

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.837 of 2016
and
O.A.Nos.986 to 988 of 2016

M/s.Hatsun Agro Product Ltd.,
having registered office at
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 97
and also carrying on its business at
Old No.AD-83, New No.AD13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai – 40.

... Plaintiff

Vs

M/s.Aruna Ice Company,
No.25, Kodeeswaran Nagar Annexe,
Kothapakkam, Cuddalore - 2.

... Defendant

Plaint filed under Order VII Rule 1 C.P.C. R/w Order IV Rule 1 of O.S. Rules and Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999.

For Plaintiff : Mr.A.R.Vishwaram

For Defendant : Mr.Balaji, Party in person

JUDGMENT

The suit has been filed for the following reliefs:

(a)for permanent injunction restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the plaintiff's registered trade mark ARUN as described in the schedule hereunder by using the offending trade mark ARUNA or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trade mark ARUN;

(b)for permanent injunction restraining the defendant by itself, its servants or agents or anyone claiming through it from in any manner passing off its products at that of the plaintiff's by using the offending trade mark ARUNA or any other trade mark, which is similar or deceptively similar to that of the plaintiff's trademark ARUN either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;

(c)granting permanent injunction restraining the defendant by themselves, its servants or agents or anyone claiming through them from in any manner infringing the plaintiff's copyright in the artistic work over the trademark label ARUN by using the offending label as shown in Annexure or any other label or labels which are

in any way a reproduction of the plaintiff's copyright label;

(d)directing the defendant to surrender to the plaintiff entire goods with the labels, packaging materials, stock of unused labels together with the blocks and dyes, name boards, sign boards, stationery materials etc., containing the impugned mark ARUNA for destruction;

(e)directing the defendant to render true and faithful account of the profits earned by it using the offending trademark ARUNA and pay such profits to the plaintiff as damages;

(f)directing the defendant to pay to the plaintiff the cost of the suit.

2.When the matter is taken up for hearing, a memorandum of settlement dated 23.11.2016 duly signed by the parties and attested by the learned counsel for the plaintiff has been filed.

3.Learned counsel for the plaintiff as well as the defendant, who appeared as party-in-person submits that the suit may be decreed in terms of the memorandum of settlement dated 23.11.2016. The memorandum of settlement reads as under:

"1.The defendant is a sole proprietorship concern represented by its proprietor Mr.Balaji, S/o.Kaliyamoorthy, aged about 28 years, residing at Kodeswaran Nagar Extension, Koothapakam, Thirupadiripuliyur, Cuddalore, Tamil Nadu – 607 002.

2.The defendant adopted the trademark ARUNA without the knowledge of the rights of the plaintiff in the trademark ARUN.

3.The defendant agrees not to use the trademark ARUNA or any other trademark which may be similar to the plaintiff's trademark ARUN.

4.The defendant agrees and consents for passing decree in terms of prayer a, b, c and d of paragraph 51 of the plaint and the suit may be decreed accordingly.

5.The defendant undertakes to handover all packets with the offending trademark after removing the ice cream and declares that there are no other stock.

6.The defendant declares that there is no stock with the trademark ARUNA.

7.The plaintiff gives up the other prayers in paragraph 3 and f of paragraph 51 of the plaint.

8.The suit may be decreed in terms of the memorandum of compromise.

9.The contents of the compromise were read over and explained to the proprietor of the defendant, namely, Mr.Balaji, in Tamil and the present compromise has been entered voluntarily without any coercion or compulsion by any party.

4.Accordingly, the suit stands decreed in terms of the memorandum of settlement dated 23.11.2016 and the said memorandum of settlement shall form part of the decree. No costs. Consequently, connected applications are closed.

25.11.2016

Index:Yes/No
mmi

M.M.SUNDRESH,J

mmi

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

C.S.No.837 of 2016

25.11.2016

<http://www.judis.nic.in>