

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.07.2020

PRONOUNCED ON: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.655 of 2019

And

O.A.Nos. 1016 & 1017 of 2019

M/s. Kaleesuware Refinery Private Limited.,
Represented by its Manager (Legal),
Mr.ASaravanan
No.53, Rajasekaran Street,
Opp: Kalyani Hospital,
Radhakrishnan Salai
Mylapore,
Chennai – 600 004.

Plaintiff

Vs

M/s. Greens Trading Company
No.4/2, Nehru Park Backside
Rice Mills Road
Ramanathapuram
Coibatore 641 045.

Defendant

PRAYER:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC., Rules read with Sections 134 & 135 of Trade Marks Act, 1999 praying for the following reliefs:

(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 reputed and well known registered Trade Mark "DHEEPAM" by using the offending Trade Mark "RAHA DHEEPAM" 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 "DHEEPAM" lamp oil by using the offending words "RAHA DEEPAM" or any other words or mark and offending packing material/pouch/bottles deceptively similar to the plaintiff's trade mark "DHEEPAM" and Trade dress for "DHEEPAM";

(c) direct the defendant their men, agents, assignees, dealers and/or retailers, distributor to surrender to the plaintiff all offending "RAHA DHEEPAM" bottle/container/packing materials label, advertising

materials hoarding, letter heads office stationery and all other goods containing/bearing offending mark/label “RAHA DHEEPAM” with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well known trademark “DHEEPAM” label and bottle/container for destruction by an order of this court; and

(d) to pay for the costs of the suit.

For Plaintiff : M/s. Vijayan Subramanian

For Defendant : Set Exparte

JUDGEMENT

The suit has been filed by M/s. Kaleesuwari Refinery Private Limited, a Private Limited Company registered under the Companies Act 1956 claiming that they are market leaders in edible oil business and that in April 2009, they had launched a unique lamp oil with a blend of 5 oils, namely, refined castor oil, sesame oil, coconut oil, refined mahua oil and refined rice brand oil. This has been marketed under the brand name “DHEEPAM”. The plaintiff has also business in edible oil such as sunflower oil, groundnut oil, olive blended oil etc., under the trade name

“Gold Winner”, “Cardia Life”. The plaintiff has registered the same under the Trade Marks Act 1999. The oil product “DHEEPAM” is marketed through out the country. The label is very stylish and captivating and there is a distinct colour scheme with a striking resemblance to a Gopuram of Hindu temple. It is also a scented oil. The design of the bottle is also unique and is registered under the Designs Act in Registration No. 245127. The Trade Mark “DHEEPAM” has been registered under the Trade Marks Act in Registration No. 2320404.

2. It is claimed by the plaintiff that the defendant is using the offending label “RAHA DEEPAM” and imitating of plaintiff's getup colour scheme and trade dress for marketing their lamp oil. It is under these circumstances that the plaintiff had approached the Court seeking the relief as stated above.

3. The defendant had been served and had been set exparte on 04.02.2020. Thereafter, the plaintiff was invited to adduce evidence.

4. The Manager (Legal) of the plaintiff's Company, A.Saravanan filed his proof affidavit and along with proof affidavit had filed as Exhibits P-1 to P-7. The certificate of Registration of Design No. 245127 issued in favour of plaintiff is Ex.P1; the Trademark Registration Certificate of the Trade mark "DHEEPAM" is Ex.P2; the Legal usage certificate for the Trade mark "DHEEPAM" is Ex.P-3. The plaintiff had also issued notice to the defendant on 28.05.2019 and the defendant had also issued a reply stating that they have discontinued "RAHA DEEPAM" and have changed the name of "RAHA LAMP OIL". However in the proof affidavit, it had been stated that the defendant has been continuing to infringe the plaintiff's Trademark DEEPAM.

5. The following is the plaintiff's label and the defendant's label (Ex.P-6). A comparison shows that both are similar.

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6. The word “DHEEPAM” is predominantly shown by the defendant. There is every possibility of the general public being misled into buying the product of the defendant thinking that they are purchasing the product of the plaintiff.

7. In view of all these facts, **this Civil Suit is decreed with costs as assessed under Section 35 of the amended CPC with respect to the relief of 'a' & 'b', namely,**

(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 reputed and well known registered Trade Mark "DHEEPAM" by using the offending Trade Mark "RAHA DHEEPAM" 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 "DHEEPAM" lamp oil by using the offending words "RAHA DEEPAM" or any other words or mark and offending packing material/pouch/bottles deceptively similar to the plaintiff's trade mark "DHEEPAM" and Trade dress for "DHEEPAM";

8. The suit is dismissed with respect to the relief of 'c', namely,

(c) direct the defendant their men, agents, assignees, dealers and/or retailers, distributor to surrender to the plaintiff all offending “RAHA DHEEPAM” bottle/container/packing materials label, advertising materials hoarding, letter heads office stationery and all other goods containing/bearing offending mark/label “RAHA DHEEPAM” with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well known trademark “DHEEPAM” label and bottle/container for destruction by an order of this court;

9. Consequently, connected Applications are also closed.

24.07.2020

Index: Yes/No

Web: Yes/No

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Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – A.Saravanan (Plaintiff)

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1: the certificate of Registration of Design No. 245127 issued in favour of plaintiff; dated 07.05.2012.

2. Ex.P2: the Trademark Registration Certificate of the Mark “DHEEPAM” dated 11.06.2018.
3. Ex.P3: the Legal Usage Certificate for the mark “DHEEPAM” dated 19.11.2018.
4. Ex.P4: the Legal notice sent by plaintiff to defendant dated 28.05.2019.
5. Ex.P5: the Legal notice sent by defendant to plaintiff dated 29.05.2019.
6. Ex.P6: the table showing “DHEEPAM” label and “RAHA DHEEPAM” label.
7. Ex.P7: the Board Resolution of the plaintiff.
3. List of Witnesses Examined on the side of the defendant:-
Nil
4. List of Exhibits Marked on the side of the defendant:-
Nil

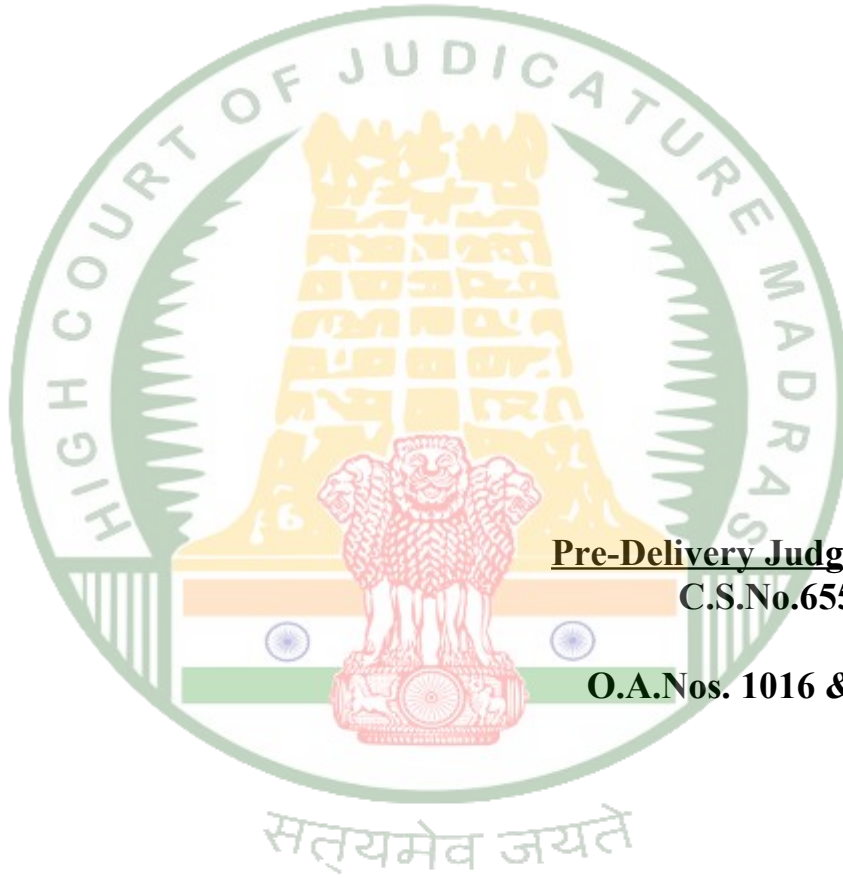
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
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