

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.977 of 2017

M/s.Kaleesuware Refinery Private Limited,
Represented by its Director Mr.K.Ashok Kumar,
No.53, Rajasekaran Street,
Opp. Kalyani Hospital, RadhakrishnanSalai,
Mylapore, Chennai - 600 004. .. Plaintiff

Vs.

M/s.Sri Karthikeya Traders
Represented by its Proprietors
1/66, Main Road, Kariyagoundanoor,
Annur, Coimbatore District - 641 653. .. Defendants

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules and Sections 134 and 135 of the Trademarks Act, 1999 r/w Sections 61 & 62 of the Copyright Act, 1957, r/w Section 22 of the Designs Act, 2000 praying to

i) For a permanent injunction to restrain the defendant, their men, agents, associates and/or assignees or any person claiming rights from them from infringing the plaintiff's reputed and well known registered Trade Mark "Gold Winner" registered vide Trade Mark No.605323 dated 27.08.1993 for Sunflower oil and Refined Sunflower oil in class 29 of the IV schedule to the Trade Marks Rules 1999 by using the offending Trade Mark "Gold King" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant.

ii) For a permanent injunction restraining the defendant, its men, agents, assignee and/or associates or any person claiming rights from them from using the offending pouch/packing material bearing the offending words "Gold King" or any other mark or word and color scheme and get up deceptively similar to that of the plaintiff packing material/pouch used for

their refined edible sunflower oil with distinct color scheme, get up with their reputed and well known trade mark "Gold Winner" for refined sunflower oil and other oil registered Trade Mark No.605323 dated 27.08.1993.

iii) Permanent injunction restraining the defendant from violating the plaintiff's copyright in the artistic work used in the plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing its reputed and well known registered trademarks "Gold Winner" by substituting the trademark "Gold Winner" with the offending words "Gold King" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material/pouch bearing trade mark "Gold Winner".

iv) for a permanent injunction to restrain the defendant, its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product as that of the plaintiff's "Gold Winner" edible refined sunflower oil by using the offending words "Gold King" or any other words or mark and offending packing Material and pouch deceptively similar to the plaintiff's trade mark "Gold Winner" and Trade dress for "Gold winner".

v) For preliminary decree directing the Defendant to render true account of profits made by the Defendant by using the aforesaid offending label of "Gold King"/

vi) directing the Defendant, its men, agents, assignees, dealers and/or retailers, distributor, to surrender to the plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter heads, office stationary and all other material containing/bearing offending mark/lable "Gold King" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well-known trademark "Gold Winner" label for destruction by an order of this Court

vii) for erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the Defendant with the offending mark/lables and pouches deceptively similar to the plaintiff's "Gold Winner" refined sunflower oil;

viii) to pay for the costs of the suit.

ix) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.S.R.Sankareshwaran

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Plaintiff is a Private Limited Company. On behalf of the plaintiff, Mr.S.R.Sankareswaran, counsel on record is before this Commercial Division. Mr.A.Saravanan, Manager-Legal of the plaintiff company, who has been duly authorised by a Board Resolution to represent the company (Board Resolution dated 03.11.2017) is before this Commercial Division along with a certified copy of the Board Resolution.

2. With regard to the defendant i.e., Sri Karthikeya Traders, Mr.R.Sathish Kumar, learned counsel on record is before this Commercial Division. I am informed that Sri Karthikeya Traders is a sole Proprietary concern and Ms.Sharmila Rajendran, sole Proprietrix is before this Commercial Division.

3. To be noted, this matter was heard on merits substantially before the parties decided to settle the lis by entering into a Memorandum of Compromise.

4. Both the aforesaid learned counsel represent that the parties have entered into a Memorandum of Compromise dated 22.03.2018, which shall hereinafter be referred to as "said MOC" for the sake of brevity, clarity and convenience.

5. The said MOC duly signed by both the parties and their respective counsel is placed before me. The terms of the said MOC read as follows:

“4. The Defendant has approached the Plaintiff for amicable settlement of the dispute and the Plaintiff also agreed to settle the dispute on the following terms and conditions reduced hereunder:

a. The Defendant undertakes not to use the Plaintiff's registered Trade Mark “Gold Winner” and/or any other trade mark/s which is similar or identical to the get up, colour scheme, arrangement of the colour, get up and logo of the Plaintiff's Trade Mark “Gold Winner”.

b. The Defendant undertakes not to infringe the Plaintiff's Copyright over Trade Mark “Gold Winner” and/or any other trade mark/s which is similar or identical to the get up, colour scheme, arrangement of the colour, get up and logo of the Plaintiff's Trade Mark “Gold Winner” and its Pouch/Packing material.

c. The Defendant undertakes not to Pass-off the goods as and for those of the Plaintiff's by adopting the Trade Mark “Gold Winner” and/or any other trade mark/s which is similar or identical to the get up, colour scheme, arrangement of the colour, get up and logo of the plaintiff's Trade Mark “Gold Winner” and its Pouch/Packing material.

d. The Defendant has given up the offending pouch and Brand/Trade Mark “Gold King” annexed herewith as Annexure - A and it will not use the said trademark hereinafter or in future.

e. The Defendant acknowledges that the Plaintiff may in future alter and/or improvise its pouch, packing material and/or label for packing “Gold Winner” Refined Sunflower Oil and other oil by changing colour scheme, get up and/or the trade dress of the pouch to garner better market share.

f. The Defendant assures the Plaintiff that the Defendant or any person claiming rights from the Defendant shall neither adopt the existing colour scheme, trade dress and/or get up of the “Gold Winner” scheme, trade dress and get up which the Plaintiff may adopt for packing and labelling its “Gold Winner” Refined Sunflower Oil for packing it's any other brand which the defendant may adopt in future.

g. The Defendant undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

h. The Plaintiff gives up all other prayers in the plaint against the Defendant in view of the above undertaking given by the Defendant including the cost of the suit and that the Plaintiff and Defendant submit that there is no claim against each other.”

6. Mr.A.Saravanan, Manager-Legal of the plaintiff company and Ms.Sharmila Rajendran, defendant carrying on business as sole Proprietrix in the name and style 'Sri Karthikeya Traders, reiterate the terms of said MOC.

7. Both the aforesaid learned counsel, on instructions, from their respective clients, request this Commercial Division that a decree in the main suit be passed in terms of said MOC.

8. To be noted, in clause h of said MOC, which has been extracted and reproduced supra, it has been agreed that plaintiff will give up all other prayers in the plaint. This requires clarity.

9. Both the learned counsel and their respective clients present in Court confirm and reiterate what clause 'h' means.

10. To be noted, paragraph 48 of the plaint is the prayer paragraph. Paragraph 48, which is the prayer paragraph of the plaint contains 9 sub-paragraphs. In other words, there are 9 limbs of prayers in the suit. Both the learned counsel and their respective clients confirm that defendant submits to decree with regard to the first four limbs i.e., sub-paragraphs (i), (ii), (iii) and (iv) of paragraph 48. Equally both the learned counsel and their respective clients confirm that plaintiff company gives up all their claims in the other five limbs of the prayer i.e., prayers in sub paragraphs (v), (vi), (vii), (viii) and (ix) of paragraph 48.

11. In the light of the submission recorded supra, there will be a decree in terms of sub-paragraphs (i) to (iv) of paragraph 48 and sub-paragraphs (v) to (ix) of paragraph 48 of the plaint will stand given up by the plaintiff.

12. As that limb of the prayer pertaining to costs, which is sub-paragraph (viii) has also been given up, the question of examining the costs does not arise.

13. The said MOC dated 22.03.2018, photocopies of the photo identity cards of aforesaid litigants as well as the aforesaid Board Resolution of the plaintiff company will form part of the decree.

14. This suit is decreed on above terms.

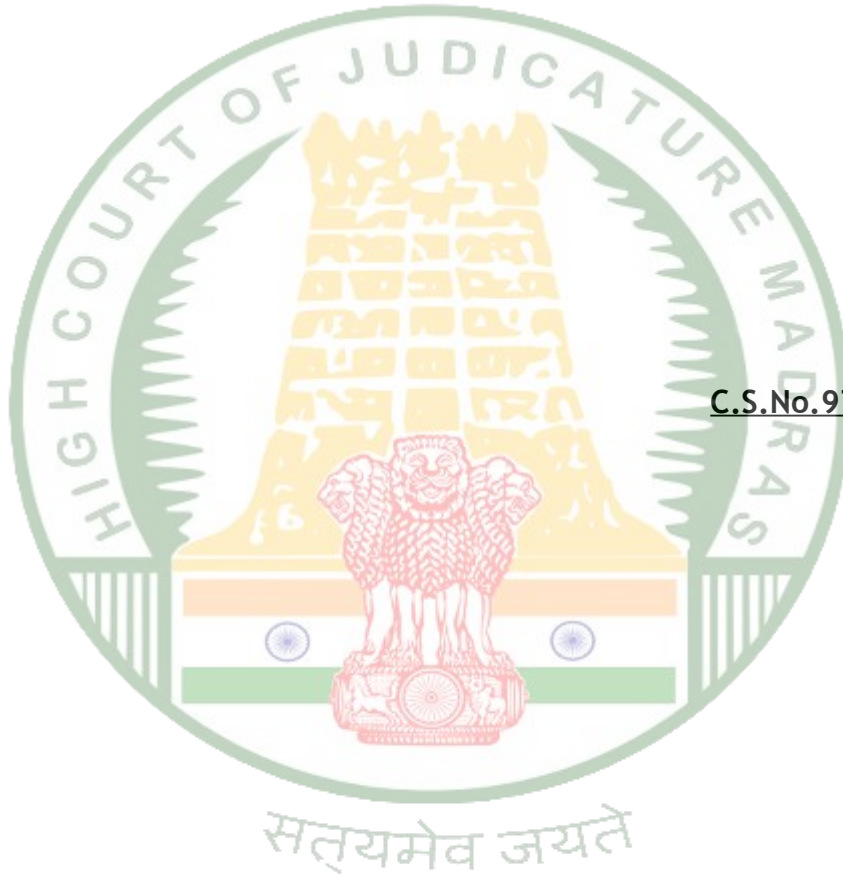
22.03.2018

Speaking/Non-Speaking order
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C.S.No.977 of 2017

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22.03.2018