

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.280 of 2020
and O.A.Nos.515 to 517 of 2020

M/s. Kaleesuware Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan (M - 44 years),
No.53, Rajasekaran Street,
Opp: Kalyani Hospital, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ... Plaintiff

..Vs..

M/s. ABI & CO,
No.281 & 284, Semmandampalayam Road,
Vellakovil - 638 111,
Erode District. ... Defendant

PRAYER : Plaint filed under and Order IV Rule 1 of the O.S.Rules r/w
Order VII Rule 1 of CPC Rules r/w Sections 134 & 135 of Trademarks Act,
1999 r/w Sections 61 & 62 of the Copyright Act, 1957, prayed for a
Judgment and Decree:-

(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 Trade Mark "**Gold Winner**" by using the offending Trade mark "**GOLD POWER**" or any mark or word deceptively similar to the aforesaid Trade Mark 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 POWE**" 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**".

(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 POWER**" 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**".

(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 POWER**".

(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 headsd office stationary and all other material containing / bearing offending mark / label "**GOLD POWER**" 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.

For Plaintiff : M/s.R.S.Suriya for
M/s.Vijayan Subramanian

For Defendant : M/s.Ramesh Ganapathy for
M/s.Mission legal

JUDGMENT

Both parties had filed the Memorandum of Compromise dated 08.12.2020. It has been signed by the Authorised Signatory on behalf of the plaintiff and by the proprietor on behalf of the defendant. It has also been signed by the learned counsels for the plaintiff and the defendant.

2. The Memorandum of Compromise also incorporated the change of label of the defendant. Under the terms of the Memorandum of Compromise that the defendant had undertaken not to use the Trademark of the plaintiff "**Gold Winner**" and also, to abide with such undertaking, they had also undertaken to pay compensation in case of violation.

3. The suit is decreed in terms of Memorandum of Compromise. No order as to costs. Consequently, connected Original Applications are also closed. The Memorandum of Compromise along with annexures presented by the parties to form part of the decree.

सत्यमेव जयते

17.12.2020

Index : Yes / No

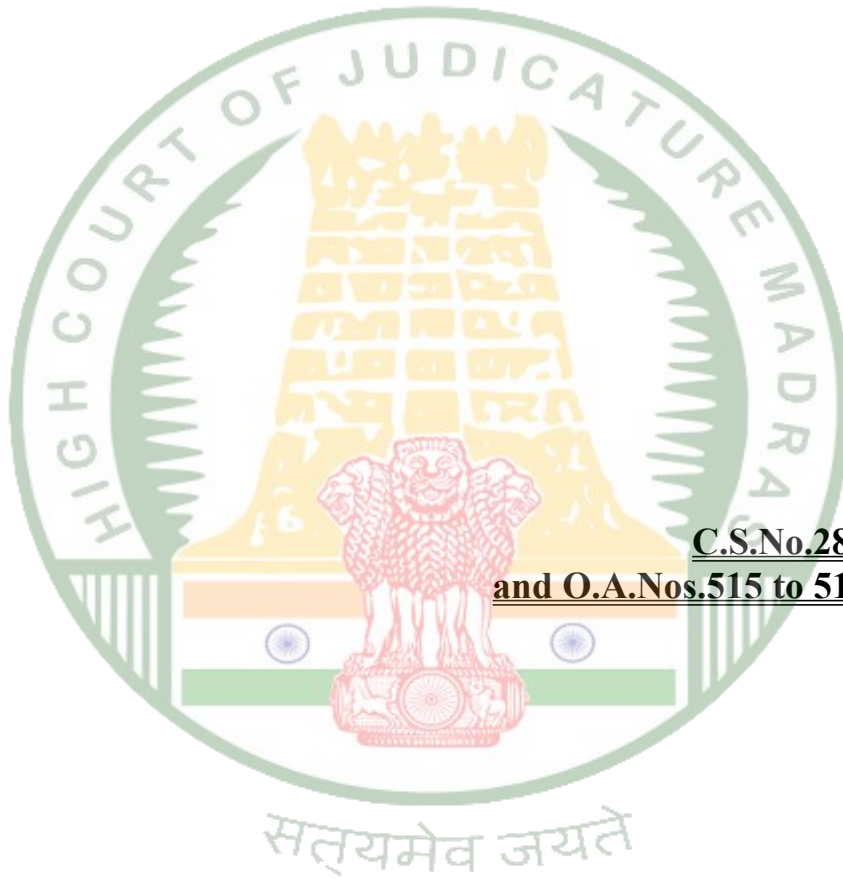
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C.V.KARTHIKEYAN, J

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