

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.396 of 2018
and
O.A.Nos.579 & 580 of 2018

1.Ashok Kumar Sethi

2. Abhinav Sethi

..Plaintiffs

Vs.

M/s.Exim India Costmetics Co,
Plot No.1723, M.I.E, Part-2,
Bahadurgarh, Haryana,
India

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Madras High Court O.S. Rules Read and Order VII Rule 1 CPC Read with Sections 54,55 & 62 of the Copyright Act, 1957 and Section 27 read with Sections 134 & 135 of the Trademarks Act, 1999, praying to, For granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned Copyright NEW GOLDEN PACK COLORINA HINA as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the

Plaintiffs Copyright **AMIN'S GOLDEN PACK** the picture mark as shown in Document No.1 or in any manner infringing the Plaintiffs Copyright as shown in Document No.1; for granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned pouch **NEW GOLDEN PACK COLORINA HINA** as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other pouch which is in any way visually, phonetically or deceptively similar to the Plaintiffs pouch **AMIN'S GOLDEN PACK** the picture mark as shown in Document No.1 or in any manner passing off the Plaintiffs pouch as shown in Document No.1; to directing the defendants to surrender to the Plaintiffs all the black hennas, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Copyright **NEW GOLDEN PACK COLORINA HINA** as shown in Document No.2 in respect of black hennas; for a preliminary decree in favour of the Plaintiff's, directing the Defendant to render an account of profits made by them by the use of the Copyright **NEW GOLDEN PACK COLORINA HINA** as shown in Document No.2 on the goods referred and for a final decree in favour of the Plaintiffs for the amount of the profits found to have been made by the Defendant, after the Defendant has rendered accounts; and for costs.

For Plaintiff : Ms.Gladys Daniel

For Defendant : Mr.K.Raja Srinivas

JUDGMENT

There are two plaintiffs and a sole defendant in this suit.

2. Ms.Gladys Daniel, learned counsel on record for both plaintiffs and Mr.K.Raja Shrinivas, learned counsel on behalf of sole defendant are before this Commercial Division.

3. To be noted, instant suit is listed under the caption 'REPORTING SETTLEMENT AND MEMORANDUM OF COMPROMISE' today.

4. Both learned counsel submitted that parties to the lis have amicably settled the lis amongst themselves and have reduced the same into writing in and by a document captioned 'Memorandum of Compromise' between the plaintiffs and defendant dated 16.11.2018 (hereinafter referred to as 'said MOC' for brevity). Said MOC has been placed before me and the same reads as follows:

**'MEMORANDUM OF COMPROMISE BETWEEN THE PLAINTIFFS
AND THE DEFENDANT**

The Plaintiffs and the Defendant have agreed to compromise the above suit C.S.(Comm.Div.)NO.396 of 2018 in the following terms:

1.The term Plaintiff and Defendant shall mean and include their heirs, executors, administrators, successors and assignees

of each party.

2.The Defendant acknowledges that the plaintiffs are the prior users of the suit Trademark/Copyright **AMIN'S GOLDEN PACK** as shown in plaint Document No 1 since 2015.

3.The Defendant undertakes to use only the carton/pouch which is filed herein as ANNEXURE -A for black hennas.

4.The defendant shall withdraw their Copyright/Trademark Applications for the registration of the Plaint Document No. 2, if any, which is not within the knowledge of the Plaintiffs within two weeks from today. The Defendant undertakes not to apply for registration of the Copyright/Trademark as shown in Plaint Document No.2 and also undertakes hereby not to assert any right in respect of the color scheme, get up or layout for any goods in future.

5.The Plaintiffs have no objection for the Defendant to dispose of the existing stock under the Copyright/Trademark as shown in Plaint Document No.2 within a period of 1 month from 07.11.2018 and ending on 07.12.2018.

6.The Plaintiffs have no objection to the use of the pouch as shown in ANNEXURE -A.

7.The Defendant submits to a Judgment and Decree as prayed for in terms of prayer (a) & (b) of para 42 of the plaint for (a) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned Copyright **NEW GOLDEN PACK COLORINA HINA** as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the Plaintiffs Copyright

AMIN's GOLDEN PACK the picture mark as shown in Document No.1 or in any manner infringing the Plaintiffs Copyright as shown in Document No.1;

(b) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned pouch **NEW GOLDEN PACK COLORINA HINA** as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other pouch which is in any way visually, phonetically or deceptively similar to the Plaintiffs pouch **AMIN'S GOLDEN PACK** the picture mark as shown in Document No.1 or in any manner passing off the Plaintiffs pouch as shown in Document No.1.

8. In view of the decree for permanent injunction the Plaintiffs have given up the reliefs contained in prayers c, d & e in para 42 of the suit including cost of the suit.

Dated at Chennai on this the 16th November 2018

sd/-
1st Plaintiff

sd/-
2nd Plaintiff

sd/-
Defendant

sd/-
COUNSEL FOR PLAINTIFFS

sd/-
COUNSEL FOR DEFENDANT

5. A perusal of said MOC reveals that both plaintiffs and the sole defendant have signed the said MOC. This Commercial Division is informed that above Abhinav Export Corporation, Seegreen Cosmetics and Exim India Cosmetics Company are all proprietary concerns and Mr. Ashok Kumar Sethi,

his son Mr.Abinav Sethi and one Mr.Ashish Jain are proprietors respectively carrying on business in the said names and styles.

6. On behalf of two plaintiffs, one Mr.S.Varadharajan Santhanam, is present before this Court with an Authorization letter. Mr.S.Varadharajan Santhanam submitted that authorization letter was duly signed yesterday i.e., 21.11.2018 and this is recorded.

7. with regard to the sole defendant, Mr.K.Raja Shrinivas, learned counsel submits that his client is encountering some difficulty in traveling from Harayana and makes a prayer to dispense with the presence of Mr.Ashish Jain for recording this Memorandum of Compromise.

8. Both learned counsel submitted that said MOC was signed by both parties to the lis and in the presence of one another and their respective counsel and on this basis, both counsel submit that prayer for dispensing with the presence of sole defendant for recording said MOC may please be acceded to.

9. The request is acceded to and the presence of sole defendant for recording said MOC is dispensed with.

10. Both learned counsel make a request to this Commercial Division

that the main suit itself be disposed of in terms of said MOC.

11. There shall be a compromise decree in the main suit in terms of said MOC. Said MOC, aforesaid authorization letter given by the second plaintiff (Court is informed that the same was signed on 21.11.2018) and self-attested photocopy of the photo identity card of Mr.Varadharajan Santhanam, plaintiff's representative, shall all form part of compromise decree.

12. Suit decreed on above terms. Consequently, all connected interlocutory applications are closed. There shall be no order as to costs.

22.11.2018

Speaking order

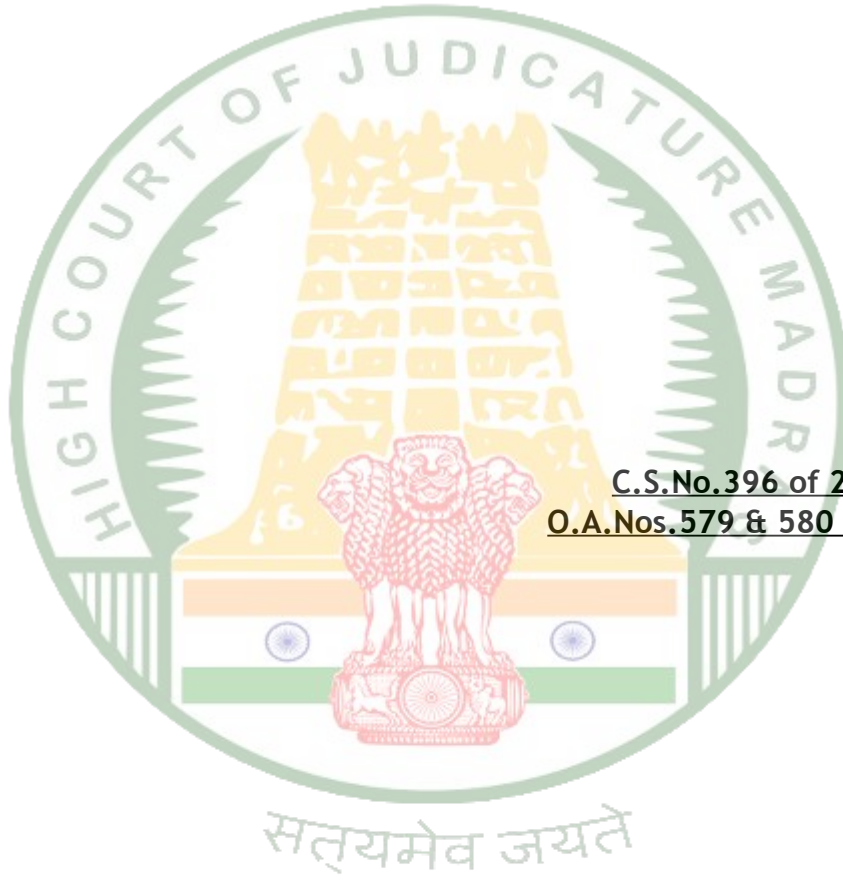
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M.SUNDAR, J.

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