

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Suit (Comm. Div.) No.609 of 2018
and O.A.Nos.813 and 814 of 2018

M/s.Kaleesuwari Refinery Pvt. Ltd.,
Rep. by its Manager-Legal, Mr.A.Saravanan,
No.53, Rajasekaran Street,
Opp. Kalyani Hospital, Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... Plaintiff

-VS-

M/s.Sri Vignesh Industries,
Near Mariyamman Temple,
Big Bazaar, Palakkad-12

Suit Summons may be served through
Palakkad District Court, Palakkad

... Defendant

Prayer: Plaint 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 and 135 of the Trade Marks Act, 1999, seeking a) to grant 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 Winner" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's; b) to grant a permanent injunction to restrain the Defendant, their men, agents, associates and/or assignees or any person claiming rights from them from Passing Off the Plaintiff's reputed and well known registered Trade Mark "Gold Winner" by using the offending Trade Mark "Gold Winnder" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's; c) for preliminary decree directing the Defendant to render true account of profits made by the

Defendant by using the aforesaid offending label of “Gold Winner” and d) for erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the Defendant with the offending mark/labels and pouches deceptively similar to the Plaintiff’s “Gold Winner” Trade mark.

For Plaintiff : Mr.Vijayan Subramanian
For Defendant : M/s.Waraon & Sai Rams

J U D G M E N T

This Civil Suit has been filed by the Plaintiff seeking 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 Trade Mark “Gold Winner” by using the offending Trade Mark “Gold Winner” or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff’s;

(ii) for a permanent injunction to restrain the Defendant, their men, agents, associates and/or assignees or any person claiming rights from them from Passing Off the Plaintiff’s reputed and well known registered Trade Mark “Gold Winner” by using the offending Trade Mark “Gold Winnder” or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff’s;

(iii) for preliminary decree directing the Defendant to render true account of profits made by the Defendant by using the aforesaid offending label of “Gold Winner”;

(iv) for erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the Defendant with the offending mark/labels and pouches deceptively similar

to the Plaintiff's "Gold Winner" Trade mark;

(v) to pay for the costs of the suit; and

(vi) pass such further or other order, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the parties have entered into a compromise and produced the Memorandum of Compromise dated 26.11.2018 entered into between the Plaintiff and the Defendant. For better understanding, the Memorandum of Compromise entered into between the parties is extracted hereunder:

**"MEMORANDUM OF COMPROMISE ENTERED INTO BETWEEN
THE PLAINTIFF AND THE DEFENDANT"**

The Plaintiff and the Defendant humbly submit as follows:

1. The Plaintiff and the Defendant jointly file the present Memo of Compromise to settle the case on the terms and conditions set forth hereinafter.

2. The Plaintiff has filed the above suit against the Defendant on account of the unfair adoption of the offending trade mark Gold Winner for selling/marketing it as flour products in violation of the Plaintiff's registered Trade Mark Gold Winner. The Defendant's Pouch are enclosed as Annexure I to this Memo of Compromise.

3. The Plaintiff filed the above suit against the Defendant

praying for 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 registered Trade Mark Gold Winner by using the offending Trade Mark "Gold Winner" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's together with other consequential relief. The prayer portion of the Plaint shall be read as part and parcel to the present Joint Memo of Compromise.

4. After initiating the above suit, the Defendant has approached the Plaintiff for an amicable settlement of the dispute without paying any damages to the Plaintiff and the Plaintiff has also agreed to settle the dispute. Consequently, the present Memorandum of Compromise has been executed between the Plaintiff and the Defendant.

5. The Defendant hereby undertakes as follows:-

1) The Defendant admits that they have been using the Plaintiff's registered trade mark Gold Winner by using the offending trademark "Gold Winner" for their products such as Gram flour, Rice Flour, Puttu Flour and Wheat Flour in and around Palakkad District in Kerala State.

2) The Defendant has given up the offending trademark Gold Winner and the offending pouch annexed herewith as Annexure I and undertakes not to use the same in future.

3) The Defendant undertakes to use the mark KERALA GOLD WIN and the trade dress, colour scheme and get up for their product as attached with this memo in Annexure-II.

4) The Defendant undertakes to withdraw the Trademark Applications, if any, to register the offending mark Gold Winner. The Defendant undertakes to withdraw all and any copyright applications seeking to register by deceptively imitating the artistic work of the Plaintiff's Gold Winner packing material for the Defendant's product which bears an identical get up, colour scheme and trade dress of the Plaintiff's packing material.

5) The Defendant assures the Plaintiff that it shall neither adopt the existing colour scheme, trade dress and/or get up of the Gold Winner Refined Sunflower Oil of the Plaintiff nor adopt such modified colour scheme, trade dress and get up which the Plaintiff may adopt for packing and labelling its KERALA GOLD WIN Flour products / Refined Sunflower Oil for packing it any other brand and products which the defendant may adopt in future.

6) The Defendant undertakes immediately from the date of signing this Memorandum of Compromise not to manufacture / produce or sell the packing materials containing the offending mark Gold Winner and also indemnifies to withdraw / buyback the products bearing the offending mark "Gold Winner" sold in the market by the defendant from the dealer/supplier/shops.

7) the Defendant undertakes to destroy all the packing materials containing the offending mark "Gold Winner" available in his hand as stock and also in its unsold product.

8) The Defendant undertakes not to adopt a trademark which is identical / similar to the Plaintiff's registered and unregistered trademarks for its product and also not to

S.VAIDYANATHAN,J.

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imitate/copy any trade dress, colour scheme and get up which is similar / identical to the Plaintiff's product.

9) The Defendant assures the Plaintiff that the above undertaking is not only binding on him but also on any person claiming rights through and from the Defendant.

It is therefore prayed that this Hon'ble Court may graciously be pleased to take this Joint Memo of Compromise filed by the Petitioner and the Defendant on file and close the above C.S.No.609 of 2018 and thus render justice."

3. Recording the Memo of Compromise entered into between the parties dated 26.11.2018, **this Civil Suit is decreed in terms of the Memorandum of Compromise.** The Memorandum of Compromise shall form part of the Decree. No costs. Consequently, connected Applications are closed.

22.02.2019

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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