1 to A.9 were photocopies, which were marked subject to objection. Now, the petitioner wants to eschew the documents on the ground that they are inadmissible in evidence.

Order 13 Rule 3 reads as follows;

ORDER XIII-PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

1...

2....

3. Rejection of irrelevant or inadmissible documents— *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.*

The main ingredient to rejection of document is either it must be irrelevant or inadmissible document. The **Hon’ble Delhi High Court has held in case in Sudir Engineering Compnay /v/ Nitco Roadways Ltd.,**

“when the documents are filed by either party in the court, these documents, though on file, do not become part of the judicial record;... Admission of a document in evidence is not to be confused with proof of a document... The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification...Endorsement of an exhibit number on a document has no relation with its proof...

In this case the documents Ex.A.1 to Ex.A.9 were marked subject to objection. The petitioner/defendant wants to eschew the documents Ex.A.1 to Ex.A.9 as they are only Photostat copies and also they objected at the time of marking the same. The respondent/plaintiff has not raised any objection for eschewing the documents and the counsel for the respondent/plaintiff has endorsed as ‘no counter’. So, in view of the endorsement on respondent side and also in view of the above settled position of law and also the respondent/plaintiff is at liberty to file original documents of Ex.A.1 to Ex.A.9, this court is inclined to allow this petition. The point is answered accordingly.

8. In the result, this petition is allowed and Ex.A.1 to Ex.A.9 are ordered to be eschewed. No cost.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in open court this the 27th day of January, 2025.

Principal District Judge,
Madurai.

List of witnesses examined:-

Petitioners side – Nil

Respondents side – Nil

List of documents marked:-

Petitioners side – Nil

Respondents side - Nil

Principal District Judge,
Madurai