

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2019

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.201 of 2019

M/s.Kaleesuvari 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.Senthilnathan Traders
Represented by not known,
Govindakonar Street,
Trichy-1. ... Defendant

Prayer: Commercial Suit filed under Order IV of the O.S Rules r/w Order VII Rule 1 of C.P.C. Rules r/w Sections 134 & 135 of the Trade Marks Act, 1999 r/w sections 61 & 62 of the Copyright Act, 1957 prays (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 Trade Mark "Gold Winner" by using the offending Trade Mark "Silver Gold" or any mark or word deceptively similar to the afore said 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 "Silver Gold" edible refined sunflower oil by using the offending words "Silver 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 Trade Mark "Gold Winner" by substituting the Trade Mark "Gold Winner" with the offending words "Silver Gold" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's color 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 "Silver 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 and all other material containing/bearing offending mark/label "Silver Gold" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's trade mark "Gold Winner" label for destruction by an order of this Court.

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

For Plaintiff : No appearance

For Defendant : No appearance

J U D G M E N T

This Court Vide order dated 10.06.2019, has set the sole defendant ex-parte and the matter was listed on 13.06.2019 before the learned Master for recording ex-parte evidence. On 13.06.2019, the learned counsel for the plaintiff was present and sought time for adjournment and since the plaintiff was not present, the matter was adjourned on 14.06.2019 for ex-parte evidence. On 14.06.2019, again the learned

counsel for the plaintiff was present and the plaintiff was not present and the matter was listed before this Court today, without completing ex-parte evidence.

2. When the matter was called thrice today, the learned counsel who represented on behalf of the counsel for the plaintiff on record was not in a position to provide appropriate answers to the Court and the matter was passed over. Again when the matter is called at 3.55 p.m., none appeared on behalf of the plaintiff. Therefore the suit is dismissed for default. It is clearly seen that the plaintiff is not showing any interest to prosecute the case. Hence, the present Commercial Suit is dismissed for default with cost of Rs.10,000/-. The cost shall be paid to the Chief Justice Relief Fund within a period of two weeks from the date of order copy made ready.

17.06.2019

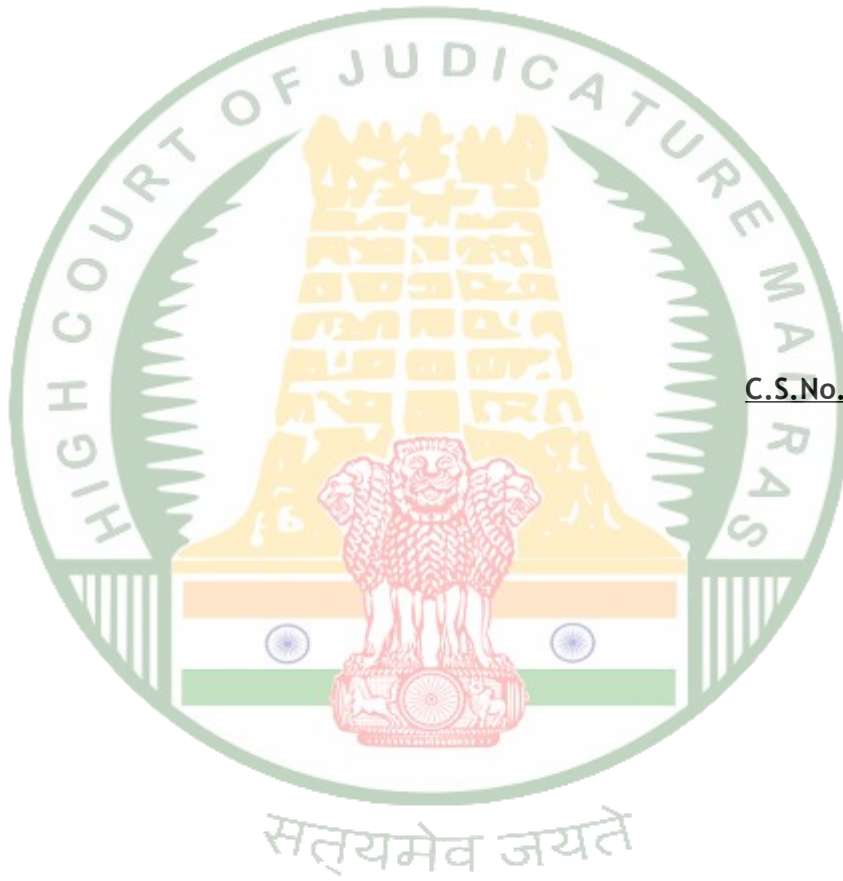
Index : Yes/No.
Speaking/Non-Speaking order
Internet: Yes/No

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KRISHNAN RAMASAMY, J.,

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C.S.No.201 of 2019

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17.06.2019