

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
25~11~2019	20~12~2019

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR
O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019
in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

N.SATHISH KUMAR, J.

COMMON ORDER

Following Civil Suits have been filed by the Plaintiff
M/s.Matrimony.com Limited for the reliefs stated therein

I. Civil Suit No.802 of 2018:

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

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

infringing and /or enabling others to infringe plaintiff's registered trademarks, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants by including them jointly or severally as "Keyword Suggestion Tool", for Search Engine Optimization, Search Engine Marketing, keyword or as adwords in the Internet search or as meta tag in any other manner.

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 the plaintiff's trademarks and domain names TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants, as adwords, for Search Engine Optimization, Search Engine Marketing, keyword Suggestion Tool, as a keyword for the internet search and /or as meta tags and thereby passing off and enabling

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

others to pass off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

c. the defendants 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;

d. 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;

e. a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the plaintiff's trademarks 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;

f. for costs of the suit

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

II. Civil Suit No.277 of 2019:

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, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, TAMILMATRIMONIAL, KANADAMATRIMONIAL etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants by including them jointly or severally as "Keyword Suggestion Tool", for Search Engine Optimization, Search Engine Marketing, keyword or as adwords in the Internet search or as meta tag 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 the plaintiff's

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

trademarks and domain names TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, TAMILMATRIMONIAL, KANADAMATRIMONIAL etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants, as adwords, for Search Engine Optimization, Search Engine Marketing, keyword Suggestion Tool, as a keyword for the Internet search and /or as meta tags and thereby passing off and enabling others to pass off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

c. the defendants 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;

d. 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;

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

e. a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the plaintiff's trademarks 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;

f. for costs of the suit

III. Civil Suit No.418 of 2019:

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, KERALAMATRIMONY, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, PUNJABIMATRIMONY etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants by including them jointly or severally as "Keyword Suggestion

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

Tool”, for Search Engine Optimization, Search Engine Marketing, keyword or as adwords by bidding for the trade marks in the Internet search or as meta tag 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 the plaintiff's trademarks and domain names KERALAMATRIMONY, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, PUNJABIMATRIMONY etc, a list where of is annexed hereto and marked as Annexure-A and /or its variants, as adwords, for Search Engine Optimization, Search Engine Marketing, keyword Suggestion Tool, as a keyword for the Internet search and /or as meta tags and thereby passing off and enabling others to pass off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

c. the defendants 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;

d. 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;

e. a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the plaintiff's trademarks 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;

f. for costs of the suit

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

IV. Civil Suit No.395 of 2019:

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, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, BENGALIMATRIMONY, GUJARATIMATRIMONY, MARATHIMATRIMONY, PUNJABIMATRIMONY, CHRISTIANMATRIMONY, TAMILMATRIMONIAL, KANNADAMATRIMONIAL, PUJABIMATRIMONIAL, SINDHIMATRIMONIAL etc., a list where of is annexed hereto and marked as Annexure-A and /or its variants by including them jointly or severally as for Search Engine Optimization, Search Engine Marketing/Google Adword bidding, in webpages/website of defendant, APP Title, ASO, off line advertisements keyword or as Adwords in the Internet search, or as meta tag in any other manner whatsoever and in violation of the orders dated 19.10.2012, 02.02.2016 and 04.08.2016 passed by the Hon'ble Supreme Court;

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

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 the plaintiff's trademarks and domain names TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, KERALAMATRIMONY, BENGALIMATRIMONY, GUJARATIMATRIMONY, MARATHIMATRIMONY, PUNJABIMATRIMONY, CHRISTIANMATRIMONY, TAMILMATRIMONIAL, KANNADAMATRIMONIAL, PUJABIMATRIMONIAL, SINDHIMATRIMONIAL etc., a list where of is annexed hereto and marked as Annexure-A and /or its variants for Search Engine Optimization, Search Engine Marketing/Google Adword bidding, in webpages/website of defendant as APP Title, ASO, off line advertisements keyword or as Adwords in the Internet search, or as meta tag and thereby passing off and enabling others to pass off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

c. the defendants 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;

d. 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;

e. a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the plaintiff's trademarks 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;

f. for costs of the suit

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

V. Civil Suit No.327 of 2019:

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, KERALAMATRIMONY, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, TAMILMATRIMONIAL, KANNADAMATRIMONIAL, etc., a list where of is annexed hereto and marked as Annexure-A and /or its variants by including them jointly or severally as for Search Engine Optimization, Search Engine Marketing/Google Adword bidding, in webpages/website of defendant, APP Title, ASO, off line advertisements keyword or as Adwords in the Internet search, or as meta tag in any other manner whatsoever and in violation of the orders dated 19.10.2012, 02.02.2016 and 04.08.2016 passed by the Hon'ble Supreme Court;

b. a permanent injunction restraining the defendant by themselves, their directors, partners, men, servants, agents,

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

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 the plaintiff's trademarks and domain names KERALAMATRIMONY, TAMILMATRIMONY, TELUGUMATRIMONY, KANADAMATRIMONY, TAMILMATRIMONIAL, KANNADAMATRIMONIAL, etc., a list where of is annexed hereto and marked as Annexure-A and /or its variants for Search Engine Optimization, Search Engine Marketing/Google Adword bidding, in webpages/website of defendant as APP Title, ASO, off line advertisements keyword or as Adwords in the Internet search, or as meta tag and thereby passing off and enabling others to pass off the business and services of the defendant as that of the plaintiff or in any other manner whatsoever;

c. the defendants 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;

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

d. 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;

e. a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the plaintiff's trademarks 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;

f. for costs of the suit

2. Pending the above suits, the following applications were taken:

2.a. Application No.5248 of 2019 in C.S.No.395 of 2019 has been filed to order for an appropriate action against the respondent for wilful disobedience of the injunction order, dated 2/7/2019 passed in

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O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

O.A.No.627 of 2019 in C.S.No.395 of 2019, which is subsisting till date.

2.b. Application No.628 of 2019 in C.S.No.395 of 2019 has been filed to grant an interim injunction restraining the respondent to infringe applicant's registered trademarks.

2.c. Application Nos.427 of 2019 in C.S.No. 277 of 2019 has been filed to grant an interim injunction restraining the respondent to use the applicant's trademarks and domain names.

2.d. Application No.6521 of 2019 in C.S.No.418 of 2019 has been filed to substitute service to the respondent by effecting publication in a local newspaper having circulation at Bangalore and also affixing the summons at the Court notice Board and the last known residence in C.S.No.418 of 2019.

2.e. O.A.No.655 of 2019 in C.S.No.418 of 2019 has been filed to grant an interim injunction restraining the respondent to infringe applicant's registered trademarks.

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

2.f. O.A.Nos.1113 and 1114 of 2019 in C.S.No.277 of 2019 have been filed to grant interim injunction restraining the respondent to infringe others to applicant's registered trademarks.

2.g. Application Nos.5099 and 5100 of 2019 of C.S.No.277 of 2019 and Application Nos.5122 and 5123 of 2019 in C.S. No.327 of 2019 have been filed for the willful disobedience of the injunction order, dated 16/4/2019 30/4/2019 passed by this Court in O.A.Nos.426, 427 of 2019 in C.S.No.277 of 2019 and O.A.Nos.530, 531 of 2019 in C.S.No.327 of 2019 respectively.

3. In all the suits the preliminary contention of the plaintiff is that plaintiff is a pioneer in using the Internet as a vehicle/platform for matrimonial alliance especially in India. The plaintiff started Internet business in the year 1997 www.bharatmatrimony.com and the domain name was registered in 1999 for online matrimonial Services. The plaintiff has registered several domain names such as www.keralamatrimony.com, www.tamilmatrimony.com,

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O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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www.telugumatrimony.com, www.bengalimatrimony.com,
www.muslimmatrimony.com, etc., for its regional customers. They
obtained registration for the following markets:

S.No.	Reg No.	Mark	Class
1	1306407	ASSAMES MATRIMONY	16
2	1535126	ASSAMES MATRIMONY	42
3	1335999	BHARAT MATRIMONY	16
4	1548863	BHARAT MATRIMONY	35, 42
5	2007933	BHARAT MATRIMONY	9,16,35 & 45
6	1306408	BENGALI MATRIMONY	16
7	2007942	BENGALI MATRIMONY	9, 16, 35 & 45
8	1306409	GUJARATI MATRIMONY	16
9	2007949	GUJARATI MATRIMONY	9, 16, 35 & 45
10	1306410	HINDI MATRIMONY	16
11	1306411	KANNADA MATRIMONY	16
12	2007947	KANNADA MATRIMONY	9, 16, 35 & 45
13	1306413	KERALA MATRIMONY	16
14	2007935	KERALA MATRIMONY	9, 16, 35 & 45
15	1345784	MATRIMONY STAMP	16
16	1306412	MARATHI MATRIMONY	16
17	1306414	MARWADI MATRIMONY	16
18	2007943	MARWADI MATRIMONY	9, 16, 35 & 45
19	1535128	MUSLIM MATRIMONIAL	42
20	1306415	ORIYA MATRIMONY	16
21	2007946	ORIYA MATRIMONY	9, 16, 35 & 45

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O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

S.No.	Reg No.	Mark	Class
22	1306417	PARSI MATRIMONY	16
23	2007940	PARSI MATRIMONY	9, 16, 35 & 45
24	1306416	PUNJABI MATRIMONY	16
25	1306418	SINDI MATRIMONY	16
26	2007931	SINDI MATRIMONY	9, 16, 35 & 45
27	1306419	TAMIL MATRIMONY	16
28	2007938	TAMIL MATRIMONY	9, 16, 35 & 45
29	1306420	TELUGU MATRIMONY	16
30	2007944	TELUGU MATRIMONY	9, 16, 35 & 45
31	1535127	URDUMATRIMONY	42
32	2007937	URDUMATRIMONY	9,16,35 & 45
33	1548863	BHARATMATRIMONY	35,42

4. The defendant was also involved in similar business of online matrimonial services which is over lapping with the plaintiff's business. It is the case of the plaintiff that use of its well known trademarks as keywords/adwords for the purpose of business promotion and customer solicitation and for Search Engine Optimization (SEO) and Search Engine Marketing (SEM) by the defendant is intentional, malafide and tainted. The conduct of the defendant is nothing but an unfair trade practice and against the standards of business ethics.

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O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

5 . It is the further contention of the applicant that when one searches on the search engine, Google, by inserting the key word "KERALA MATRIMONY", the website of the respondent appears in the search result with the title "KERALA MATRIMONY" and by clicking on the link, it directs the user to the website of the defendant in which the respondent again misleadingly advertises the applicant's trademark "KERALA MATRIMONY" in their webpage so as to completely deceive the Internet users. The above facts show that the respondent has optimised his website with SEO (Search Engine Optimization) by using the registered trademarks of the applicant and is bidding for the plaintiff's registered trademarks to advertise as SEM (Search Engine Marketing), as a tool for its SEO and in its webpages illegally so as to increase the visibility of the respondent's website in search engines to the specific keywords of the applicant. Such use by the respondent also amounts to trademark violation of the applicant. The respondent also opt to use other terms such as kalyan, alliance, marriage, Vivaham, wedding etc., to optimise its website for the search engines and in the adtext for paid advertisements. Hence all the applications have filed for interim injunction.

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

6. The primary contention of the respondent in the counter is that the suit is not maintainable that Google has to be made as a party. The alleged registrations of the applicant do not deserve to remain in the register and is liable to be cancelled. The respondent who is in offering matrimonial services which are specific to language, region, caste based, cannot be forced to give up on words that are generic and are most appropriate to describe their services.

7. Mr. Aravind Pandian learned senior counsel appearing for the applicant / plaintiff submitted that in the earlier round of litigation this court has held that although the plaintiff was entitled to an injunction, they would not interfere with the order of the Learned Single Judge on account of the undertaking given by google at the interlocutory stage that it would not permit the use of any trademarked term in the adwords program. In the appeal challenging the above order by the defendants the Hon'ble Supreme Court was not inclined to interfere with the order of the division bench of this court. It is his contention the use of competitors trademark either explicitly ie., in the domain

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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name or ad text or in the background of as meta tags or key words, causes initial interest confusion by diverting consumer traffic from the website of the legitimate trademark owner. The use of another trader's mark in meta tags and by other background means has been deemed as a violation of the trade mark owner's rights by Indian courts. It is his further contention that infringement can be based on confusion that initial customers interest, even though no actual sale is finally completed as a result of the confusion. It is evident when one searches for the plaintiff's brand such as "Tamil Matrimony", one of the defendants advertisement also show up along with the plaintiff's website. When customer hit a link to one of the defendant's website and notices that similar services are being offered, such a consumer will not go in specific search of the plaintiff's website, especially after having found a competitor's website that offers similar services. Therefore the purpose of using the plaintiff's trademarks are only as "trigger" for the defendants advertisements, which is sought to be camouflaged as descriptive use and intended to act as "springboard" to enable the defendants to illegally divert the users searching for the plaintiff and their trademarks.

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

8. The Learned senior Counsel further submits that the trade mark used in the code as a keyword is invisible to the end-user or customer. Such use, though invisible to the customer, is illegal. Such use is deliberate, and is done in order to increase the hits for the defendants' website. It is his contention the arguments of the defendants are entirely based on self serving presumptions. owing to the extensive use of the subject marks for the last few decades, the subject mark have come to be associated solely with the plaintiff and have granted significant goodwill and reputation of which the defendants are taking undue advantage. His further submission that " if the proprietor is the prior user of the trademark, and if such trademark is applied by a subsequent adapter to similar goods /services such use amounts to passing off and he also submits that particular words even though descriptive, may have acquired technical signification which would give to them in the trade, the character of a trademark. It is his further contention, What in each case or in each trade will produce the effect intended to prohibited, is a matter which must depends upon the circumstances of each case and peculiarities of each trade and the

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O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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“use” of trademark in any particular trade must be perceived in accordance with the specific aspects of that trade. In business such as matrimonial services that are largely dependent on internet platforms, the advertising function is a trade mark of key the use of a trademarks to illegitimately and deliberately divert customers away from the trademark owner’s website amounts to infringement. Further section 29(3) read with section 29(6)(c) and section 29(6)(d) would demonstrate the statutory presumption of confusion due to such illegal advertising tactics resorted to by the defendants herein.

9. The Learned senior Counsel submit that it was recognized that excepting the space in between, the trademarks used by the defendants are identical and would cause confusion in the minds of the public. There is no logical explanation as to why the plaintiff’s marks with a space must be permitted to be used freely by third parties while trademark protection must extend, as the defendants repeatedly claim, only to the mark without the space. Further, in this sense, the use of the trademark with or without a space, for bidding as key words for advertising the website of the defendants, will have an adverse

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impact on the advertising function of the subject marks. The Defendants are usurping the goodwill and reputation earned by the plaintiff's marks and are attempting to dilute the same by widespread and concerted illegal use.

10. The Learned senior counsel further submits that if the defendant adopts an identical/similar mark subsequently, in website there by diverting traffic from the plaintiff's website, such use by the defendant is deemed to be dishonest and malafide. In the presence case, the defendants have failed to establish that their use of the plaintiff's registered trademark in a descriptive sense and the words contained in such trademarks do not have alternatives. There is no evidence of any third-party use of the plaintiff's trademarks except for the purpose of online advertising thereby usurping the goodwill and reputation acquired by the plaintiff and his further contention is when there is a judicial establishment of a proposition of law or fact between the parties to earlier litigation and when the same questions arise in later litigation, the established propositions are treated as conclusive inter se the same parties.

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

11. The Learned senior Counsel further submits that there is no legal basis for this argument and there is no variance in the jurisprudence between the online and offline marks. In the present case, the customer who searches for the plaintiffs mark, when clicking upon the defendants' advertisements would immediately be rerouted to the defendant website, and may lose any interest in availing the plaintiffs service even if he understands that the defendant is not connected with the plaintiff. This this immediacy in the possible confusion and loss of economic opportunity in fact makes this principle rather apt for the present scenario. It is his further contention that the result are "naturally" occurring is wholly incorrect, and results are due to SEM and SEO activities, and any result in the landing page in either ads or organic results is a direct result of deliberate design. It is worthwhile to note that such bidding "commoditize" the plaintiff's trademarks, allowing them to be bought by the defendants to act as contextual triggers for their advertisements. This is also directly contradictory to the defendants' arguments that such use is descriptive, as it exposes the defendants' intension to commoditize the

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O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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plaintiff's trademark in order to divert fleeting customer attention, and gain transaction and his further submission is this practice is in line with the practice of the "springboarding" i.e. using the plaintiff's trademark to divert traffic which would not have come on account of the defendants either using their own marks or other terms. Such unnatural advantages is done to the prejudice of the plaintiff. Plaintiff's trademark have been in use for in close to 2 decades. Even is descriptive, the trademark have indisputably acquired secondary significance. The use of the plaintiff's trademark to act as contextual triggers for the purpose of advertisement amounts to nothing but infringement.

12. In support of his contention the learned Senior Counsel for the Plaintiffs relied upon the following Judgments:

1. *Kapil wadhwa & ors Vs. Samsung Electronics Co. ltd* **[2012 (194) DLT 23]**
2. *Christian Louboutin SAS Vs. Nakul Bajaj* **[2018 (253) DLT728]**
3. *SNJ Distilleries Ltd. Vs. Imperial Spirits P. Ltd.* **[2010 (4) LW 304]**

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

4. Reddaway Vs. Bamham [1896 RPC 218]

5. Ishi Khosla Vs. Anil Agareal & Anr. [2007 (34) PTC 370 (Del)]

6. Info Edge (India) Pvt. Ltd. Vs. Shailesh Gupta & Anr. [ILR 2002 (I) DEL 220]

7. Info Edge (India) Ltd. Vs. Sumanta Bhattacharya [(2017) 240 DLT 737]

8. Regina Vs. Hogan [1974 All ER 142]

9. Inovation Ventures, LLC Vs. N.V.E., Inc No.10-2353 (6th Cir.2012) [763 F. 3d 524]

13. Mr.K.Harishankar, learned Counsel appearing for the defendant/respondent in C.S.No.277 of 2019 and Mr.Sathish Parasaran, learned Senior Counsel appearing for the Respondent/Defendant in O.A.No.530 and 531 of 2019 in C.S.No.327 of 2019 and Mr.R.Satish Kumar, learned counsel for the respondent/defendant in O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018 submitted that the plaintiff has miserably failed to explain why Google Inc., was not added as a party to the present suit particularly when they were a party to the earlier round of litigation, this Hon'ble Court refused to grant interim injunction in favour of the plaintiff against the other

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

defendants. The plaintiff by filing this suit is re-litigating and attempting to obtain interim injunction which were earlier refused by this Hon'ble court and also confirmed by the Hon'ble Supreme Court. It is his further contention that in fact, the plaintiff has also filed screenshots along with the plaint filed by it, where certain terms entered into the google search result yield result pertaining to the respondents website as a sponsored link. However, the Respondent reiterates that it has not bid for any adword consisting of the term "KERALAMATRIMONI" (Without space). While so, the Respondent's cannot be held liable for the plaintiff's registered trademark. He also states that the plaintiff has failed to note that the entity with the best information, is Google Inc. Had Google Inc. be made party to the present proceedings, it would have been made amply clear that there has been no bid made by the defendants of the plaintiff's registered trademark.

14. The learned senior counsel Mr.Sathish Parasaran further submits that the plaintiff approached this court with unclean hands. The plaintiffs have miserably failed to note that the earlier litigation resulted in the plaintiff being denied injunction by both the Single

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

Judge and the Division Bench. It is his further contention the Defendant was never a party to the earlier proceedings, and in any event is not bound by the decisions therein and he is not liable for the either infringement or for passing off in so far as any person using as internet search engine is definitely aware of how a search engine works and in any event such a person would not be deceived into believing that the respondents website is associated with that of the applicant's. It is further submitted that the assertion is demonstrably false, in so far as the defendant has submitted on affidavit that it has not in any manner of bid for the plaintiff's registered trademark and that in any event it is entitle to a bid for the words "Bharat Matrimony" (with space) or "KERALA Matrimony" (with space) in so far as they are nothing more than a combination of two generic words and the plaintiff does not have any right over the same. It is his further contention, in the typeset of Documents filed along with the plaint, the plaintiffs have not filed any document to show that the use of the words "KERALAMATRIMONY" (with/without space) has thrown up any results of the defendant. That have been only at the time of oral submission, through a document that has not been filed as evidence. Therefore the

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O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

plaintiff has misrepresented the case before this Hon'ble Court. Therefore The Learned Senior Counsel submitted that the present application is liable to be dismissed on the above said grounds.

15. It is his further contention that admittedly the matrimonial services offered by the plaintiff and the defendant are aimed to cater to the needs of millions of Indians across the world belonging to/ originating from the various regions of India. Hence the use of the words kerala together with the word matrimony on a search engine by internet users would definitely mean that such user is looking for matrimonial subject / service for Keralites or atleast those speaking Malayalam and the respondent which caters to the matrimonial requirements of keralites and Malayalis is entitles to listed in the search so conducted. It is further submitted that the use of the keywords "Kerala Matrimony" etc. by the defendant is to indicate the nature and purpose of the service offered, and hence does not amount to infringement of the plaintiffs trademark as provided for under section 30(2) (a) of the Act. Further, on account of the word matrimony as well as Bharat/Kerala/etc. being of non-distinctive

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

character as well as common to trade and genuine description of the services offered, the registration obtained by the plaintiff will not entitle it the exclusive right to use the same in view of Sec.17(2)(b) of the act. Therefore, the entire case of the plaintiff must stand or fall on the strength of its claim in relation to _ KERALA MATRIMONY_ ETC. that is, that defendant is not entitled to use the word kerala etc. next to matrimony even with a space in between. So it is his contention, for above reasons that the plaintiff is not entitled to an injunction.

16. The Learned senior Counsel further contended that the plaintiff marks are prima facie descriptive /generic and the plaintiff's trademark are a non- unique combination of two commonplace words, first being the names of popular castes/ communities / languages / geographical places, i.e. TAMIL, TELUGU, BENGALI, GUJARATI etc. and the second being a dictionary word, i.e. MATRIMONY / MATRIMONIAL , which are synonymous to marriage or a state of being married or relating to marriage. It is submitted that combination of generic /common words is prohibited. The Honourable Delhi High Court in **Lownebrau AG and another vs. Jagpin Breweries Ltd.,**

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

[(2009) 157 DLT 791] has held that a respondent in an injunction application is entitled to challenge the prima facie validity of trademark by demonstrating that it is purely descriptive. If the respondent raises the plea, and the court is of the view that there is force in the contention, an injunction cannot be granted because the mark is prima facie invalid. Therefore it is his contention that plaintiff's alleged trademark being non-unique and inherently non-distinctive combination of two common place words the Hon'ble court is well within its power to test the prima facie validity of the plaintiff trademarks for the purpose of dismissing the application for interim injunction.

17. In support of his contention he relied upon the following Judgments:

1. *Lowenbrau AG & Anr. Vs. Jagapin Breweries Ltd. [(2009) 257 DLT 791]*

2. *Stokely Van Camp, Inc Vs. Heniz India Pvt. Ltd. [(2010) 171 DLT 16]*

3. *Marico Ltd. Vs. Agro Tech Foods Ltd*

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

[(2010) 174 DLT279(DB)]

**4. *Lubin Ltd. Vs. Johnson and Johnson* [2015
(1) Mh.L.J. 501]**

18. Mr.Sathish Parasaran learned Senior Counsel also appearing for the Respondent/Defendant in O.A.Nos.627 and 628 of 2019 in C.S.No.395 of 2019 submitted that in the earlier round of litigation this court refused to grant interim injunction in favour of the plaintiff and against the defendant. The Hon'ble division bench also considered the undertaking given by Google India Pvt. Ltd that plaintiff registered trademarks will be protected by ensuring that others do not use them in their "as words". His further submitted that defendant has never violated the above said orders passed by the Supreme Court. In fact the allegedly infringing use complained off by the plaintiff in the present suit was available on the defendant's website www.shaadi.com at least since 2013 as apparent from the web archive of the defendants website. Moreover the expressions PUNJABI

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

MATRIMONIALS, TAMIL MATRIMONIALS, TELUGU MATRIMONIALS etc. were used by the Defendant at least since 2003 and the same were not even challenged by the plaintiff in the earlier suit. Therefore, there was no occasion for the plaintiff to have filed the present suit belatedly and obtain urgent ad-interim/ interim injunction against the defendant. No equity whatsoever can be claimed by the plaintiff in this regard.

19. It is his further submission that free competition is a general rule, whereas exclusive right is an exception. Advertising for a brick and mortar business is non contextual or targeted advertising. Online platform being contextual a website has to necessarily use relevant keywords to remain visible and attract existing as well as new customers. These keywords necessarily include the name of the product sold or the kind of services offered. He further submitted that nobody can claim immunity from free competition, whether by virtue of trademark law otherwise, and because of trademark as keywords from search engines does not constitute trademark use. The plaintiff's claim is effectively a request to the court to restrain competitors from

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

advertising side by side its service, regardless of the content of the advertisement, and thus, even if the advertisement does not use the registered trademark or its components, jointly or severally. For the reasons, it is submitted that the mere display of a competitor's advertisement next to registered goods or services cannot constitute users or infringement. Therefore, the entire case of the plaintiff must stand or fall on the strength of its claim in relation to – Gujarati Matrimony or Tamil Matrimony etc. – that is, that defendant is not entitled to use the words Gujarati/Tamil etc. next to matrimony even with a space in between. It is his further submits that the undertaking provided by Google India Pvt. Ltd was only for using the keyword WITHOUT space, i.e. the registered marks of the plaintiff. There was no undertaking in violation of the same.

20. The learned senior counsel further submitted that the plaintiff's mark are prima facie descriptive /generic and these marks of the plaintiff are inherently devoid of any distinctive character because they describe the class of goods or services, rather than plaintiff's service and the plaintiffs marks do not meet answer the question test.

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

Therefore the plaintiff's marks are generic/descriptive and cannot be monopolized by the plaintiff to the exclusion of others. His further submission that the defendant used the word Gujarat Matrimony (with a space) or Tamil Matrimony etc. not to answer the question _ " who are you" but to answer the question _ "what are you". In other words, defendant by using those words, does not represent that this is its name, but rather that this is what its website does. Such non trademark use of a registered trademark is protected both under section 29 and under section 30(2)(a). Whether this is used in the title of advertisement or in the body or otherwise in any manner whatsoever is not important, because in all these cases it is descriptive. His further submission nobody can have any monopoly over words like _ Tamil and Matrimony, whether individually or in combination. And his contention plaintiff's trademarks are a non-unique combination of two commonplace words, first being the names of popular castes /communities / languages / geographical places, i.e. TAMIL, TELUGU, BENGALI, GUJARATI, KERALA etc. and the second being dictionary word, i.e. 'MATRIMONY / MATRIMONIAL, which are synonyms to marriage are state of being married or relating to

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

marriage. It is submitted that combination of generic /common words prohibited. Hence in view of the above the applications filed by the Applicant/Plaintiff is liable to be dismissed with cost.

21. In support of his contention he relied upon the following Judgments:

1. *McCain International Ltd. Vs. Country Fair Foods Ltd.* [1981 RPC 69]

2. *British Vacuum Cleaner Company, Ltd. Vs. New Vacuum Cleaner Company, Ltd.* [1907 2 ch. 312]

3. *Jeryl lynn Trademark* [1999 FSR 491]

4. *In re Joseph crosfields & Sons Ltd.* [1910 1 Ch.130]

5. *Society of Motor Manufacturer and traders Vs. Motor Manufacturer and traders Mutual Insurance* [1925 ch. 675]

22. It is relevant to note that the earlier round of litigation, the plaintiff herein has filed a suit. In the above suits, similar applications

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
O.A.No.628 of 2019 and A.No.5248 of 2019 in C.S.No.395 of 2019

were taken out by the plaintiff. In those applications, the main grievance of the plaintiff is that the respondent who have matrimonial platforms the online Internet in the advertisement service in the Search Engine Google by adopting advertise text which are exactly it is similar to the registered trademark of the plaintiff.

23. The learned Single Judge of this Court after elaborate discussion, has not granted injunction. The above judgment has been reported in **CONSIM INFO PVT LTD Vs. GOOGLE INDIA PVT LTD & FOUR OTHERS [2010 (6) CTC 813]**. The same issue raised in the earlier litigation is also almost similar in the instant cases. In paragraph No.146, the learned Single Judge, at paragraph 146 has observed and held that the words "Tamil", "Muslim", etc., are descriptive items, indicating a race, language, ethnic group or a community and no one is entitled to monopolise the use of these words. Similarly, the word 'matrimony' is descriptive of the state of marriage of a person.

24. In paragraph 147, learned Single Judge has held that

O.A.Nos.1113, 1114 of 2018 in C.S.No.802 of 2018;
O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
O.A.Nos.655, 656 of 2019, A.No.6521 of 2019 in C.S.No.418 of 2019;
O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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plaintiff is not aggrieved per se (and cannot be aggrieved) by the use of these words by the defendants independently and individually. The only grievance of the plaintiff is that when the defendants use the very same combination of words with or without a space in between, it causes confusion in the minds of the consumers.

25. In paragraph 148, learned Single Judge has recorded that the question as to whether the registered trade marks of the plaintiff have acquired secondary meaning or not, has to be tested only on the strength of the evidence let in.

26. Ultimately, the learned Single Judge refused to grant any injunction against which appeal was preferred before the Division Bench of this Court. The Division Bench has held that even assuming that the choice of the words "Tamil", "Matrimony", etc., in the keyword suggestion tool need not necessarily have happened deliberately, but the combination of two words with a space in between have happened only deliberately. This aspect can also only be examined at the time of trial by examination of witnesses and ultimately orders of the learned

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Single Judge is confirmed.

27. SLP was filed against the abovesaid order. The Hon'ble Supreme Court did not interfere with the order passed by the Courts below. However, the Hon'ble Supreme Court continued with the interim orders, restraining the respondents from displaying their names in the website of the petitioner therein in the "Adwords" programme of the Google. The previous suit is still pending for trial and in the process of examination. Now, the present suits are filed wherein the google is not made as defendant. The entire issue raised in this suit based on the programme of the google.

28. It is well settled that merely because the mark is registered, injunction will not automatically follow, when validity of registration is questioned in the written statement/pleadings. While deciding whether injunction should be granted or not, a tentative view is required to be taken on the question of validity of registration and principles for grant of injunction applied. However, final decision on validity of registration is to be taken by the authorities and not by the

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civil Court. Registration is *prima facie* regarded as valid but mere registration alone is not conclusive and is not binding on the Civil Court when the application for injunction is considered and decided. Onus, however, will be on the party which questions validity or registration to show that the registration is *prima facie* and tentatively bad or invalid.

29. Though the Plaintiff has registered the trademark in his name viz., "Tamil Matrimony" matrimony is descriptive word. Similarly, the word in Kannada, Malayalam and Telugu is also descriptive. In fact, all major Indian languages have registered as trade mark. There is no synonym for such word. For example the word Tamil is indicating language. Similarly, the word Muslim indicating religion and Kanada and Telugu also indicate the respective languages. The word matrimony is only relate to marriage in descriptive nature. When the words are descriptive in nature, merely because the registration is obtained by the plaintiff the same cannot be a ground to grant an order of

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injunction. The question involved in this lis is related to "Adwords" programme of the Google. Admittedly, Google has not been made a party in this suit. The highest bidder is given the top slot in the list of sponsored links. An advertiser is entitled to any number of keywords for advertising his website on the sponsored links, but the slot allotted to him in the list of sponsored links, depends upon the price offered by him for the keyword in comparison to the price offered by others for the very same keyword. Whether the use of such keywords which are generic name amounts to infringement or not, cannot be decided at this stage, since such similar issue is already pending for trial in the previous suit instituted by the Plaintiff.

30. It is the main contention of the of the Plaintiff that the Defendant has deliberately used the plaintiff's trademarks as keywords and adwords on the search engines. It is the contention that one searches on the search engine, Google, by

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inserting the keyword "Tamil matrimony", the website of the defendant appears in the search result with the title "Tamil matrimony" and by clicking on the link, it directs the user to the website of the defendant in which the defendant again misleadingly advertises the plaintiff's trademark "Tamil matrimony" in their webpage so as to completely deceive the internet users. Therefore, the defendant has optimised their website with SEO (Search Engine Optimization) by using the registered trademarks of the Plaintiff and is bidding for the Plaintiff's registered trademarks to advertise as SEM (Search Engine Marketing) as a tool for its SEO and in its webpages illegally so as to increase the visibility of the defendant's website in search engines to the specific keywords of the plaintiff. Such use by the defendant also amounts to trademark violation of the plaintiff. The defendants also optimized their website for ranking high and to increase visibility in the search results and is committing infringement of the plaintiff's registered trademark.

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O.A.No.427 of 2019, A.Nos.5099, 5100 of 2019 in C.S.No.277 of 2019;
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Hence it is their contention that online user would easily be misled to believe that the website of the defendant has been sponsored or is otherwise associated with the plaintiff's websites. Moreover, in order to maintain its visibility on the organic search result, the plaintiff is forced to purchase or bid for its own trademarks as keywords for a higher price than necessary. The selection of keywords/adwords by the defendant is not accidental or coincidental. To reap the benefit of plaintiff's goodwill and reputation, the defendant has intentionally bid in Search Engine Marketing (SEM) for the Plaintiff's well-known trademarks and its variants for increasing its visibility on the organic search results.

31. It is the contention of the all the defendants that the trademarks registration obtained by the plaintiff is highly generic expressions, it would prevent any person from marketing or promoting their website at all and thereby illegally retain a monopoly which is against the principles of trademark law. The

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user or the internet cannot be considered ignorant to the domain names and the websites and would go to the same according to the preferences and needs. The very purpose of search engines like google is to provide for links to the website of multiple owners and the plaintiff cannot find anything illegal in the same. The reason why Search Engine Optimisation are sold as adwords or keywords are not on account of their trademark status but on account their generic nature. The words Tamil, Telugu, Kerala, and Kannada etc., cannot be interchanged or any other words used in their place. Similarly the word MATRIMONY cannot be substituted as it is most common and competent word for looking for alliances for marriages. Hence, the plaintiff cannot be allowed to illegally retain the said words as trademarks and prevent others genuinely and bonafide using the same.

32. The Plaintiff seeks to virtually eliminate the said words from the purview of common usage in internet with respect to

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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searching matrimonial alliances which is not a mere unfair trade practice but is clearly against all canons of ethics and morality. During the course of the argument it is admitted by the Plaintiff's counsel that plaintiff cannot and does not claim any monopoly over the word matrimony. It is also relevant to note that in the reply statement to the counter affidavit the Plaintiff themselves have filed that they are not seeking injunction to restrain the respondent/defendant from using any of the words `Tamil`, `Malayalam`, `Telugu`, `Panjabi`, `Assamese`, etc., in the combination with any word other than 'matrimony'. It is also relevant to note that the word 'matrimony' the same cannot be substituted either as it is the most common and competent word for looking for alliances for marriages. Hence it is the main contention of the Defendant that the plaintiff sought to restrain the defendant from using any of the words Tamil, `Malayalam`, `Telugu`, `Panjabi`, `Assamese`, etc. in combination with the particular word 'matrimony'. It is relevant to note that the word

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'matrimony' cannot be substituted either as it is the most common and competent word for looking for alliances for marriages. It is also to note that the keywords and adwords are available in the market. The seller of the Adwords or Keywords are not before us, though he was made as a party in the previous suit. Merely the trademark was registered said registration alone itself cannot be a ground to grant injunction. Though Section 28 of the Trademark Act give exclusive right to the use of the registered trademark in relation to goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trademark. It is seen that Section 28 begins with "subject to other provisions of the Act" which includes the power to file a rectification etc.,and to plead invalidity of the trademark.

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33. In this regard, it is relevant to refer the judgment of the Full Bench of Bombay High Court in ***Lupin Limited vs. Johnson***

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& Johnson [2015 (61) PTC 1]:

"60. The question posed for consideration in the reference:

"Whether the Court can go into the question of the validity of the registration of the plaintiff's trade mark at an interlocutory stage when the defendant takes up the defence of invalidity of the registration of the plaintiff's trade mark in an infringement suit?" is answered thus:

In cases where the registration of trade mark is ex facie illegal, fraudulent or shocks the conscience of the Court, the Court is not powerless to refuse to grant an injunction, but for establishing these grounds, a very high threshold of prima facie proof is required. It is, therefore, open to the Court to go into the question of validity of registration of plaintiff's trade mark for this limited purpose, to arrive at a prima facie finding."

34. It is also relevant to refer the judgment of the Delhi High Court in **Marico Industries vs. Agro Tech Foods Ltd. [2010 (43) PTC 39]**

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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"15. CONCLUSIONS: On a consideration of submissions and the judgments:

(i) The court can at an interlocutory stage take a prima facie view as to the validity of a registered trade mark. This view can be taken based on averments made in the written statement/ pleadings. [Lowenbrau AG and Anr. v. Jagpin Breweries Ltd and Anr. MIPR 2009 (1) 356]. The pleadings in this regard, as in every other case, has to be read "meaningfully" (see Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and Ors. MANU/SC/1970/2007 : (2007) 4 SCC 343)

(ii) Some marks are inherently incapable of distinctiveness. [Asian Paints Ltd v. Home Solutions Retail (India) Ltd. MANU/MH/0699/2007 : 2007 (35) PTC 697 (Bom)]

(iii) The rights under Section 28 are subject to other provisions of the Trade mark Act. Also the registered proprietor or the permitted user can exercise his rights if the registered mark 'is valid'.

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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(iv) *A descriptive mark can be registered provided it has acquired secondary meaning [Godfrey Phillips India Ltd v. Girnar Food & Beverages (P) Ltd. MANU/SC/0541/2004 : 2004 (5) SCC 257]*

(v) *If a descriptive mark is one, which is, essentially a combination of common English words the user of the marks has to bear the risk of, some amount of confusion. No monopoly can be claimed by the user of the mark. [Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. 2001 PTC 300 (SC) & JJ.R. Kapoor v. Micronix India 1994 Supp. (3) SCC 215;*

(vi) *The mark can be impugned both at the stage of registration and post registration. See provisions of Section 9(l)(a) to (c) of the Trade Marks Act for challenge at time of registration and Section 30 and 35 for challenge after registration.*

(vii) *If the registered mark and the rival mark are not identical; in other words the two marks are similar then the same test as in the case of passing off*

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is applicable; which is, is there a likelihood of deception or cause for confusion. [Ruston and Hornby Ltd v. Zamindara Engineering Co. MANU/SC/0304/1969 : AIR 1970 SC 1649.

35. When the registration of Trademark *ex facie* illegal or shocks the consensus of the court, the courts are not powerless to refuse the injunction. Therefore from the above judgments the Court also at the time of interim relief can go into the question of allowing the registration of the plaintiff trademark for the limited purpose, to arrive at *prima facie* finding. Admittedly the word in Tamil, Kanada, Assam, Kerala and Telugu for generic nature. In fact it relate to a particular language. Similarly the word matrimony is also dictionary word and it is competent word for looking for alliances for marriage. When the advertisement was made through the virtual word in the internet the adwords / keywords sold by the Google, any competitor can enter internet with keyword. It is also relevant to note that the

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plaintiff themselves though being a registered trademark paid for advertisement to the 'Google' they have also purchased keywords. For search of matrimony arise only those generic words normally used by anyone. Therefore when the words also generic they have no synonym for that word except using those words people have no choice to find out any results in respect of the search made related to marriage alliance. Such being the position the mere registration of trademark of the generic words, in my view, will not entail the plaintiff to get an order of injunction.

36. The documents filed in the typed set from page Nos.161 to 182, when carefully perused, the registered trademark of the plaintiff namely Keralamatrimony is used in the search engine, only Keralamatrimony will appear first and others below their link. It is not in dispute that the plaintiff and the defendants are in same services. Once, they are paid for their advertisement, the advertisements were seen with the blue box containing the prefix 'AD'. The ranking of paid advertisements is based on the bidding which has to be paid for

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specific key words. The plaintiff is also paying for advertisements. The advertisements or key words of the google even display the plaintiff's mark. Only if the plaintiff has paid for such key words, the name will appear in the links. As could be seen from the records that even a mere use of the word matrimony in isolation the same will lead to respective links and placed according to their payments. Even both Tamil matrimony used with a space, the parties who are paid for advertisements, their links also will be shown in the page.

37. The Google which is operating the entire programme in their search engine is not made a party in the suit. The Google having given an undertaking before this Court in an earlier occasion that the plaintiff's registered trade mark would be protected by ensuring that others do not use them in their 'AdWords'. Whether or not, those policies were implemented by the google, there is no evidence. Further, Google has not been arrayed as a party before this Court. Unless the Google is made a party and policy is implemented by them, as long as sufficient permission is granted to all the competitors, plaintiff cannot seek injunction merely based on their registration. The

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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word Tamil and matrimony are descriptive words and there is no synonyms for the words Tamil matrimony. Matrimony is a common word found in the dictionary. Both the words are descriptive in nature. The trademark of the plaintiff as Tamil matrimony, Kanada Matrimony, etc. The documents filed before this Court indicate that if the word matrimony alone is used, different kind of links will appear in their ranking as per their paid amount. As long as Google is not made a party and people have no other choice of advertisements except through search engine, they cannot be prevented until the Google has implemented its policy in selling the registered trademark as Adwords. The plaintiff has placed much emphasis on the interim Order of the Apex Court stating that some of the defendants prevented from using Adwords programme of the Google. It is relevant to note that even if the word matrimony is used, the page will show according to the rates paid for the advertisement. Therefore, only when the Google is made a party in the suit and Google come before this Court, it can be ascertained how the entire programme has been made in the search engine and without the Google as a party, this Court cannot make roving enquiry.

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38. It is also to be noted that during the course of the hearing, it was admitted by the learned Senior Counsel Mr.Arvind Pandian that the plaintiff cannot and does not claim monopoly over the word matrimony. It is to be noted that the document filed by the plaintiff particularly the registration certificates, clearly indicate that the description of the goods/services registered also mentioned word 'matrimony'. In the reply to the counter affidavit, the plaintiff himself admitted that it reiterated and clarified that the applicant is not seeking monopoly on making use of the individual word, Tamil, Malayalam, Telugu, Punjabi, Assami, matrimony etc. independently. The applicant is not even seeking injunction to restrain any of the words Tamil, Telugu, Malayalam, Assame, etc. in combination with any other word other than matrimony. The injunction is sought to prevent the respondent from using the words Tamil, Telugu, Malayalam, Punjabi, Assami etc. in combination with the particular word matrimony. The documents filed by the plaintiff in typed set from page Nos.157 to 181 in C.S.No.802 of 2017 indicate that search result will show Tamil matrimony and matrimony with space, the above search shows and Tamil matrimony, which does not have the same

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combination of words. Similarly in page Nos.157 to 163, when Malayalam.com is searched, the results show the defendant site showing Tamil matrimony or Telugu matrimony [with space for matrimony]. Therefore, the contention of the plaintiff that only when their trademark has been used and the defendant link shown in the website cannot be countenanced. Even for using any word, Tamil or Kanada etc. with matrimony. Therefore, when the competitors have no other choice except advertising their business in the virtual word, unless the Google which sells key words for advertisers, is added as a party, injunction cannot be Ordered against competitors who are legitimately using only the available marketing methods at present.

39. The remedy sought for could be granted and effectively enforced only if Google is made a party to the present suit. The Plaintiff in the guise of claiming Injunction against infringement is trying to monopolize the Entire Online Matrimony business market which is against the provisions of the Constitution of India and Competition Act 2002. Plaintiff can claim ownership against rem only for the Trademarks. Plaintiff having itself used the variants of the TM

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Jointly and severally as keywords cannot restrain the Defendant from using them as Keywords. Since, it cannot claim exclusive use of such keywords. Google using various algorithms, find various keywords that are largely used keywords and then put those words for binding in its Ad Word programme. The Defendant left with limited choice of words had to bid for those keywords provided by Google. Some of the defendants have been using the words "KERALA & MATRIMONY" separately as the said keywords have in no way infringed the Registered trademarks of the Plaintiff.

40. Considering the above aspects, when the trade marks of the plaintiff are descriptive in nature and free competition is a general rule, whereas exclusive right is an exception, online platform being contextual, a website has to necessarily use relevant keywords to remain visible and attract existing as well as new customers and the keywords were already auctioned by the Google and anyone can participate in the bid. Without making the Google as a party, injunction is granted in favour of the free competitors to bid the keywords, which amounts to restrain the trade in its entirety. Unless and until the Google is made as a party

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O.A.Nos.530, 531 of 2019, A.Nos.5122, 5123 of 2019 in C.S.No.327 of 2019; and
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and the policy is implemented to protect the registered trade mark of the parties, injunction would certainly lead to restraining the trade. Therefore, considering all these aspects, this Court finds that a *prima facie* case is not made out by the plaintiff and balance of convenience is also not in favour of the plaintiff. In fact, if injunction is continued to operate, it will lead to irreparable loss only to the defendants. Therefore, injunction applications filed by the plaintiff in all the suits are dismissed. In view of the same, all connected applications filed for contempt and other reliefs are also closed.

20.12.2019

Index:Yes/No
Internet:Yes/No
vum/mvs/ggs/vrc

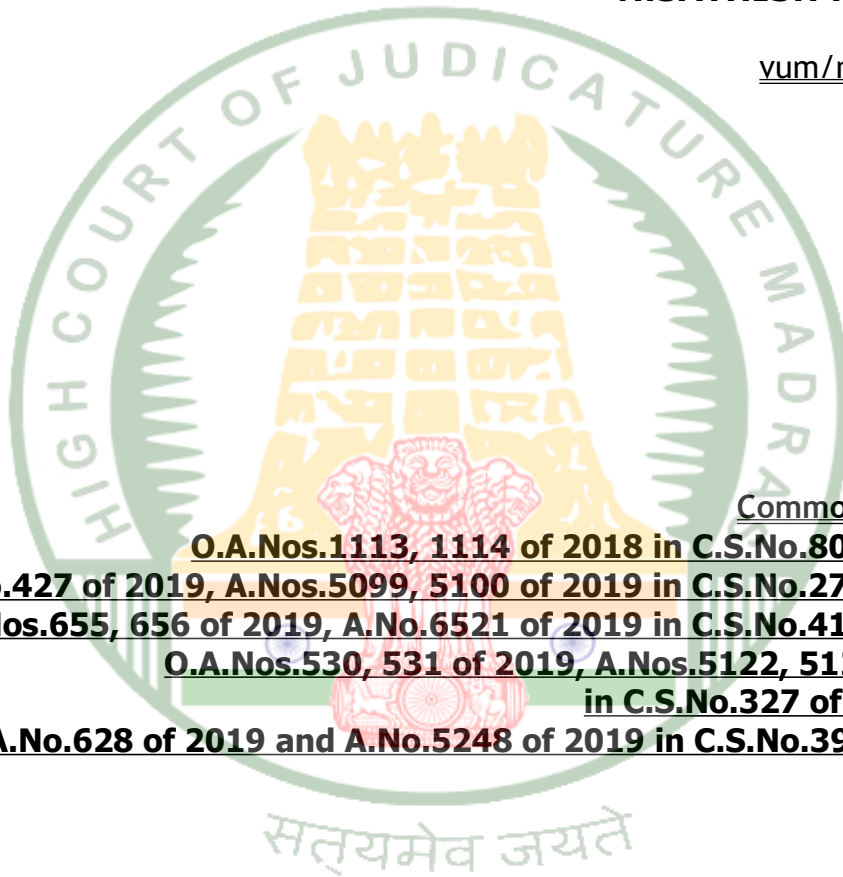
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