IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **15.03.2018**

CORAM

THE HON'BLE **MR.JUSTICE M.SUNDAR**

C.S.No.986 of 2017

M/s.V.V.V & Sons Edible Oils Limited.
Represented by its Managing Director,
V.R.Muthu,
No.443, Bazaar
Virudhunagar – 626 001.

Registered Address
No.6, 6/2, Ellayamudali Street II Lane,
(Kailasam Street),
Tondiarpet,
Chennai – 600 081. .. Plaintiff

Vs.

1.M/s.S.G.R. (777) Foods Pvt Ltd.,
Rep. by its Managing Director,
New No.21, Old No.10,
1st Cross Street,
Lake Area,
Chennai – 600 034.

2.M/s.Kaarmegam Oil Mills
No.9/761, Kangeyam Road,
Muthur – 638 105,
Tiruppur District,
Tamil Nadu. .. 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 praying to

a) grant permanent injunction restraining the defendants from manufacturing, preparing and selling gingelly oil by way of imitating the plaintiff's bottle design and label colour scheme passing off their product as deceptively similar to the product of the plaintiff;

b) A preliminary decree be passed in favour of the plaintiff directing the defendants to render accounts of profits made by its by use of the bottle design and label colour scheme which is identical and/or deceptively similar and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts;

c) The defendants be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as liquidated damages for committing acts of infringement against plaintiff's bottle design and label colour scheme so as to pass off its products as and for the plaintiff's products;

d) The defendants be ordered and decreed to deliver up for destruction to the plaintiff all the preparations, machines, bottles, labels, packaging either filed or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned bottle design and colour scheme of the label of the plaintiff products;

e) Grant costs of this suit; and

f) Grant such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

For Plaintiff : Mr.R.L.Ramani, Senior Counsel
for M.V.Anand

For Defendants : Mr.K.Premchander

JUDGMENT

Mr.R.L.Ramani, Senior Counsel leading Mr.V.Anand, learned counsel on record for the plaintiff is before this Commercial Division. Mr.K.Premchandar of M/s.Anand & Anand, Law Firm, is before this Commercial Division on behalf of both the defendants.

2. With regard to the parties, Mr.M.Rajiv Vignesh, authorised representative and Director of the plaintiff company, Ms.V.Kirithika Markshi, Manager of the first defendant company, duly authorised vide Board Resolution dated 12.03.2018 and Mr.N.Mohanraj, spouse of Ms.S.Shanthy, Proprietrix

carrying on business as Kaarmegam Oil Mills (second defendant company) with a Letter of Authority dated 14.03.2018 are before this Commercial Division. The Letter of Authority and the Board Resolution have been presented before this Commercial Division. Photo identity cards of aforesaid litigants/litigant representatives together with self attested photocopies of the same have also been presented before this Commercial Division.

3. Both the learned counsel before me, on instructions from their respective clients, submit that the parties have arrived at a Memorandum of Compromise and have reduced the same to a Memorandum of Compromise dated 15.03.2018, which reads as follows:

"It is most respectfully submitted as follows:

1.The Plaintiff is V.V.V. & Sons Edible Oils Limited, represented by its Managing Director, Mr.V.R.Muthu, having office at No.443, Bazaar, Virudhunagar – 626 001 and official address at No.6, 6/2, Ellayamudali Street II Lane, Kailasam Street, Tondiarpet, Chennai - 600 081.

2.The 1st defendant is S.G.R. (777) Foods Pvt. Ltd., represented by its Manager, Manager – HR & Supply Chain Ms.V.Kirithika Marksi having office at New No.21, Old No.10, 1st Cross Street, Lake Area, Nungambakkam, Chennai – 600 034.

3.The 2nd defendant is M/s.Kaarmegam Oil Mills represented by its authorise representative Mr.N.Mohanraj At No.9/761, Kangeyam Road, Muthur – 638 105, Tiruppur District, Tamil Nadu.

4. The plaintiff has filed the above suit against the defendants for the following reliefs:

a) grant permanent injunction restraining the defendants from manufacturing, preparing and selling gingelly oil by way of *imitating the plaintiff's bottle design and label colour scheme passing off their product as deceptively similar to the product of the plaintiff;*

b) A preliminary decree be passed in favour of the plaintiff directing the defendants to render accounts of profits made by its by use of the bottle design and label colour scheme which is identical and/or deceptively similar and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts;

c) The defendants be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as liquidated damages for committing acts of infringement against plaintiff's bottle design and label colour scheme so as to pass off its products as and for the plaintiff's products;

d) The defendants be ordered and decreed to deliver up for destruction to the plaintiff all the preparations, machines, bottles, labels, packaging either filed or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned bottle design and colour scheme of the label of the plaintiff products;

e) Grant costs of this suit; and

f) Grant such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

5. In order to settle the matter amicably, the 1st defendant approached the plaintiff and subsequently, the plaintiff and the Defendants above named have arrived at a settlement on the following terms and conditions:

6. The 1st defendant herein has voluntarily agreed to amend the impugned label by enlarging the logo size in the label and alterations to other features in the label so that the logo is *prominently depicted. The amended label is annexed as Annedure-1 herein.*

7.The 1st defendant is permitted to alter, vary, amend or add non distinctive features in the label i.e., Products description in various languages, quantity details, picture, nutrition facts, address, Food license details, pricing details and other statutory requirements details.

8. The 1st defendant has further agreed to exhaust the impugned label within a period of 3 months from the date of execution of the present Memorandum of Compromise and agrees to destroy the remaining unused labels.

9. It is submitted that the 2nd defendant is only the bottler for the 1st Defendant and they do not own any proprietary rights in the impugned or amended label. Therefore, the plaintiff gives up all their claims against the 2nd defendant based on this present memo of compromise.

10. Subject to the above terms of this memo of compromise, the Plaintiff gives up their claims made in Plaint Para 13 (a) (b) (c) (d) (e) and (f) against both the defendants, and suit may be decreed in terms of the present Memorandum of Compromise entered into between the parties.

11.The above said terms of compromise shall be binding on the plaintiff and the defendants themselves as also, on their Proprietors, Partners, Directors, Associates, Assignees, Successors in interest including subsidiaries and any other entity or person with which they may be directly or indirectly associated.

12. The parties herein represent and warrant the following:

a) They have taken all necessary action to authorize the execution of and the performance of their obligations under this Memo of Compromise;

b) that they have the power, authority and full legal capacity, to enter into this Memo of Compromise and to perform their obligations hereunder;

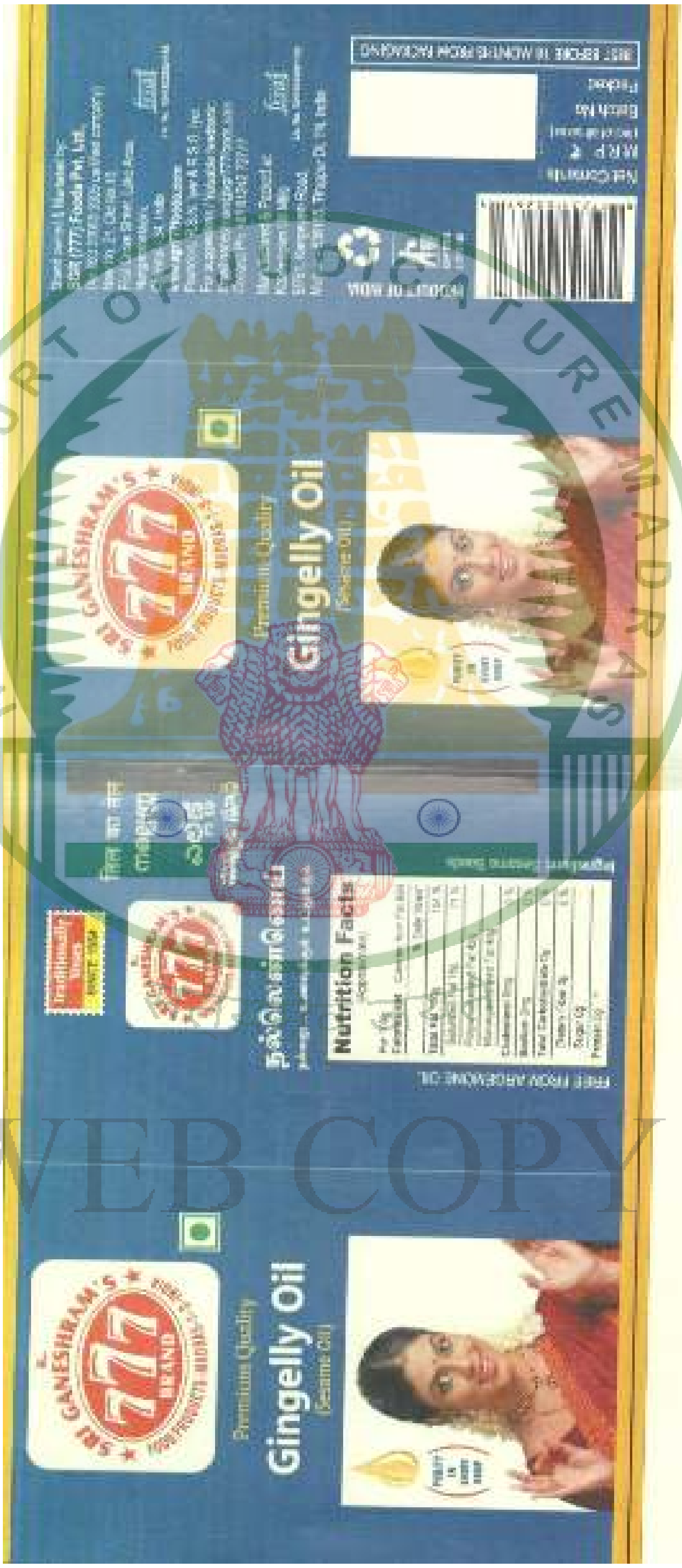
c) that this Memo of Compromise will constitute legal, valid and binding obligations on each Party, enforceable against each other in accordance with the terms provided hereunder;

d) that neither the execution of this Memo of Compromise nor the performance of obligations contemplated hereby is in conflict with any applicable law or any instrument, contract or other agreement to which they are a party.

It is therefore prayed that this Hon'ble Court may be pleased to record the Memorandum of Compromise and the Decree may be passed in favour of the Plaintiff and the Defendants, incorporating the terms of the compromise as stated above, thereby rendering justice.

Dated at Chennai on this the 15th day of March 2018."

ANNEXURE-1



4. The aforesaid litigants/parties to this lis present before this

Commercial Division confirm that they have entered into the aforesaid Memorandum of Compromise and signed the same after satisfying themselves and after understanding the terms. In other words all the aforesaid litigants/parties to this lis before this Commercial Division, reiterate the contents of the aforesaid Memorandum of Compromise dated 15.03.2018.

5. In the light of the narrative supra, both the learned counsel make a request that a decree be passed in terms of the aforesaid Memorandum of Compromise dated 15.03.2018.

6. Owing to all that have been set out supra, there shall be a compromise decree in terms of the aforesaid Memorandum of Compromise dated 15.03.2018, which has been extracted and reproduced supra.

7. The memorandum of compromise, Letter of Authority, Board Resolution etc., and self attested photo identity cards shall form part of the decree.

8. This suit is decreed on the above terms.

15.03.2018

Speaking/Non-Speaking order

Index : Yes/No

vsm

M.SUNDAR, J.

vsm

C.S.No.986 of 2017

15.03.2018