

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.S.(Comm.Div)No.187 of 2019
and O.A.Nos.252 to 254 of 2019**

M/s.KALEESUWARI REFINERY PRIVATE LIMITED,
Represented by its Manager (Legal),
Mr.A.Saravanan,
No.53, Rajasekaran Street,
Opp. Kalyani Hospital, Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

...Plaintiff

Versus

M/s.Gem Edible Oils Private Limited,
No.5/221, Kovai Road,
Kareagoundamapalayam (PA)
Annur – 641 653.

...Defendant

This suit is filed under Order IV Rule 1 of the O.S.Rules r/w. Order VII Rule 1 of C.P.C Rules r/w. Sections 134 & 135 of Trade Marks Act, 1999 r/w. Sections 61 & 62 of the Copyright Act, 1957 for the following reliefs:

(i) For a permanent injunction to restrain the defendant, their men, agents, associates and/or assignees or any person claiming rights from them from infringing the plaintiff's reputed and well known registered Trademark "DHEEPAM" by using the offending Trademark "DHIVYA DHEEPAM" or any mark or word deceptively

similar to the aforesaid Trademark of the plaintiff's for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant.

(ii) For a permanent injunction to restrain the defendant its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product, as that of the plaintiff's "DHEEPAM" lamp oil, by using the offending words "DHIVYA DHEEPAM" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trademark "DHEEPAM" and Trade dress of "DHEEPAM".

(iii) 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 "DHIVYA DHEEPAM" as trademark 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;

(iv) 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 "DHIVYA DHEEPAM" lamp oil as that of the plaintiff's "DHEEPAM" lamp oil with the offending "DHIVYA DHEEPAM" label and container bearing the same colour scheme, get up, layout, trade dress, design, shape and configuration as that of the plaintiffs aforesaid "DHEEPAM" label and bottle/container for lamp oil.

(v) For a preliminary decree directing the defendant to render

true account of profits made by them by selling lamp oil bearing offering label of "DHIVYA DHEEPAM" and the offending bottle/container similar to that of the plaintiff's "DHEEPAM" lamp oil.

(vi) Direct the defendant their men, agents, assignees, dealers and/or retailers, distributor to surrender to the plaintiff all offending "DHIVYA DHEEPAM", bottle/container/packing materials label, advertising materials hoarding, letter heads office stationary and all other goods containing/bearing offending mark/label "DHIVYA DHEEPAM" 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.

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

For Plaintiff : Mr.Vijayan Subramanian

For Defendants : Set *ex parte*
vide order dated 12.06.2019

J U D G M E N T

सत्यमेव जयते

Today(12.09.2019), when the matter is called, the learned counsel for the plaintiff submitted that the parties have resolved their disputes. He has also filed the Joint Compromise Memo dated 30.08.2019, entered into between the parties, before this Court and prayed that the suit may be decreed in terms of the said Joint Compromise Memo entered between the parties.

2. The said Joint Compromise Memo reads as follows:

"1.The defendant undertakes not to use the trademark of the plaintiff, "Dheepam" or any other mark which is similar or identical to the plaintiff's Trademark and the defendant has changed their mark as "Dhivya GOLD" as projected in the design of the label attached with this memo in Annexure-A.

2. The defendant undertakes not to use the get up, colour scheme, arrangement of the colour which are closely similar to it, get up and logo of the plaintiff's product "Dheepam" and the trade dressing of the defendant's product will be hereafter as projected in the design of label attached with this memo in Annexure-A.

3. The defendant undertakes to use the trade dress, colour scheme and get up for their product "Dhivya GOLD" as attached with this memo in Annexure-A.

4. The defendant undertakes not to pass-off the goods as and for those of the plaintiff's by adopting the similar or identical get up, colour scheme, arrangement of the colour, get up and logo of the plaintiff's product "Dheepam" and its pouch/packing material.

5. The defendant shall erase, remove or obliterate from all infringing goods, materials, or articles in his possession or control with the offending mark labels and pouches claimed to be deceptively similar to the plaintiff's "Dheepam".

6. The defendant undertakes for settlement without payment of any compensation to the plaintiff. The parties affirm that upon both the parties performing their obligations and understanding under this memorandum of compromise they have no claim against each other.

7. The defendant undertakes to compensate the plaintiff sufficiently with damages if it violates any of the clauses of this Memo of Compromise."

ANNEXURE-A

(PROPOSED POUCH OF THE DEFENDANT)



N.SATHISH KUMAR, J.,

mrr

3. The above Joint Compromise Memo is recorded and the same shall form part and parcel of the decree.

4. Considering the submission made by the plaintiff's counsel, this Court is inclined to decree the suit in terms of the said Joint Compromise Memo. Accordingly, this Civil Suit is decreed in terms of the Joint Compromise Memo dated 30.08.2019, entered into between the parties. No costs. Consequently, connected Application is closed.

12.09.2019

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Index : Yes/No

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