

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.S.No.215 of 2019
and A.No.2356 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.Golden Refineries Private Limited,
No.144, Mulanur Road, Karattupalayam,
Vellakoil – 638 111.

...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) 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 "Gold Winner" by using the offending Trademark "Golden Sun" 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) 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 "GOLDEN SUN" edible refined sunflower oil by using the offending words "GOLDEN SUN" 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 "GOLDEN SUN" bearing same 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 trademark "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 "GOLDEN SUN".

(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 and all other material

containing/bearing offending mark/label "GOLDEN SUN" 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.D.Pragadeesh
for Ms.Hemalatha

J U D G M E N T

Today(12.09.2019), when the matter is called, the learned counsel for 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:

"The Defendant undertakes not to use the Trademark of the plaintiff, "Gold Winner" or any other mark which is similar or identical to the plaintiff's trademark, and the defendant has changed their mark as "LUCKY 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 "Gold Winner" 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 "Lucky 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 "Gold Winner" 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 "Gold Winner".

6. The defendant shall not further violate the plaintiff's Copyright in the artistic work used in the packing pouches of the plaintiff from the date of signing this Joint Memo of Compromise.

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)



WEB COPY

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

N.SATHISH KUMAR, J.,

mrr

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 between the parties. No costs. Consequently, connected Application is closed.

mrr

Index : Yes/No

12.09.2019

C.S.No.215 of 2019

सत्यमेव जयते

WEB COPY