

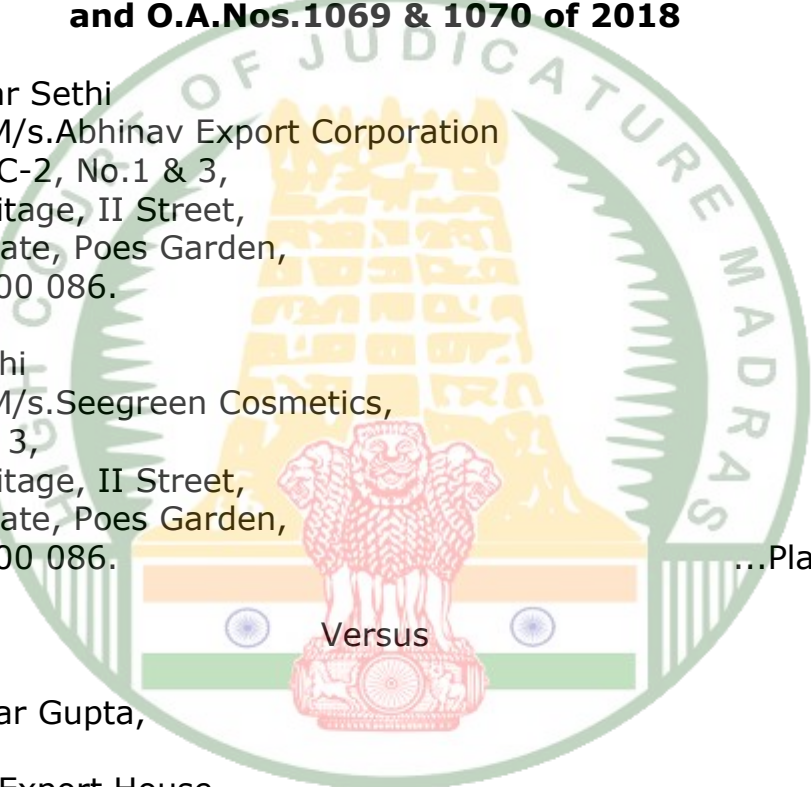
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2019

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The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.S.(Comm.Div.)No.774 of 2018
and O.A.Nos.1069 & 1070 of 2018**

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- 1.Ashok Kumar Sethi
Trading as M/s.Abhinav Export Corporation
Residing at C-2, No.1 & 3,
Swarup Heritage, II Street,
Kasthuri Estate, Poes Garden,
Chennai - 600 086.
- 2.Abhinav Sethi
Trading as M/s.Seegreen Cosmetics,
C-2, No.1 & 3,
Swarup Heritage, II Street,
Kasthuri Estate, Poes Garden,
Chennai - 600 086.Plaintiffs
- Versus
- 1.Mr.Raj Kumar Gupta,
Proprietor,
RKS Henna Export House,
A-271, Okhla Industries Area,
Phase - I,
New Delhi - 110 020.
- 2.JWALA Beauty Centre,
No.162, N.S.C Bose Road,
Sowcarpet,
Chennai - 600 079.Defendants

Plaint filed under Order IV Rule 1 of the Original Side Rules and Order VII, Rule 1 of the C.P.C r/w Sections 54, 55 & 62 of the Copyright Act, 1957 and Section 27 r/w Sections 134 & 135 of the Trademarks Act,

(a) To grant a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned Copyright RKS HINA Black Henna as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the plaintiffs' Copyright AMIN'S GOLDEN PACK the picture mark as shown in Document No.1 or in any manner infringing the plaintiffs' Copyright as shown in Document No.1.

(b) To grant a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned pouch RKS HINA Black Henna as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other pouch which is in any way visually, phonetically or deceptively similar to the plaintiffs' pouch AMIN'S GOLDEN PACK the pouch as shown in Document No.1 or in any manner passing off the plaintiffs' pouch as shown in Document No.1.

(c) To direct the defendants to surrender to the plaintiffs all the black hennas, packing materials, cartons, advertisement materials, and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Copyright RKS HINA Black Henna as shown in Document No.2 in respect of black hennas.

(d) For a preliminary decree in favour of the plaintiffs, directing the defendants to render an account of profits made by them by the use of the Copyright RKS HINA Black Henna as shown in Document No.2 on the goods referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants has rendered accounts.

(e) To direct the defendants to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Ms.Gladys Daniel

For Defendants : Mr.R.Sathish Kumar

J U D G M E N T

Today(06.06.2019), when the matter is taken up for hearing, the learned counsel appearing for both sides have submitted in unison that the parties have resolved their disputes. The learned counsel appearing for the plaintiffs has also filed a Memo of Compromise dated 06.06.2019, before this Court.

2. The said Memo of Compromise reads as follows:

"The Plaintiffs and the Defendants have agreed to compromise the above suit C.S.(Commn.Div.) No.774 of 2018 in the following terms:

1. The term plaintiffs and defendants shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2. The defendants acknowledges that the plaintiffs are the prior users of the suit Trademark/Copyright AMIN'S GOLDEN PACK as shown in Complaint Document No.1 since 2015.

3. The defendants undertakes to use only the carton/pouch which is filed herein as ANNEXURE-A for black hennas.

4. The defendants shall withdraw their Copyright/Trademark Applications for the registration of the *Plaint Document No.2*, if any, which is not within the knowledge of the plaintiffs within two weeks from today. The defendants undertakes not to apply for registration of the Copyright/Trademark as shown in *Plaint Document No.2* and also undertakes hereby not to assert any right in respect of the said color scheme, get up or layout for any goods in future.

5. The plaintiffs have no objection to the use of the pouch as shown in ANNEXURE A.

6. The defendants submits to a judgment and decree as prayed for in terms of prayer (a) & (b) of para 42 of the *Plaint* for

(a) granting a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned Copyright RKS HINA Black Henna as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the plaintiffs' Copyright AMIN'S GOLDEN PACK the picture mark as shown in Document No.1 or in any manner infringing the plaintiffs' Copyright as shown in Document No.1.

(b) granting a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by exporting, selling, advertising and or offering for sale by using the impugned pouch RKS HINA Black Henna

as shown in Document No.2 upon the henna or in any media and use the same in invoices, letter heads and visiting cards or by using any other pouch which is in any way visually, phonetically or deceptively similar to the plaintiffs' pouch AMIN'S GOLDEN PACK the pouch as shown in Document No.1 or in any manner passing off the plaintiffs' pouch as shown in Document No.1.

7. In view of the decree for permanent injunction the plaintiffs have given up the reliefs contained in prayers c, d & e in para 42 of the suit including cost of the suit."

3. The aforesaid Memo of Compromise is taken on file and the same shall form part of the judgment.

4. This Civil Suit itself is decreed in terms of the Memo of Compromise filed by the plaintiffs' counsel. However, there shall be no order as to costs. Consequently, connected Applications are closed.

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Index : Yes/No

06.06.2019

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KRISHNAN RAMASAMY, J.,
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