

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.231 of 2018

&

O.A.Nos.349 and 350 of 2018

Hatsun Agro Product Ltd.,
 Having registered office at,
 No.1/20-A, Rajiv Gandhi Salai (OMR),
 Karapakkam, Chennai - 600 097
 And also carrying on its business at,
 Old No.AD-83/ New NO.AD13,
 Anna Nagar, Opp. IOB Towers Branch,
 Chennai - 600 040 .. Plaintiff

Vs.

M/s. Om Sakthi Oil Industries
 Main Road, Varichikududi
 PIN - 609 6009 .. Defendant

Plaint filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of High Court O.S. Rules and Section 134 and 135 of the Trade Marks Act, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 seeking permanent injunction restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the Plaintiff's Trade Marks "AROKYA" by using the trade mark "AROKYA" or any other mark or marks which are in any way identical or deceptively similar or colourable imitation of the plaintiff's registered trademarks as described in the schedule to the plaint; 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 as that of the Plaintiff by using the offending trademark "AROKYA" which are similar, deceptively similar and

identical to the Plaintiff's trademark "AROKYA" or by using any other trademark which is similar, deceptively similar or identical to that of the plaintiff's trademark "AROKYA" by manufacturing or selling or offering for sale or in any manner advertising the same; to directing the defendant to surrender to the plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc for destruction; to directing the defendant to render true and faithful accounts of the profits earned by them through the sale of the offending products bearing the offending trade mark and directing payment of such profits to the plaintiff and for costs of the suit.

For Plaintiff : Mr.A. Prabhakar Reddy

For Defendant : Mr.Ashok Kumar J.Daga

JUDGMENT

There is a sole plaintiff and a lone defendant in the instant suit.

2. Mr.Prabhakar Reddy of M/s.APR Associates (Law Firm) on behalf of sole plaintiff and Mr.Ashok Kumar J Daga, learned counsel on record for sole defendant are before this Commercial Division.

3. Plaintiff is a Public Limited Company and Mr.P.Sivasakthivel, who is described as Officer-Legal of the plaintiff company, is present before this Commercial Division along with a certified copy of a Board Resolution passed by the Board of Directors of the plaintiff in the meeting held at its Registered Office on 18.10.2018. A certified true copy of the same has been produced.

4. This Commercial Division is informed that the sole defendant is a partnership firm and Mr.K.C.Alagappan, who is managing partner in the defendant partnership firm is present before this Commercial Division and this Court is informed that managing partner of defendant firm has requisite authority to represent defendant firm. Both the aforesaid counsel and the aforesaid representatives of plaintiff and defendant submit that the parties have amicably settled the lis amongst themselves and have reduced the same into writing by way of a Memorandum of Compromise dated 10.12.2018, which shall hereinafter be referred to as 'said MOC' for the sake of convenience and clarity. Both learned counsel submit that said MOC has been signed by both parties in the presence of one another and in the presence of respective counsel. Said MOC reads as follows:

'MEMORANDUM OF COMPROMISE'

The parties to the above proceedings agreed to resolve the disputes in the following terms:

- 1.The Defendant hereby accepts and acknowledges that the Plaintiff is the absolute proprietor of the said trademark "AROKYA" without any limitation whatsoever and the defendant or any one claiming under them have no manner of right to use the said trademark either alone or in combination with any other mark or word.*
- 2.The DEFENDANT has agreed to stop using the said trademark "AROKYA" in their trademark.*
- 3.The DEFENDANT has agreed to change its trademark and*

trade label and disclose the same to the plaintiff the new trademark and trade label;

4.The Defendant hereby agrees that he shall not manufacture any fresh stock of products under the mark "AROKYA" from the date of signing of this Compromise.

5.The defendant further agrees that there are no pending stocks with the trademark "AROKYA" available with the Defendant. In the event of any product under the said mark "AROKYA" remaining unsold subsequent to the date of this Memorandum of Compromise, the Defendant agrees that the same would be recalled from the market and disposed off in the presence of representative of the plaintiff.

6.The Defendant has specifically agreed and assured the Plaintiff that either he or any of his close relatives or agents, heirs, successors, legal representatives or any one claiming through him will not use the said trademark "AROKYA" in future in respect of any production any manner whatsoever and in any place or market throughout India. If any violation is found in future, then the plaintiff reserves the right to initiate appropriate legal proceedings against the defendant or against his close relatives or agents, heirs, successors, legal representatives or any one claiming through him

7.The Defendant recognized the goodwill of the plaintiff in the trademark "AROKYA" and undertakes that it would not use the trademark "AROKYA" or any other trademark that is identical and/or similar to the trademark "AROKYA" with respect to any product. Further, the Defendant also undertakes that it will not apply for the trademark "AROKYA" or any other trademark that is identical and/or similar to the trademark "AROKYA" with respect to any product or service.

8.The Defendant also agrees to withdraw trademark

application in Application No.1846335 filed by the Defendant therein seeking or registration of the trademark AROKYA and also agrees that apart from the said application there are no other applications for trademark and/or copyright applications pending before any Tribunal/Registry and also agrees not to apply for any trademark or copyright with respect to the the trademark AROKYA.

9.In pursuance and upon compliance of the above clauses, both parties hereby agree not to continue with the legal proceeding already pending between them in respect of the trademark "AROKYA" and thereby resolve the existing legal proceedings amicably.

10.The suit may be decreed in terms of prayer a, b, c, d and e of para 42 and plaintiff gives up other reliefs.

IN WITNESS WHEREOF THE PARTIES HEREIN HAVE SIGNED THIS MEMORANDUM ON THIS THE 10th DAY OF DECEMBER 2018.

sd/-
PLAINTIFF

sd/-
DEFENDANT

sd/-
COUNSEL FOR PLAINTIFF

sd/-
COUNSEL FOR DEFENDANT'

5. Both learned counsel and their respective clients' representatives i.e., representatives of plaintiff and defendant make a request that the main suit itself may please be disposed of by way of a compromise decree in terms of said MOC.

6. Both representatives have also produced their photo identify cards

together with self-attested photocopies of photo identity cards.

7. Representatives of both plaintiff and defendant confirm that said MOC has been signed by plaintiff and defendant after understanding all the terms and conditions therein and both of them make a joint request that this Commercial Division may please be dispose off the main suit itself in terms of said MOC.

8. In the light of the narrative supra, main suit itself is disposed of in terms of said MOC. In other words, there shall be a decree in the main suit in terms of said MOC i.e. aforesaid MOC dated 10.12.2018. Said MOC, certified true copy of plaintiff company's Board resolution referred to supra self attested photocopies of photo identity cards of the representatives of the plaintiff company and defendant firm shall all form part of the compromise decree.

9. Suit decreed on above terms. There shall be no order as to costs.

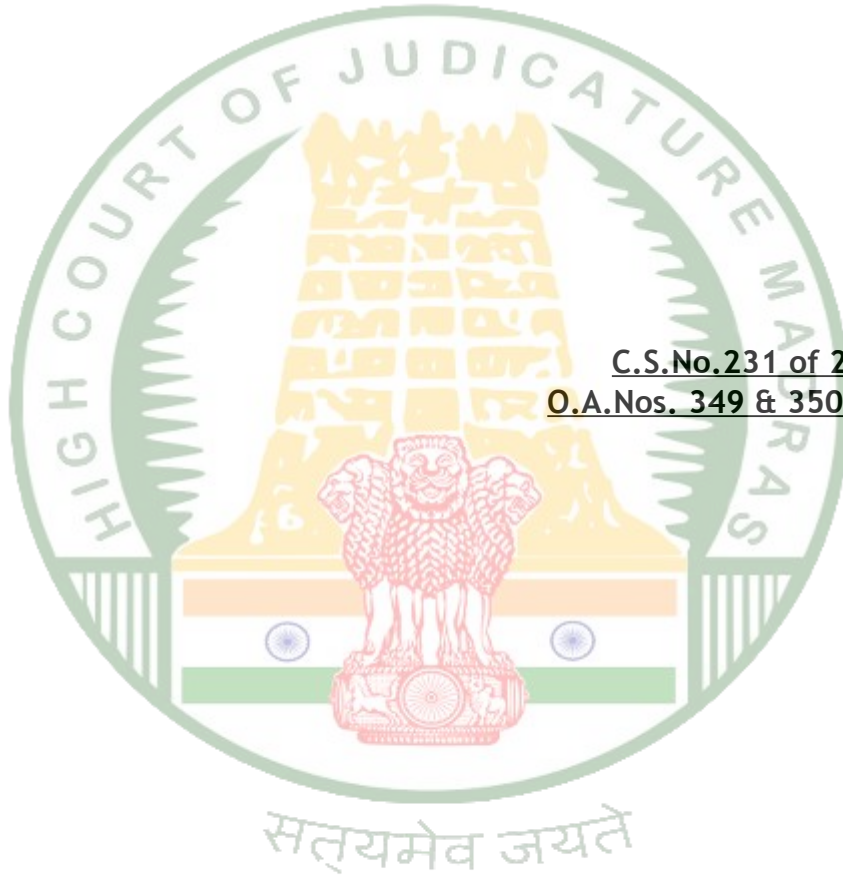
Consequently, connected interlocutory applications are closed.

10.12.2018

gpa

M.SUNDAR.J.,

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