

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.361 of 2017andA.No.2746 of 2017andO.A.Nos.498 to 501 of 2017

M/s.Hatsun Agro Product Ltd.,
Having registered officer at,
"Domain", Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai - 600 097
And also carrying on its business at,
Old No.AD-83/New No.AD 13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai - 600 040.

..Plaintiff

Vs.

1.M/s.S.P.Mani & Mohan Dairy (India) Pvt. Ltd.
34 & 84, Jeevanadam Street,
Kollamapalayam,
Erode - 638 002.

2. M/s.S.P. Mani & Mohan Dairy,
A Partnership firm represented by its Partner,
Mr.R.Mohanasundaram,
34 & 84, Jeevanadam Street,
Kollamapalayam,
Erode - 638 002.

3. Mr.R.Mohanasundaram,
34 & 84, Jeevanadam Street,
Kollamapalayam,
Erode - 638 002.

4. Mr.S.P.Loganathan,
34 & 84, Jeevanadam Street,
Kollamapalayam,
Erode - 638 002.

5. Mr.M.Dhayalan,
34 & 84, Jeevanadam Street,
Kollamapalayam,
Erode - 638 002.

.. Defendants

This Civil Suit is preferred, under Order VII Rule 1 of CPC Read with Order IV Rule 1 of High Court O.S. Rules and Sections 134 & 135 of The Trade Marks Act, 1999, praying

a) For permanent injunction restraining the defendants by themselves, their agents, servants or any one claiming through from in any manner infringing the Plaintiff's Trade Mark "AROKYA" as shown in the Schedule hereunder by using the offending trademark "AMIRTHAA" or any other mark or marks which are in any way identical or deceptively similar to the Plaintiff's registered trademark "AROKYA";

b) For permanent injunction restraining the defendants by themselves, their agents, servants or any one claiming through from in any manner infringing the Plaintiff's Trade Marks as shown in the Schedule hereunder and the trademark label shown in the Annexure-P1, P2,P3 and P4 by using the Defendant's trademark label shown in Annexure-D1 or any other mark or marks which are in any way identical or deceptively similar to the Plaintiff's trademark label "AROKYA";

c) For permanent injunction restraining the Defendants by themselves, their servants or agents or anyone claiming through them from in any manner passing off their products as that of the Plaintiff's products by selling or offering to sell their products under the offending trademark and trademark label "AMIRTHAA" as shown in Annexure-D1 or by using any

other trademark, trademark label, which is identical or similar, deceptively similar to that of the plaintiff's trademark "AROKYA" whether by manufacturing or selling or offering for sale or in any manner advertising the same ;

d) For a permanent injunction, restraining the Defendants by themselves, their servants or Agents or anyone claiming through them from in any manner infringing the Plaintiff's copyright in the artistic work over the trademark label "AROKYA" as shown in Annexure P1, P2, P3 and P4 by using the offending label as shown in Annexure-D1 or any other label or labels which are in any way a reproduction of the Plaintiff's copyright label AROKYA as filed in Annexure P1, P2, P3 and P4 ;

e) Directing the Defendant to surrender to the Plaintiff the entire products with the offending labels, stock of no use, offending labels together with the blocks and dies, name boards, sign boards etc for destruction;

f) Directing the Defendant to render true and faithful accounts of the products earned by them through the sale of the offending milk products bearing the offending trademark label and directing payment for such profits to the plaintiff;

g) Directing the Defendant to pay to the Plaintiff the cost of the suit; and

h) grant such further or other orders as this Court may deem fit and proper under the circumstances of the case.

For Plaintiff : Mr. A.Prasanna Venkat of
M/s.APR Associates

For Defendant : Mr.S.Patrick for Mr.Swaminathan

JUDGMENT

There is one plaintiff and there are five defendants in this suit.

2. This suit is listed today (28.01.2019) under the caption 'REPORTING SETTLEMENT AND MEMORANDUM OF COMPROMISE'.

3. On behalf of sole plaintiff, Mr.A.Prasanna Venkat of M/s.APR Associates (Law Firm) and Mr.S.Patrick, learned counsel representing the counsel on record for all the five defendants are before this Commercial Division.

4. To be noted, plaintiff is a Public Limited Company and is, therefore, a juristic person. One Mr.Rajesh DR, who is described as Assistant General Manager in the plaintiff company is present in Court. On behalf of defendants, with regard to presence of the parties a memo dated 28.01.2019 has been filed, which reads as follows:

'MEMO FILED ON BEHALF OF THE DEFENDANTS

The Defendants humbly submits as follows

1. It is submitted that the Plaintiffs filed the civil suit against the defendants for infringement of trademark, copyright and also for the tort off passing off and cost.
2. It is submitted that the Plaintiff and the defendants entered into the joint compromise memo in the suit.

The Plaintiff and the defendants signed the compromise memo.

3. It is submitted that the Defendants are residing and working at Erode and have a pre engaged urgent work, Hence they are not unable to travel to Chennai. Therefore they are not in a position to personally present before this Hon'ble Court for hearing today.

It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to accept the bonafide reason stated above by the Defendants for non-appearance and dispense with the personal appearance of the Defendants and take on record of the Joint Compromise memo signed by the Plaintiff and the Defendants thus render justice.

Dated at Chennai on this 28th day of January 2018. '

5. The aforesaid memo is self-explanatory.

6. Both the learned counsel, on instructions, from their respective clients submit that parties have amicably settled the lis amongst themselves and have reduced the same to writing vide a 'Memorandum of Compromise dated 28.01.2019' (hereinafter 'said MOC' for brevity). To be noted, said MOC includes nine annexures. Four annexures have been described as P1 to P4 and five annexures have been described as D1 to D5. Therefore, reference to said MOC will include these nine annexures also.

7. With regard to the presence of defendants, learned counsel Mr.S.Patrick, reiterates the aforesaid memo and submits that the parties have signed the said MOC in the presence of each other and therefore, presence of the defendants may please be dispensed with. This request is acceded to.

8. On behalf of plaintiff Mr.Rajesh. DR, submits that he has signed the said MOC, he has requisite Board Resolution of the plaintiff company to do so and he reiterates the contents of said MOC.

9. Learned counsel on both sides as well as plaintiff company's representative make a common request that the main suit itself may please be disposed of by way of a compromise decree in terms of said MOC.

10. To be noted, plaint has been verified and signed by one Mr.N.Muthunathan S/o. K.Balasingam who has been described as Officer-Legal in the plaintiff company. Therefore, Mr.Rajesh DR has produced a Certified True Copy of the Resolution passed by the Board of Directors of the plaintiff company in a meeting held on 16.10.2017. A perusal of this Certified Copy reveals that Mr.Rajesh DR, has been authorized by the plaintiff company to represent the plaintiff company in these proceedings.

11. Besides this, plaintiff company's representative has also produced his PAN card as photo identity card together with self attested photo copy of the photo identity card.

12. In the light of the narrative supra, this suit is disposed of by way of compromise decree in terms of said MOC. As mentioned supra, said MOC will include the nine annexures.

13. The said MOC reads as follows:

'MEMORANDUM OF COMPROMISE

The Plaintiffs and the Defendants respectfully submit that with a view to avoid further legal proceedings in the above suit both the parties agreed to settle the dispute and reached a compromise as follows:-

1. The Defendant agree and consent for passing decree in terms of Prayer b, c & d of paragraph 46 of the Plaint and the suit may be decreed accordingly;
2. The Plaintiff is not pressing for any other reliefs in paragraph a, e, f & g.
3. The trademark and trade dress as used by the Plaintiff is filed as Annexure P1, P2, P3 & P4.
4. The trademark and trade dress in respect of which the present suit is filed is filed as Annexures D1. The changed trademark label and trade dress is filed as Annexures D2, D3, D4 and D5.
5. The defendant undertake that they will not or infringe the plaintiff's Trademark and Copyright in the trademark label P1, P2, P3 & P4 or pass of their goods as that of the Plaintiff.
6. The Plaintiff has no objection for the Defendant to use the trademark and trade dress in respect of its milk products

as per the Annexures enclosed with this Memorandum of Compromise.

7. The Defendants agree that there are no pending stock of labels as shown in Annexure D1 with the Defendant. In the event of any product under the said mark remaining unsold subsequent to the date of this Memorandum of Compromise, the Defendants agree that the same would be recalled from the market and disposed off in the presence of representative of the Plaintiff.
8. The parties shall bear their respective costs.

Therefore, the Plaintiffs and the Defendants pray this Hon'ble Court may be pleased to record this Memorandum of Compromise and the suit may be decreed in the aforesaid terms and thus render justice.

Dated at Chennai on this the 28th day of January 2019.'

ANNEXURES

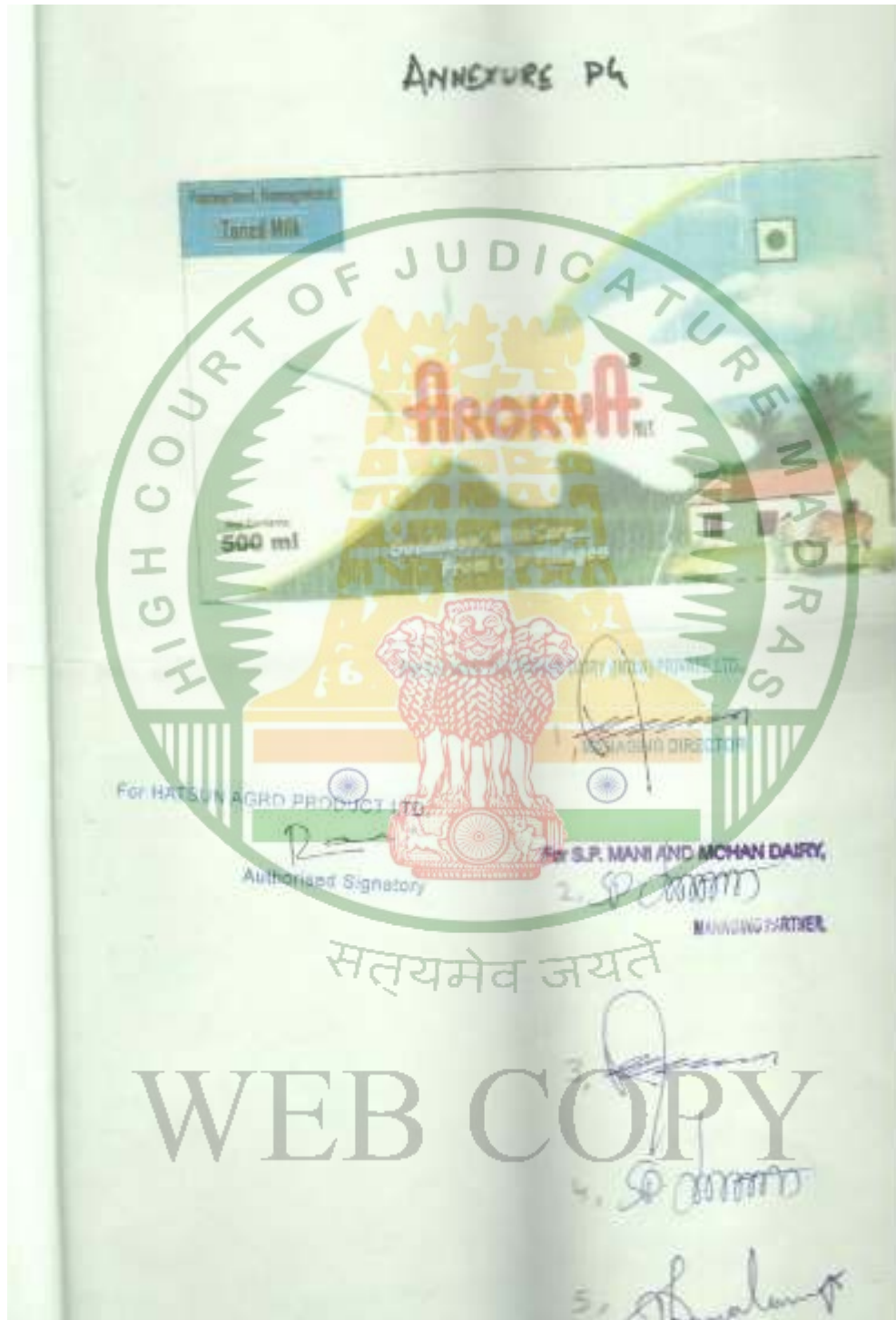




ANNEXURE P3

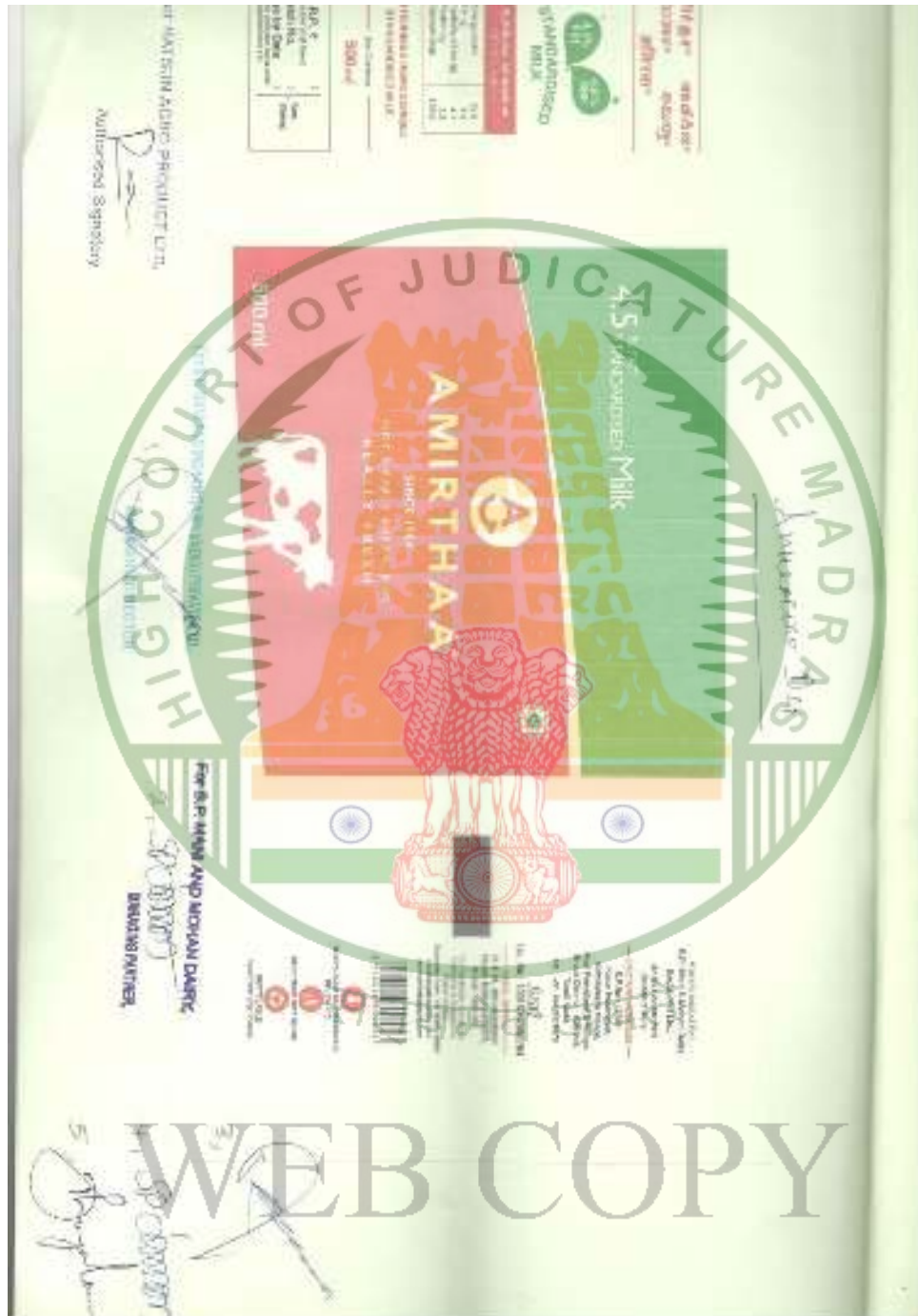


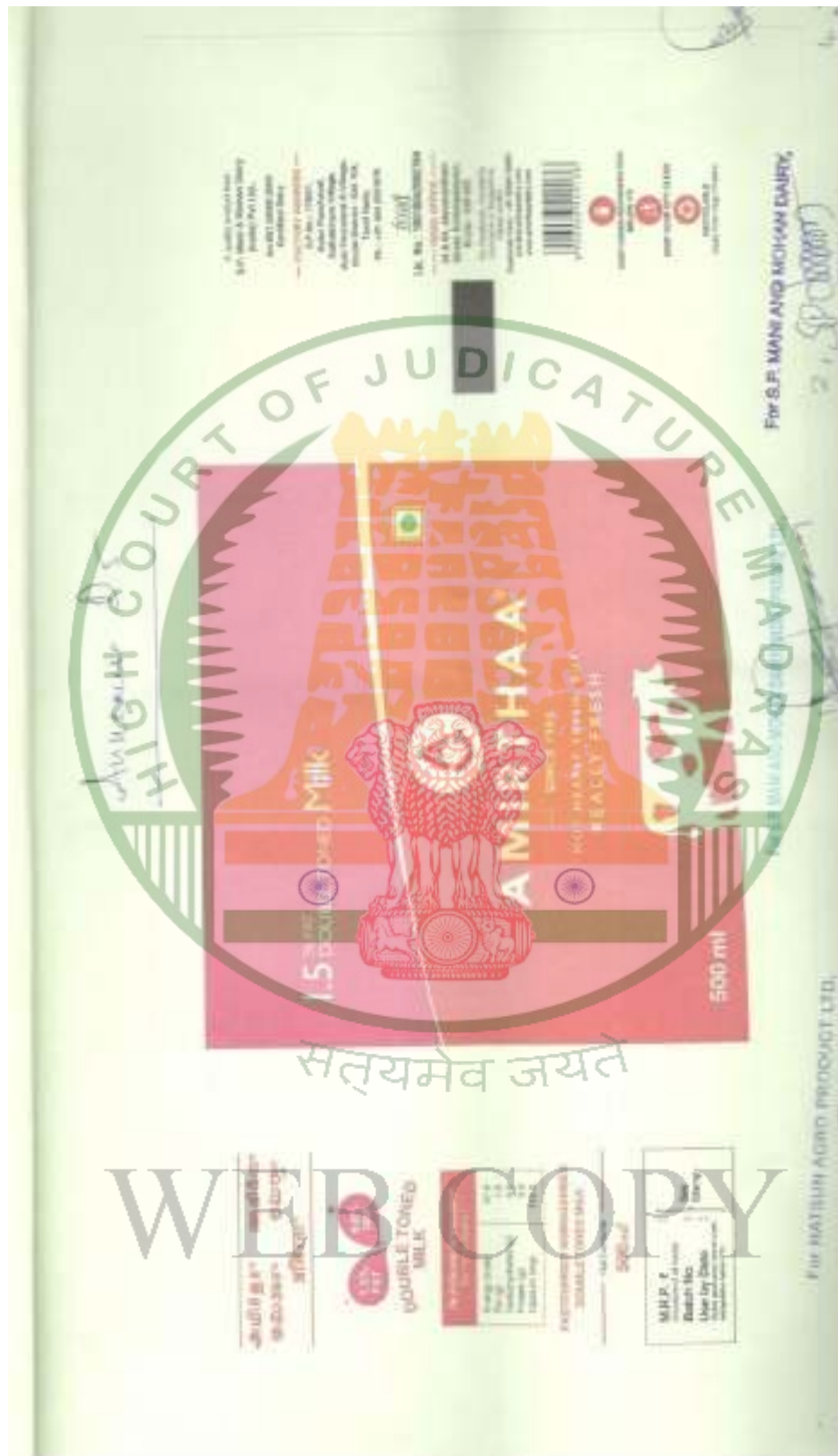
WEB COPY











14. Said MOC, Memo filed on behalf of defendants being memo dated 28.01.2019, self-attested photo copy of photo identity card of plaintiff and certified true copy of plaintiff company's Board Resolution shall all form part of the compromise decree.

Suit is decreed on above terms. Consequently connected interlocutory applications are closed. There shall be no order as to costs.

28.01.2019

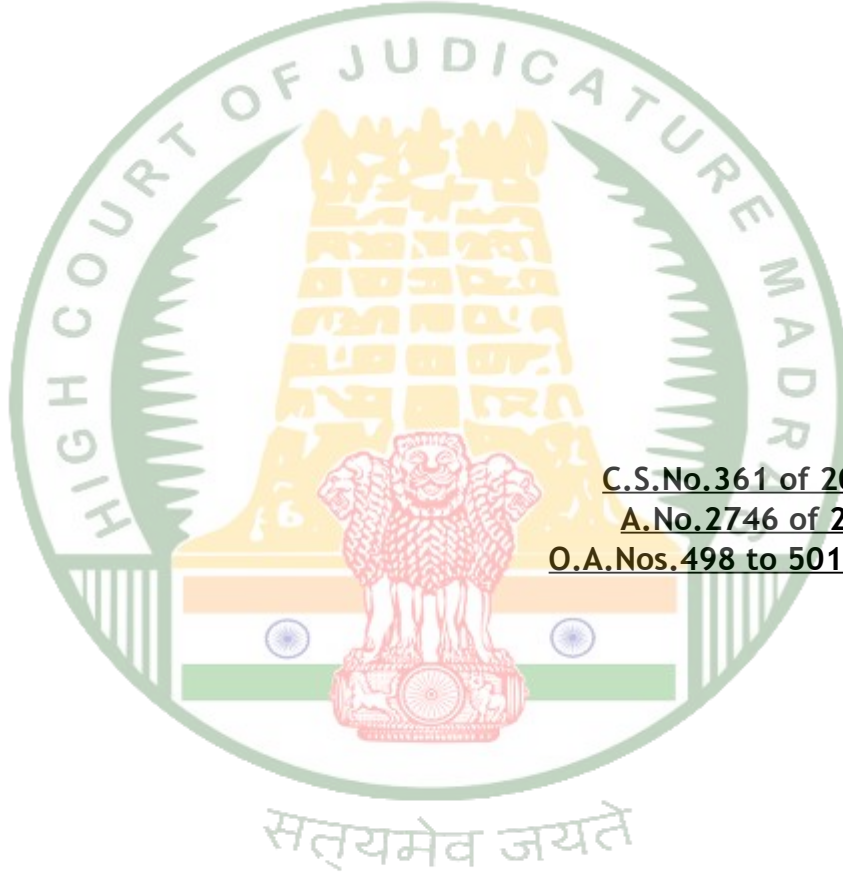
Speaking order/Non-Speaking Order

Index : Yes/No
gpa/mp



WEB COPY

M.SUNDAR, J.
gpa/mp



C.S.No.361 of 2017 and
A.No.2746 of 2017 and
O.A.Nos.498 to 501 of 2017

WEB COPY

28.01.2019