

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 11TH DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. Nos.4163 to 4165 of 2018
in
O.A. Nos.143 to 145 of 2017
in
C.S. No.100 of 2017

M/s.Kaleesuwari Refinery Pvt.Ltd
Represented by its Director
Mr.K.Ashok Kumar,
No.53, Rajasekaran Street
Opp.Kalyani Hospital,
Radhakrishnan Salai
Mylapore, Chennai 600 004

... Applicant/Plaintiff
(in all original applications)

-Verus-

Sri Durgai Oil Stores,
Represented by its Proprietor
Mr.I.M.Selvaraj,
No.2240, TNHB Villapuram,
Madurai 625 011

... Respondent/Defendant
(in all original applications)

A. Nos.4163 to 4165 of 2018:-

Sri Durgai Oil Stores,
Represented by its Proprietor
Mr.I.M.Selvaraj,
No.2240, TNHB Villapuram,
Madurai 625 011

... Applicant/Respondent/Defendant

-Versus-

M/s.Kaleeswari Refinery Pvt. Ltd.,
Represented by its Director
Mr.K.Ashok Kumar,
No.53, Rajasekaran Street
Opp.Kalyani Hospital,
Radhakrishnan Salai
Mylapore, Chennai 600 004

... Respondent/Applicant/Plaintiff

A. No.4163 of 2018:-

Application praying that this Hon'ble Court be pleased

to modify the order dated 26.04.2018 passed in O.A. No.143 of 2017 in C.S. No.100 of 2017, on the file of this Hon'ble Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application.

A. No.4164 of 2018:-

Application praying that this Hon'ble Court be pleased to modify the order dated 26.04.2018 passed in O.A. No.144 of 2017 in C.S. No.100 of 2017, on the file of this Hon'ble Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application.

A. No.4165 of 2018:-

Application praying that this Hon'ble Court be pleased to modify the order dated 26.04.2018 passed in O.A. No.145 of 2017 in C.S. No.100 of 2017, on the file of this Hon'ble Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application.

These applications coming on this day before this court for hearing the court made the following order:-

On 26.04.2018 this Court had passed orders in O.A.Nos. 143 to 145 of 2017. In the said order, this Court had stated as follows:-

"23. *I would direct the defendant to have the words 'For External Use*

only' in bold under the names "Son Gold Lite" in the front of the pouch above the image of the sunflower in prominent letters. This would dispel any doubt in the mind of the people who buy the product "Son Gold" marketed by the defendant thinking it is edible oil. The defendant cannot ride on the same colour, get up of the plaintiff. But the defendant appears to have changed his colours from what the plaintiff complained at the time of institution of the suit.

24. The only disturbing feature to be addressed are the words "External Use" which are in small lettering on the back side of the pouches of the defendant. This can be addressed by directing the defendant to put the said words in English and all vernacular languages in bold letters in the front of the pouches/packets.

25. I further hold that till such insertions are made, the plaintiff would be entitled to an order of interim injunctions as prayed in O.A.Nos. 143 to 145 of 2017. The defendant is at liberty to bring to the notice of this Court if they had put the words "for External Use only" in English and in all vernacular language prominently in the front of the packet in the white coloured of the pouch above the sunflower image. The defendant can then seek modification of the injunctions now granted. Till such time, the plaintiff should have the benefit of interim injunctions.

26. With these observations, O.A.Nos. 143 to 145 of 2017 are allowed. No costs."

2. The suit had been filed for a permanent injunction restraining the defendant or anybody acting under them from infringing the plaintiff's registered Trademark "Gold Winner" for Refined Sunflower Oil by using offending words

"Son Gold" and also for permanent injunction restraining the defendant or anybody acting under them from using the offending pouch/packing material with the words "Son Gold" and colour scheme and get up deceptively similar to that of the plaintiff's material / pouch used for refined edible sunflower oil under the Trademark "Gold Winner" and for permanent injunction restraining the defendant or anybody acting under them from violating plaintiff's copyright and Trademark "Gold Winner" by using the offending words "Son Gold" in a pouch, which is deceptively similar to that of the plaintiff and also for permanent injunction restraining the defendant or anybody acting under them from passing off their products as that of the plaintiff's products "Gold Winner" by using the words "Son Gold" and for accounts and for a direction against the defendant to surrender to the plaintiff all offending pouch/packing materials with the name "Son Gold" and for removal of all the infringing goods from the possession of the defendant and for costs.

3. The said application in O.A.Nos. 143 to 145 of 2017 were heard in detail and arguments were advanced by Mr.T.Mohan, learned counsel on behalf of the plaintiff and Mr.A.Subbiah, learned Senior Counsel on behalf of the defendant.

4. Subsequently after the order has been passed, the present applications in A.Nos. 4163 to 4165 of 2018 had been filed and presented before this Court on 06.06.2018. In the said applications, the reliefs sought were as follows:-

"A.No. 4163 of 2018 had been filed to modify the order dated 26.04.2018 passed in O.A.No. 143 of 2017 in C.S.No. 100 of 2017, on the file of this Honourable Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application.

A.No. 4164 of 2018 had been filed to modify the order dated 26.04.2018 passed in O.A.No. 144 of 2017 in C.S.No. 100 of 2017, on the file of this Honourable Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application.

A.No. 4165 of 2018 had been filed to modify the order dated 26.04.2018 passed in O.A.No. 145 of 2017 in C.S.No. 100 of 2017, on the file of this Honourable Court, by permitting the applicant to market his product in refined Sun Flower Oil, for external use only, in the name of "Son Gold Lite", as per the pouch with the colour pattern and set up as annexed with this application."

5. Along with the three applications, the defendant has filed a typed set of papers. Perusal of the typed set of papers reveal that they have changed the exterior of the pouch in accordance with the direction of this Court. They have in fact put yellow colour in the middle of the cover. They have prominently used the words 'for external use only' and in Tamil btsp cgnahfj;jpw;F kl;Lk;. The following is the present pouch of the defendant:-



6. It has been complained by the learned counsel for the defendant that subsequent to the order of injunction, their business stopped and they have now in accordance with the directions of this Court, reworked their pouch colours and seek permission to utilise the same.

7. The applications were presented on 06.06.2018 and it was posted for filing of counter today ie., on 11.06.2018. Today, the first representation made by the learned counsel on behalf of the plaintiff is that they have filed an appeal against the order dated 26.04.2018 and that appeal was filed on 08.06.2018, which is on Friday.

8. Any party aggrieved by any order has a right to file appeal. It is to be welcomed since the issues raised can then be considered from different perspectives. But filing an appeal more as a recourse to prevent a Court from proceeding further in pending applications should never be encouraged. In this case, the appeal has been filed after the present applications had been moved before this Court. The only representation made was that appeal had been filed, implying that the Court should not proceed further. The Court has a duty to proceed further on the basis of the facts presented before it.

9. Moreover since the directions of this Court has been complied with by the defendant, it is only natural that there would be an expectation that Court would also abide by its own orders. The defendant was directed to insert the words "for external use only". They have done that and that should be viewed in the correct perspective.

10. Counter has not been filed by the respondent/plaintiff. They have also not filed any memo giving details the appeal said to have been filed.

11. As stated above, the defendant has made necessary changes in the pouch and have inserted the words 'for external use only'.

12. In view of the above, the order dated 26.04.2018 is modified as prayed for in A.Nos. 4163 to 4165 of 2018. Since an appeal has been filed, Registry is directed to issue this order copy today ie., on 11.06.2018.

Sd./-C.V.K.J

11/06/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

jj 10/05/18

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.