

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.03.2021**

CORAM:

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**

C.S.No.602 of 2002

Handy Instant Foods,
7, Chakrapani Street,
Chennai - 600 033.

... Plaintiff

..Vs..

1.Nature's Care,
PK 19, Phase V,
Industrial Estate,
Ekkatuthangal,
Chennai - 600 097.

2.Abel Nutraceuticals,
No.9, Bangaru Colony,
1st Street, K.K.Nagar West,
Chennai - 600 070

... Defendants

PRAYER : Complaint filed under and Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure read with Sections 105 and 106 of the Trade and Merchandise Marks Act, 1958, prayed for a Judgment and Decree:-

(a) granting a permanent injunction restraining the defendants, their distributors, stockist, servants, agents, retailers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising, directly or indirectly dealing in the product under the trademark DIAMEAL or any other trademark containing the plaintiff's trademark DIAMEAL which is identical with or deceptively or phonetically similar to the plaintiff's trademark DIAMEAL so as to pass off the defendants product as and for the products of the plaintiff or in any other manner whatsoever;

(b) The defendants be ordered and decreed to deliver up for destruction to the plaintiff all the products, preparation, dyes, blocks, articles, literature, cartons, labels, papers and things bearing and containing the impugned trademark DIAMEAL to an authorized representative of the plaintiff, for destruction;

(c) A preliminary decree be passed in favour of the plaintiff directing the defendants to render accounts of profits made by them by use

of the trademark DIAMEAL or any mark similar thereto and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts.

(d) For costs of this suit.

For Plaintiff : M/s.Gladys Daniel

For Defendant 1 : Unserved

JUDGMENT

Suit had been instituted by Handy Instant Foods a partnership firm taking advantage of Sections 105 and 106 of the Trade and Merchandise Act, 1958, seeking protection and infringement of their trademark DIAMEAL.

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2. It is to be mentioned that actual trademark of the plaintiff is DIVYA DIAMEAL. They are aggrieved with the defendants, since they infringed their mark by using the word DIAMEAL. It is informed by the

learned counsel that an order of interim injunction had been granted which continues till date.

3. An affidavit has been filed by the plaintiff stating that on 11.11.2015 they had assigned their trademarks DIVYA and DIVYA DIAMEAL to Jeeva Industries Private Limited. A memo has also been filed by the learned counsel for the plaintiff affirming the said fact. It had been stated that necessary protection should be given to the assignees Jeeva Industries Private Limited with respect to protection of the Trademarks DIVYA and DIVYA DIAMEAL.

4. The suit had been pending for the past 19 years. There has been no effective progress, quite apart from the fact that an order of interim injunction continues till this date.

5. I have no reasons to continue to hold over the plaint on the board of this Court. The suit is dismissed. However, the injunction granted to the plaintiff would continue. If at all the Assignees, Jeeva Industries Private Limited has any cause of action either against the defendants or

against anybody acting under the defendants or against any third party, they have liberty to institute a fresh suit and also take advantage of the fact that injunction had been granted to the plaintiff during the pendency of this suit.

6. With the above observation, suit is dismissed. No order as to costs.

22.03.2021

Index : Yes / No
Web : Yes / No
rna

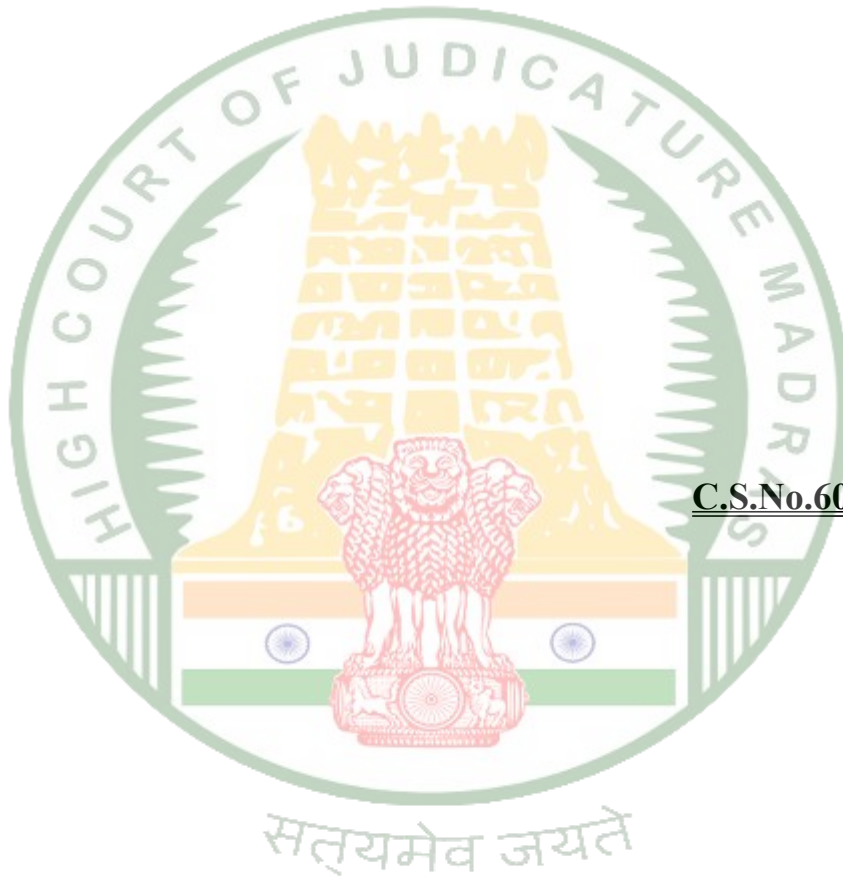


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