

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.594 of 2019
and
O.A.Nos.913 to 915 of 2019

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Legal),
A.Saravanan ... Plaintiff

Vs.

M/s.Prabu Oil Industries,
No.13/3, Oklipalayam, Othakkalmandapam,
Coimbatore – 641 032. ... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) 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 Trademark "Gold Winner" by using the offending Trademark "GOLD M" or any mark or work 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.

(b) For a 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 Winner" edible refined sunflower oil by using the offending words "GOLD M" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trademark "Gold Winner" and trade dress for "Gold Winner".

(c) 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 Trademark "Gold Winner" with the offending words "GOLD M" bearing same trade dress, color scheme and get p deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material/pouch bearing Trademark "Gold Winner".

(d) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "GOLD M".

(e) 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 "GOLD M" 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.

(f) 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" refined sunflower oil.

(g) To pay for the costs of the suit;

(h) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.Vijayan Subramanian
For defendant : Mr.R.Sathish Kumar

J U D G M E N T

The suit has been laid 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 Trademark "Gold Winner" by using the offending Trademark "GOLD M" or any mark or work 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) For a 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 Winner" edible refined sunflower oil by using the offending words "GOLD M" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trademark "Gold Winner" and trade dress for "Gold Winner".

(iii) 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 Trademark "Gold Winner" with the offending words "GOLD M" bearing same trade dress, color scheme and get p 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 "GOLD M".

(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 "GOLD M" 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) 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" refined sunflower oil.

(vii) To pay for the costs of the suit;

(viii) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. When the matter is taken up for hearing, a joint memo of compromise entered into between the plaintiff and defendant dated 18.11.2019, signed by the parties and duly attested by their respective counsel has been produced.

3. Learned counsel appearing for the plaintiff as well as the learned counsel appearing for the defendant would submit that the suit may be decreed in terms of the joint memo of compromise

dated 18.11.2019. The joint memo of compromise reads as under:

The parties herein respectfully submit as follows:-

A. The parties herein submit that the above suit filed by the plaintiff against the defendant for permanent injunction and for directions.

B. The plaintiff and the defendant respectfully submit that with a view to give quietus to the matter, they have agreed to settle their disputes amicably on the following terms:-

TERMS OF THE MEMORANDUM OF COMPROMISE:-

1. 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 "GOLD M" 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 the memo in Annexure - A.

3. The defendant undertakes to use the trade dress, colour scheme and get up for their product "GOLD M" 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.*

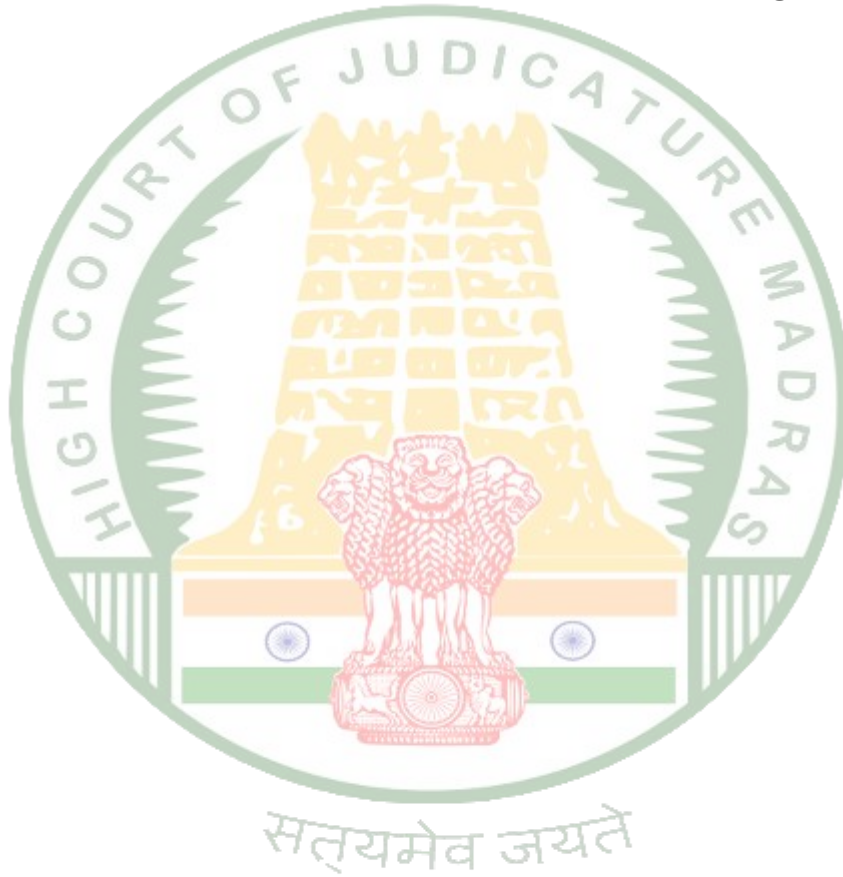
It is therefore prayed that this Hon'ble Court may be pleased to receive the Memo of Compromise and pass a decree in terms of the same and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.

4. Accordingly, the suit stands decreed in terms of the joint memo of compromise dated 18.11.2019 and the said joint memo of compromise is taken on record and the same shall form part of the

decree. No costs. Consequently, connected original applications are closed.

18.11.2019

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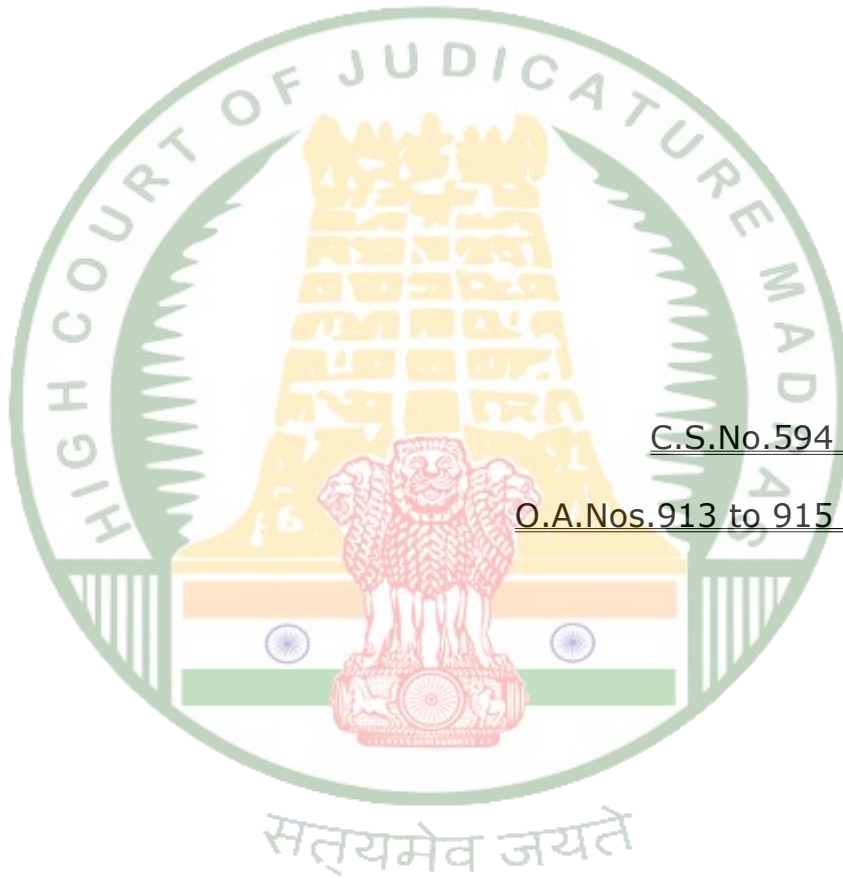


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