

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.30 of 2018
and A.Nos.386 & 387 of 2018
and O.A.Nos.42 to 44 of 2018

M/s.Kaleesuvari 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.VVV.Anandham & Sons,
Represented by its Chairman,
Mr.Ashokan Chakravarthy,
Head Office at : No.42, Andikinar Street,
Virudhunagar - 626 001, Tamil Nadu

Having Branch Office at: No.1, Hyder Garden,
3rd Street, Perambur,
Chennai - 600 012, Tamil Nadu. .. Defendant

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

(i) For a permanent injunction to restrain the defendant from violating the Plaintiff's Copyright in the artistic work in the label used by the Plaintiff for marketing "DHEEPAM" lamp oil in any manner with the offending label bearing the offending words "NAVA JYOTI DEEPAM OIL" as trade mark bearing same color scheme, layout and get up or with any other similar or identical or deceptively similar or deceptively identical label to that of the Plaintiff's "DHEEPAM" lamp oil label;

(ii) For a permanent injunction to restrain the Defendants, their men, agents, associates and/or assignees or any person claiming rights from them from passing-off their inferior “NAVA JYOTI DEEPAM OIL” lamp oil as that of the Plaintiff’s “DHEEPAM” lamp oil with the offending “NAVA JYOTI DEEPAM OIL” label and container bearing the same colour scheme, get up, layout, trade dress, design, shape and configuration as that of the Plaintiff’s aforesaid “DHEEPAM” label and bottle/container for lamp oil;

(iii) For a permanent injunction to restrain the Defendants, their men, agents, assignees, dealers and/or retailers from committing acts of piracy by restoring to fraudulent imitation of Plaintiff’s Registered Design No.245127 in respect of the container/bottle used by the Plaintiff for marketing/selling “DHEEPAM” lamp oil;

(iv) For a preliminary decree directing the Defendant to render true account of profits made by them by selling lamp oil bearing offending label of “NAVA JYOTI DEEPAM OIL” and the offending bottle/container similar to that of the Plaintiff’s “DHEEPAM” Lamp Oil;

(v) Direct the Defendant, their men, agents, assignees, dealers and/or retailers, distributor, to surrender to the Plaintiff all offending “NAVA JYOTI DEEPAM OIL” Lamp Oil, bottle/container/packing material, label, advertising materials, hoarding, letter heads, office stationery and all other goods containing/bearing offending mark/label “NAVA JYOTI DEEPAM OIL” with distinct color scheme, get up or any other mark visually or phonetically similar to the Plaintiff’s well-known trademark “DHEEPAM” label and bottle/container for destruction by an order of this Court;

(vi) For erasure, removal or obliteration from all offending goods, materials or articles in the possession or control of the Defendants with the offending mark/labels and container of “NAVA JYOTI DEEPAM OIL” Lamp Oil deceptively similar to the Plaintiff’s “DHEEPAM” lamp oil and for destruction of the offending container having same shape, design and configuration as that of the Plaintiff’s Registered Design No.245127 dated 07.05.2012 for bottle/container used by the plaintiff for selling and marketing “DHEEPAM” Lamp Oil.

(vii) To pay for the costs of the suit and

(viii) 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.R.Anish Kumar

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Mr.R.Anish Kumar, counsel on record for sole plaintiff company is before this Commercial Division. Mr.A.Sarvanan, Manager-Legal of the sole plaintiff company is before this Commercial Division.

2. Mr.A.Saravanan, Manager-Legal of the plaintiff company has been duly authorised in this regard, vide a Board Resolution dated 03.11.2017 and a certified true copy of the same has also been placed before me.

3. On behalf of the defendant, Mr.R.Sathish Kumar, learned counsel on record is before this Commercial Division.

4. I am informed that the defendant i.e., VVV Anandham & Sons is a registered Partnership firm. I am also informed that the registered Partnership firm is represented by one Mr.Mahendran Anandham, who is the Managing Partner of the defendant firm. An affidavit dated 20.03.2018 sworn to by Mr.Mahendran Anandham, has been placed before me, wherein and whereby it has been set out that the deponent is unable to be present before this commercial Division today owing to ill health. In other words, he is indisposed. It has also been averred in the affidavit that Mr.P.Arunachalam, Branch in-charge in Chennai for the defendant Firm is authorised to be present before

this Commercial Division. Mr.P.Arunachalam, is present before this Commercial Division today.

5. After some arguments on merits, I am informed that the parties decided to enter into a compromise. I am also informed that the compromise has been arrived at and the same has been reduced to a Memorandum of Compromise dated 20.03.2018. This Memorandum of Compromise dated 20.03.2018, shall hereinafter be referred to as 'said MOC' for the sake of brevity, convenience and clarity.

6. The said MOC has been duly signed by both the parties and their respective counsel.

7. Today, both the aforesaid learned counsel viz., Mr.R.Anish Kumar and Mr.R.Sathish Kumar, on instructions from their respective clients, request this Commercial Division that a compromise decree be passed in terms of said MOC.

8. Terms of said MOC reads as follows:

“1. The Plaintiff had filed the above suit against the Defendant praying for permanent injunction restraining the Defendant their men, agents, dealers and/or retailers, associates and/or assignees or any person claiming rights from them for the following reliefs;

(i) From violating the Plaintiff's Copyright in the artistic work in the label used by the Plaintiff for marketing "DHEEPAM" lamp oil in any manner with the offending label bearing the offending words "NAVA JYOTI DEEPAM OIL" as trade mark bearing same color scheme, layout and get up or with any other similar or identical or deceptively similar or deceptively identical label to that of the Plaintiff's "DHEEPAM" lamp oil label;

(ii) From passing-off their inferior "NAVA JYOTI DEEPAM OIL" lamp oil as that of the Plaintiff's "DHEEPAM" lamp oil with the offending "NAVA JYOTI DEEPAM OIL" label and containing bearing the same colour scheme, get up, layout, trade dress, design, shape and configuration as that of the Plaintiff's aforesaid "DHEEPAM" label and bottle/container for lamp oil;

(iii) From committing acts of piracy by restoring to fraudulent imitation of Plaintiff's Registered Design No.245127 in respect of the container/bottle used by the Plaintiff for marketing/selling "DHEEPAM" lamp oil;

(iv) For a preliminary decree directing the Defendant to render true account of profits made by them by selling lamp oil bearing offending label of "NAVA JYOTI DEEPAM OIL" and the offending bottle/container similar to that of the Plaintiff's "DHEEPAM" Lamp Oil;

(v) Direct the Defendant, their men, agents, assignees, dealers and/or retailers, distributor, to surrender to the Plaintiff all offending "NAVA JYOTI DEEPAM OIL" Lamp Oil, bottle/container/packing material, label, advertising materials, hoarding, letter heads, office stationary and all other goods containing/bearing offending mark/label "NAVA JYOTI DEEPAM OIL" with distinct color scheme, get up or any other mark visually or phonetically similar to the Plaintiff's well-known trademark "DHEEPAM" label and bottle/container for destruction

by an order of this Court;

(vi) For erasure, removal or obliteration from all offending goods, materials or articles in the possession or control of the Defendants with the offending mark/labels and container of "NAVA JYOTI DEEPAM OIL" Lamp Oil deceptively similar to the Plaintiff's "DHEEPAM" lamp oil and for destruction of the offending container having same shape, design and configuration as that of the Plaintiff's Registered Design No.245127 dated 07.05.2012 for bottle/container used by the plaintiff for selling and marketing "DHEEPAM" Lamp Oil.

(vii) And other consequential reliefs.

2. The Plaintiff is a trend setter and pioneer in the scented lamp oil segment and introduced a scented lamp oil with a blend of 5 oils and created niche in the market which the Defendant admits.

3. The Plaintiff introduced the aforesaid scented lamp oil with a unique stylized label with a trademark "DHEEPAM" and a container/bottle having novel shape, design and designation, registered vide Registered Design No.245127. A copy of the Plaintiff's label and bottle for "DHEEPAM" scented lamp oil and its design registration in the bottle are filed as Annexure A, B & C respectively and collectively referred to the Plaintiff's Intellectual property rights.

4. The Defendant's offending trademark "NAVA JYOTI DEEPAM OIL" with the label and image of bottle are referred in Annexure D & E.

5. 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;-

i. The Defendant admits violations of Plaintiff's trademark

and copyright in “DHEEPAM” scented lamp oil as in **Annexure - A & B** vide **Annexure - D** and tenders an unconditional apology to the Plaintiff.

ii. The Defendant undertakes that the Defendant will not harm the Plaintiff by imitating any of the products of the Plaintiff in the market by copying the Plaintiff's intellectual property rights.

iii. The Defendant undertakes that the Defendant will not copy the registered design of the Plaintiff's bottle as shown in **Annexure-C** and will not use the offending label as shown in **Annexure-D** hereinafter.

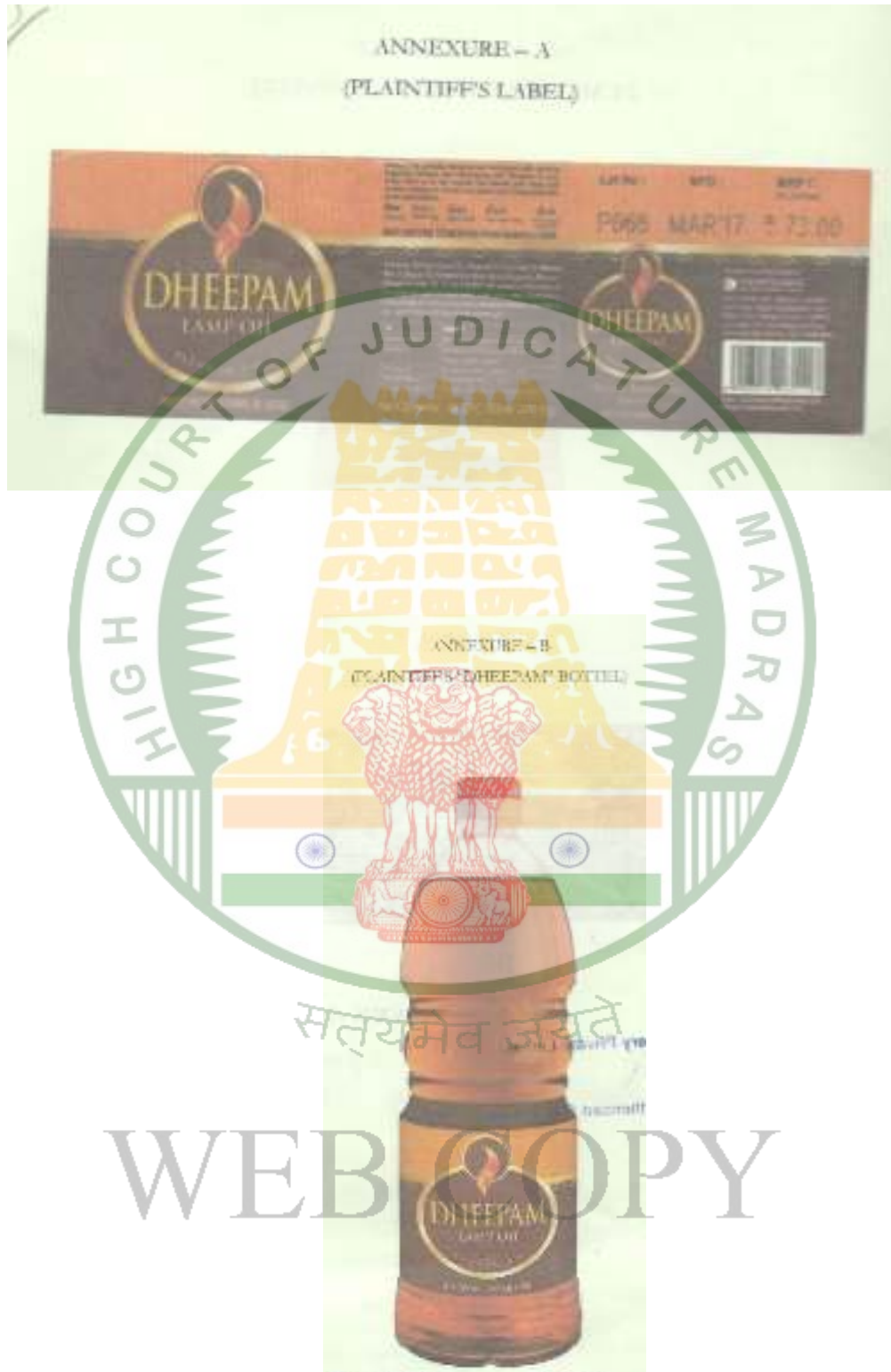
iv. The Defendant also undertakes to destroy all the offending labels used for marketing offending “NAVA JYOTI DEEPAM OIL” lamp oil as depicted in **Annexure - D**.

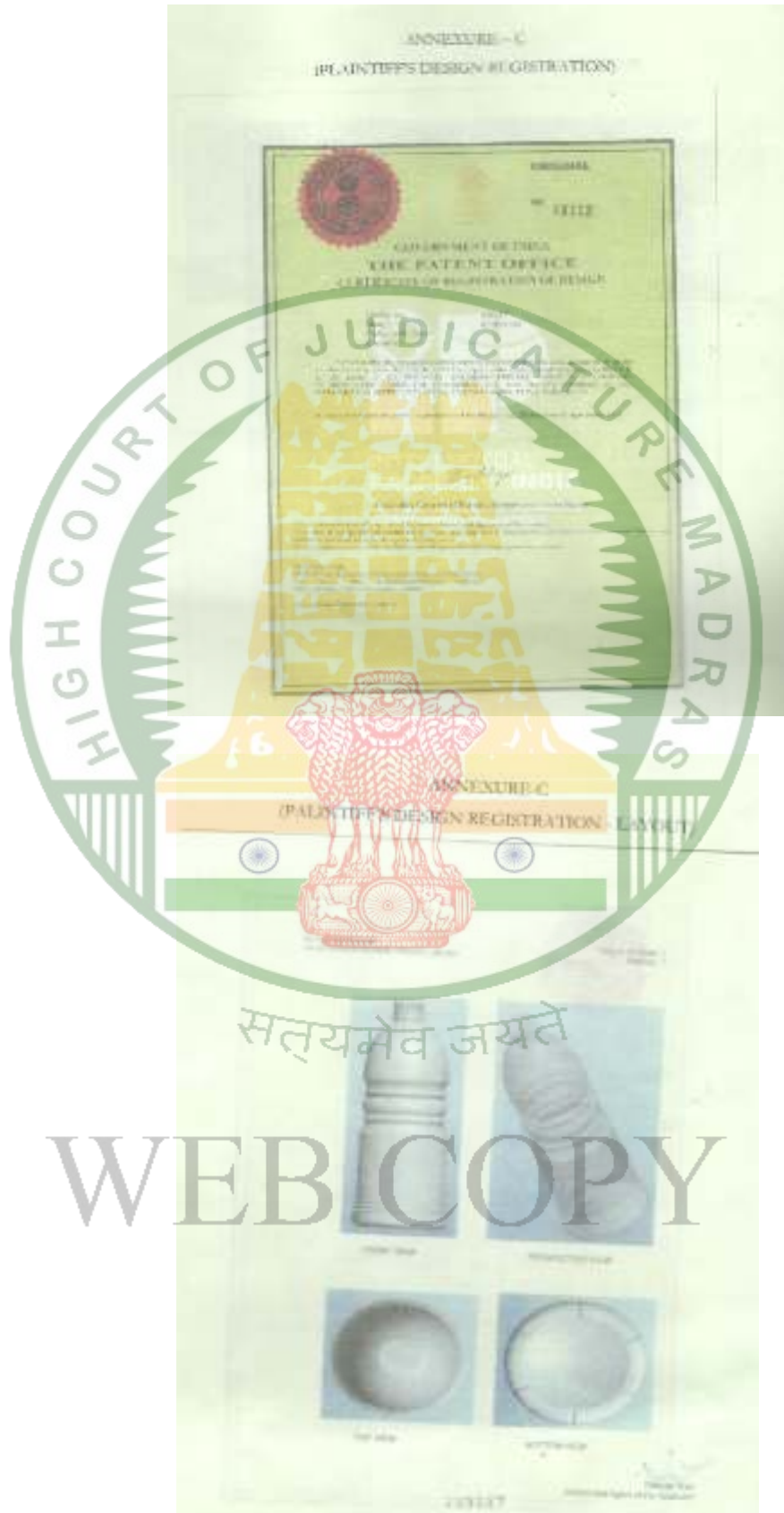
v. The Defendant will give-up all trademark, copyright and design applications if any filed before the respective Intellectual Property Rights authority for the offending mark “NAVA JYOTI DEEPAM OIL” as in **Annexure D & E** and any other application which may have any resemblance with the Plaintiff's Intellectual Property Right (IPR).

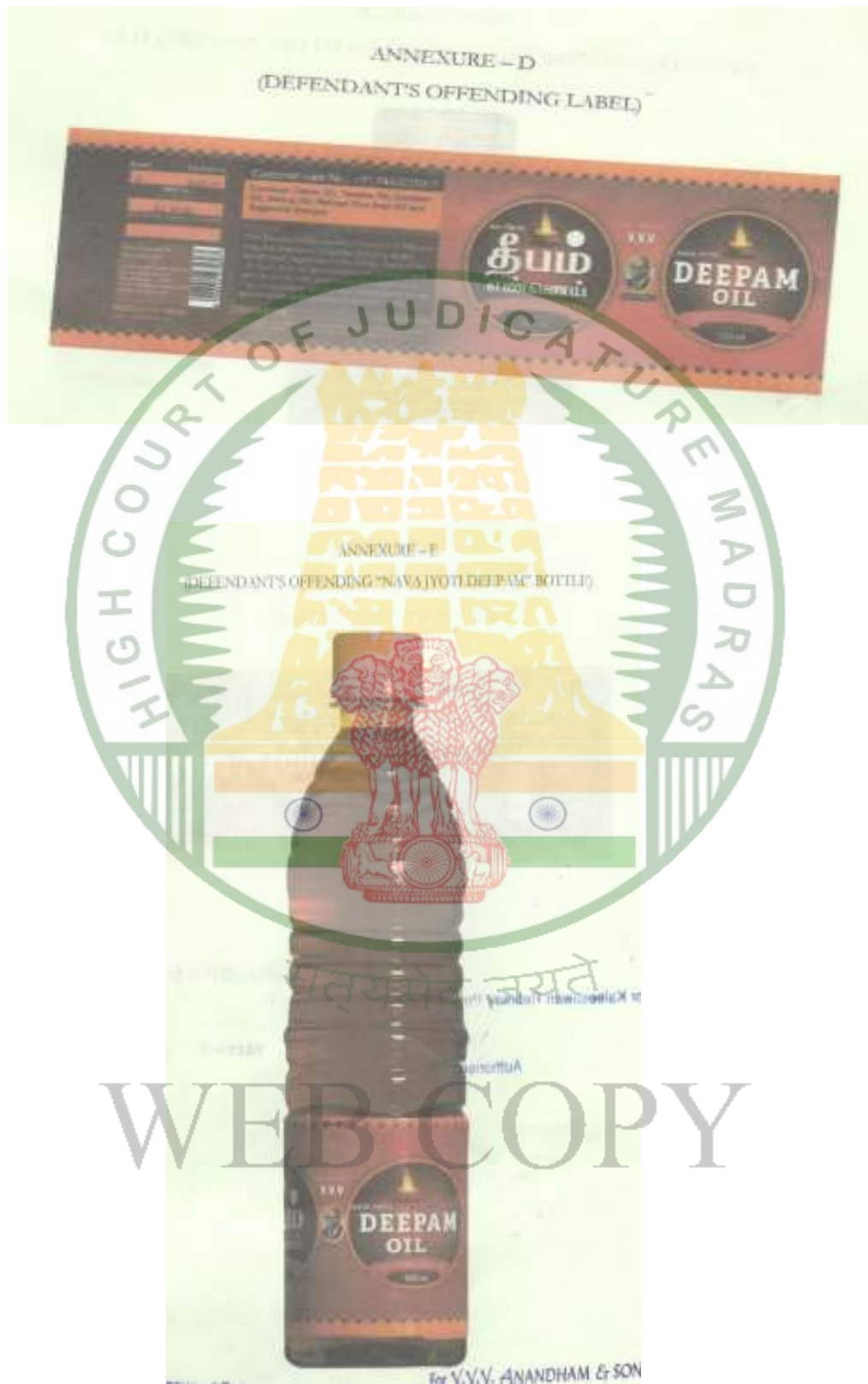
vi. The Defendant adopts new stylish label as in **Annexure - F** for marketing its lamp oil with the trademark “ANANDHA JYOTI DEEPAM OIL” which will not have any resemblance with the Plaintiff's Intellectual Property Right (IPR).

6. In view of the above, the Plaintiff is not pressing the reliefs claimed in Para 49 (iv) to (vii) of plaint against the Defendant.”

9. There are six annexures to the said MOC i.e., Annexure-A to Annexure-F. The Annexures are as follows:









10. In the light of the request made by both the learned counsel, there shall be a decree in this suit in terms of the said MOC.

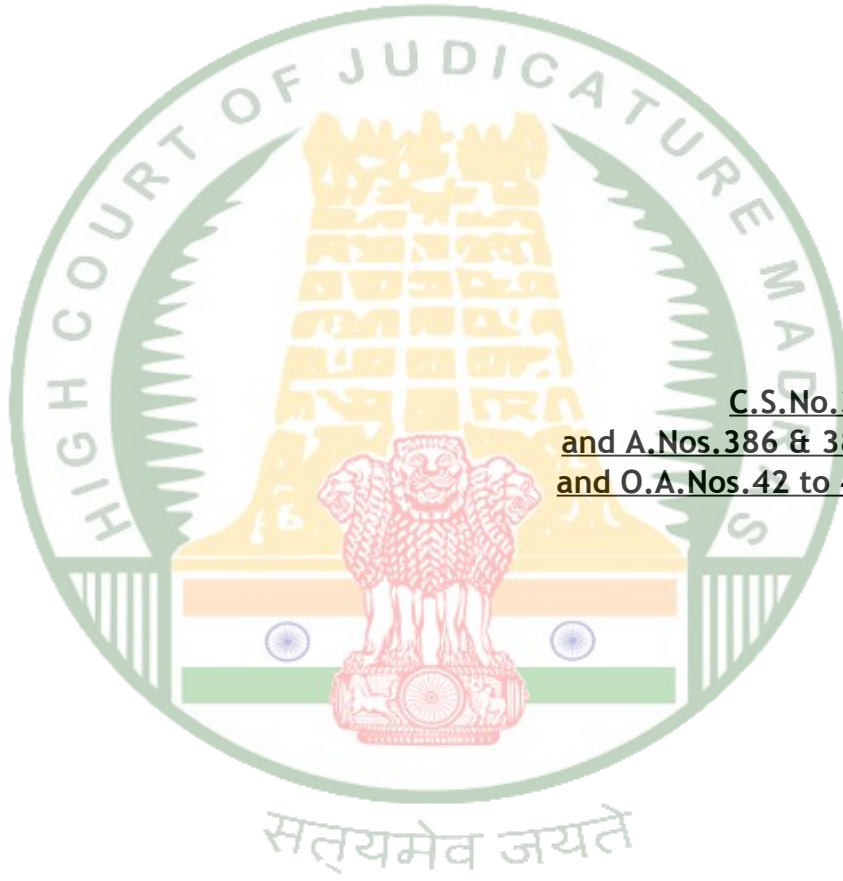
11. The aforesaid Board Resolution of the plaintiff company, affidavit sworn to by the Managing Partner of the defendant firm and the self attested photocopies of photo identity cards of the aforesaid litigants shall form part of the compromise decree.

12. This suit is decreed on the above terms. Consequently, connected pending applications shall stand closed.

23.03.2018

Speaking/Non-Speaking order
Index : Yes/No
vsm

M.SUNDAR, J.
vsm



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