

C.S.No.426 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.426 of 2019 &

O.A.Nos.673 to 675 of 2019 & A.No.4954 of 2019

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan,
No.53, Rajasekaran Street,
Opp: Kalyani Hospital, Radhakirshnan Salai,
Mylapore, Chennai – 600 004. ... Plaintiff

Vs

M/s.Kalasakthi Agro Pvt. Ltd.,
No.434/2, Arcot to Tindivanam Road,
Pudhupadi (Village), Arcot,
Vellore – 632 583 ... Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules of Madras High Court read with Order VII Rule 1 of CPC read with Sections 134 and 135 of Trade Marks Act, 1999 read with sections 61 and 62 of the Copyright Act, 1957 for the following judgment and decree :

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 registered Trade Mark "Gold Winner" by using the

offending Trade Mark “Sakthy Gold” or any mark or ord deceptively similar to the aforesaid Trade Mark of the plaintiffs 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 them from passing-off their interior product, as that of the plaintiff's “Gold Winner” edible refined sunflower oil by using the offending words “Sakthy 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. For a permanent injunction restraining the defendant from violating the plaintiff's copyright in the artistic work used in the plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing its reputed and well known registered Trademarks “Gold Winner” by substituting the Trade mark “Gold Winner” with the offending words “Sakthy Gold” 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 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 “Sakthy 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 stationery and all other material containing/bearing offending mark/label “Sakthy Gold” with distinct colour 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. For erasure, removal or obliteration from all infringing goods, materials or articles in the possession and control of the defendant with the offending mark/labels and pouches deceptively similar to the plaintiff's “Gold Winner” refined sunflower oil;

vii. To pay costs of the suit.

For Plaintiff : Ms.Surya R.S.

For defendant : Mr.K.Shakespere

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J U D G M E N T

This suit has been filed 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 registered Trade Mark "Gold Winner" by using the offending Trade Mark "Sakthy Gold" or any mark or word deceptively similar to the aforesaid Trade Mark of the plaintiffs 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 them from passing-off their inferior product, as that of the plaintiff's "Gold Winner" edible refined sunflower oil by using the offending words "Sakthy 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. For a permanent injunction restraining the defendant from violating the plaintiff's copyright in the artistic work used in the plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing its reputed and well known registered Trademarks "Gold Winner" by substituting the

Trade mark “Gold Winner” with the offending words “Sakthy Gold” 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 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 “Sakthy 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 stationery and all other material containing/bearing offending mark/label “Sakthy Gold” with distinct colour 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. For erasure, removal or obliteration from all infringing goods, materials or articles in the possession and control of the defendant with the offending mark/labels and pouches deceptively similar to the plaintiff’s “Gold Winner” refined sunflower oil;

vii. To pay costs of the suit.

2. When the matter was taken up today, the learned counsel appearing for the defendant submitted that the defendant is no more using the trademark of the plaintiff and undertakes to refrain from using the trademark of the plaintiff in future and filed an affidavit to that effect.

3. Since the defendant has made an admission of infringement and also admitted that they also desist from infringing hereafter and also made a change in their marks, this Court is of the view that it is the fit case, where the decree and judgment itself can be passed on the basis of the admission of the fact made before this Court through their counsel. Even the oral admission of the learned counsel for the defendant can also be taken note of. In view of the above, the admission of the defendant's counsel taken on record and the suit is liable to be decreed.

4. According, the suit is decreed in respect of prayers 'i' to 'iii'. As far as the prayers 'iv' to 'vi' are concerned, the suit is dismissed. Consequently, the connected applications are closed. No cost.

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Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order



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N.SATHISH KUMAR, J.

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