

HIGH COURT OF JUDICATURE AT MADRAS**DATED : 11.06.2019****CORAM :****THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY****C.S.No.203 of 2019
and
OA.Nos.283 to 285 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-600004 ... Plaintiff

..Vs..

M/s.Sai Hari Agency
No.4/183, A.Nachinampatti
Salem Main Road,
H.Dodampatti Post Office, सत्यमेव जयते
Hosur Taluk
Dharmapuri District ... Defendant

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Suit 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 praying for
a judgment and decree (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 Trade Mark "Gold Winner" by using the offending Trade Mark "**GOLD 'n' GOLD**" or any mark or word deceptively similar to the aforesaid Trade Mark 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) 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 "**GOLD 'n' GOLD**" edible refined sunflower oil by using the offending words "**GOLD 'n' GOLD**" or any other words or mark and offending packing Material and pouch deceptively similar to the Plaintiff's trade mark "Gold Winner" and Trade dress for "Gold Winner". (iii) Permanent injunction restraining the Defendant from violating the Plaintiff's registered Copyright, **A-68242/2005 dated 27.01.2005** in the artistic work used in the Plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing its reputed registered Trademark "Gold Winner" by substituting the Trademark "Gold Winner" with the offending words "**GOLD 'n' GOLD**" bearing some trade dress, color scheme and get up deceptively similar to that of the Plaintiff's colour scheme and trade dress in the packing material/pouch bearing trade Mark "Gold Winner". (iv) For preliminary decree directing the Defendant to render true account of profits made by the Defendant by using the aforesaid offending label of "**GOLD 'n' GOLD**". (v) Directing the Defendant, its men, agents, assignees, dealers and/or retailers, distributors, to surrender to the Plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter

heads, office stationary to all other material containing/bearing offending mark/label "**GOLD n GOLD**" with distinct color scheme, get up or any other mark visually or phonetically similar to the Plaintiff's trademark "Gold Winner" label for destruction by an order of this Court (vi) to pay for the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian
For Defendant : Mr.Vijay Anand

JUDGMENT

When the matter is taken up for hearing, a Joint Memo of compromise dated 11.06.2019 has been filed on behalf of both the parties. The said Memo has been duly signed by both the parties and attested by their respective counsels. The terms of the Memo of Compromise reads as under:

"TERMS OF THE MEMORANDUM OF COMPROMISE:-

1. The Defendant undertakes not to use the get up, colour scheme like red and orange, arrangement of the colour which are closely similar to it, get up and logo of the Plaintiff's product "Gold Winner" and the trade dressing will be hereafter as projected in the design of label attached with the memo in Annexure-A.
2. The Defendant undertakes to use the

trade dress, colour scheme and get up for their product Gold 'n' Gold as attached with this memo in Annexure-A. The defendant is entitled to change the trade dress, colour scheme of his produce without which is not similar or identical to the product of the plaintiff.

3. 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 "Gold Winner" and its Pouch/Packing material.

4. 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 "Gold Winner".

5. The Defendant undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

6. The Defendant has entered into this compromise without prejudice to their right to have its Trademark or design registered without offending or affecting the plaintiff's product.

7. The Plaintiff gives up all other prayers in the plaint including any relief of damages against the Defendant in view of the above undertaking given by the Defendant."

2. The learned counsel appearing on either side has submitted that the suit may be decreed in terms of Memo of Compromise.

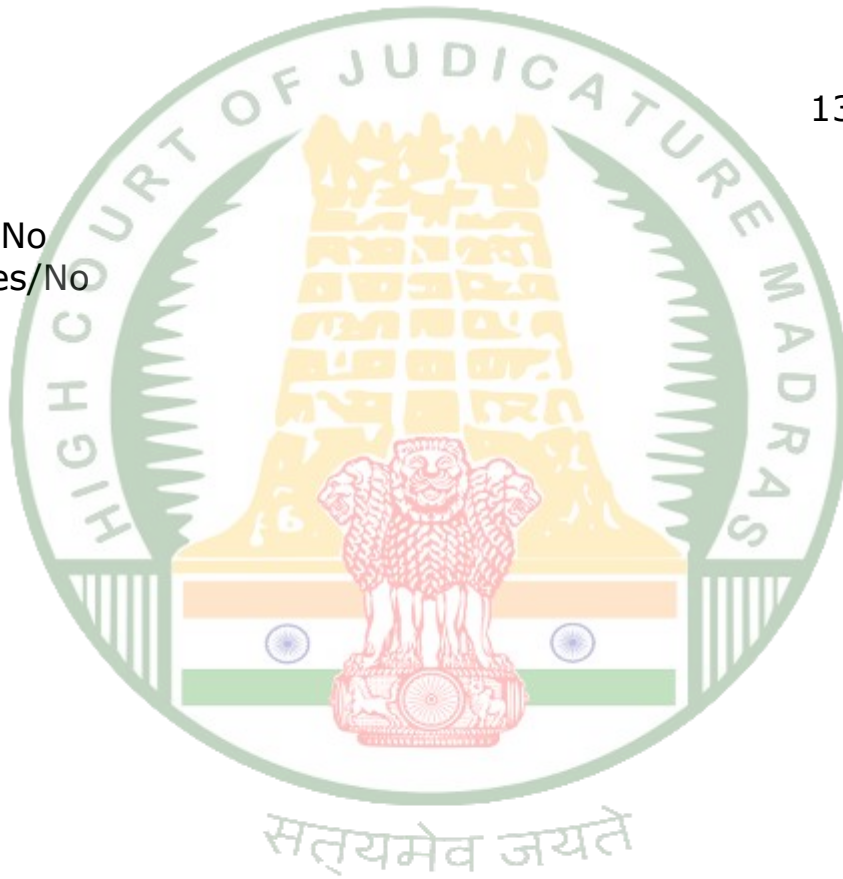
3. Recording the Joint Memo of Compromise dated 11.06.2019, this suit is decreed in terms of Joint Memo of Compromise. The Joint Memo of Compromise shall form part of the decree. No costs. Consequently, connected Applications stands closed.

13.06.2016

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Index:Yes/No

Internet:Yes/No



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KRISHNAN RAMASAMY, J

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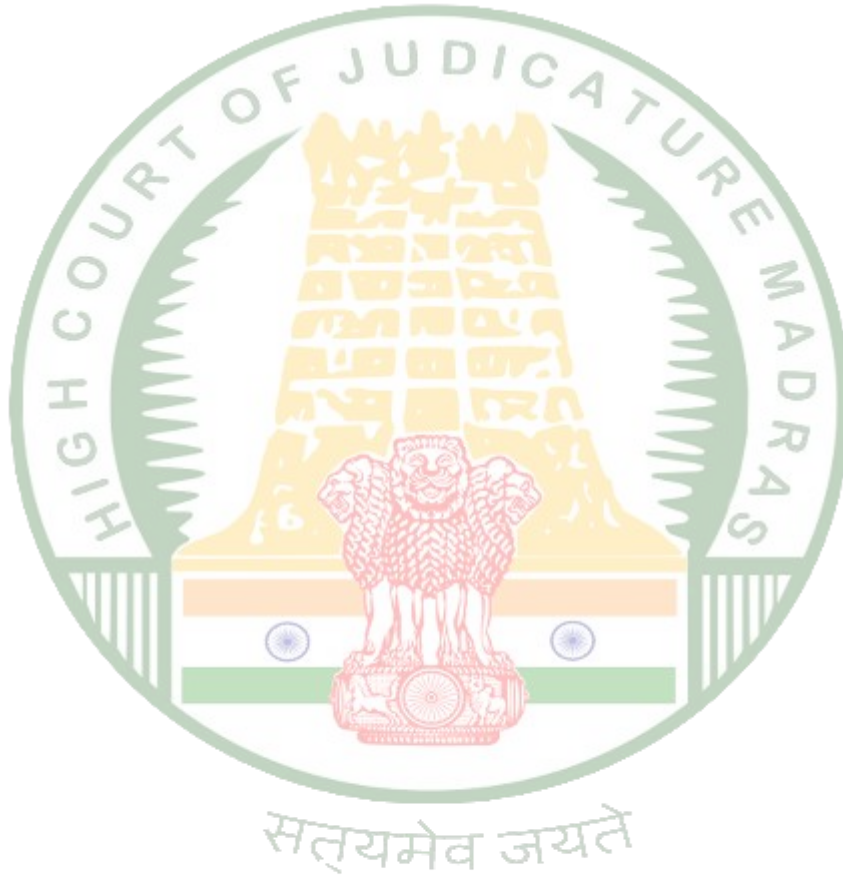
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