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C.S.(Comm. Div.)No.131 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.11.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm. Div.)No.131 of 2022

and

O.A.Nos.383 to 385 of 2022, A.No.2659 of 2022

in

C.S.(Comm. Div.)No.131 of 2022

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

.. Plaintiff

Vs.

M/s.Ajay Agencies
24/28, Ganapathy Nagar,
2nd Street, Ekkatthuthangal
Chennai-600 032.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the O.S. Rules read with Order VII Rule 1 of CPC, Rules read with Sections 134 and 135 of the Trademarks Act, 1999, praying

(i) For a permanent injunction to restrain the defendant, their men, agents, associates and / or assignees or any person claiming rights from



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them from infringing the plaintiff's reputed and well known registered Trade Mark "DHEEPAM" by using the offending Trade Mark "DEEPA OLEE" 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;

(ii) 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 "DEEPA OLEE" 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";

(iii) 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 lamp oil and bearing its reputed and well known registered trademark "DHEEPAM" with the offending words "DEEPA OLEE" 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 "DHEEPAM";

(iv) Direct the defendant their men, agents, assignees, dealers and / or retailers, distributor to surrender to the plaintiff all offending "DEEPA OLEE" bottle / container / packing materials label, advertising materials hoarding, letter heads office stationary and all other goods containing / bearing offending mark / label "DEEPA OLEE" with distinct color



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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;

(v) To pay for the costs of the suit and

(vi) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

For Plaintiff : Ms.Preetha Natarajan
For Defendant : Mr.Viswesswaar

J U D G M E N T

This judgment / common order which is a product of compromise will now dispose of the captioned main suit and captioned four applications.

2. To be noted, captioned matters are listed under the cause list caption 'FOR REPORTING SETTLEMENT' today.

3. Ms.Preetha Natarajan, learned counsel on record for sole plaintiff company and Mr.Viswesswaar, learned counsel on record for lone defendant are before this Commercial Division.



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4. Both learned counsel submit that parties have arrived at a settlement and have reduced the terms of settlement to writing vide a joint memo captioned 'JOINT COMPROMISE MEMO FILED BY THE PARTIES' and dated 25.10.2022 [hereinafter 'said JMOC' denoting 'Joint Memo of Compromise' for the sake of convenience, clarity and brevity]. Said JMOC which contains two annexures (Annexure-A and Annexure-B) has been placed before this Commercial Division and a scanned reproduction of the same together with docket is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Ordinary Original Civil Jurisdiction)
C.S. (Com. Div.) No.131 of 2022

M/S. KALEESWARI REFINERY PRIVATE LIMITED

Represented by its Manager (legal),

Mr. A. Saravanan (M - 45 years),

No. 53, Rajasekaran Street,

Opp. Kalyani Hospital, Dr. Rachakrishnan Salai,

Mylapore, Chennai - 600 004.

...Plaintiff

- VERSUS -

M/s. Ajay Agencies,

24/2B, Ganapathy Nagar,

2nd Street, Ekkathuthangal,

Chennai - 600 032.

...Defendant

JOINT COMPROMISE MEMO FILED BY THE PARTIES

The Parties herein respectfully submit as follows:-

- A. The Parties herein submit that the above suit filed by the Plaintiff against the Defendant for permanent injunction and for directions.
- B. The Plaintiff and the Defendant respectfully submit that with a view to give quietus to the matter, they have agreed to settle their disputes amicably on the following terms:-

TERMS OF THE MEMORANDUM OF COMPROMISE:-

1. The Defendant undertakes not to use the Trademark of the Plaintiff, "DEEPAW" or any other mark which is similar or identical to the Plaintiff's

M/S. Kaleeswari Refinery Private Limited

Authorized Signatory

For AJAY AGENCIES

N. Raj
Proprietor



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registered Trademark, and the Defendant has changed their mark as "RAJA YOOGAM" as a label with a colour combination as projected as a design of the label attached with this memo in Annexure-A.

2. The Defendant undertakes not to use the get up, colour scheme, arrangement of the colour which are closely similar to it, get up and logo of the Plaintiff's product "DHEEPAM" and the trade dressing of the Defendant's product will be hereafter as projected in the design of label attached with this memo in Annexure -A.
3. The Defendant undertakes to use the trade dress, colour scheme and get up for their product "RAJA YOOGAM" as attached with this memo in Annexure-A.
4. The Defendant undertakes not to Pass-off the goods as and for those of the Plaintiff's by adopting the similar or identical get up, colour scheme, arrangement of the colour, get up and logo of the plaintiff's product "DHEEPAM" and its Pouch / Packing material.
5. The Defendant shall erase, remove, or obliterate from all infringing goods, materials or articles in his possession or control with the offending mark labels, as described in Annexure-B and pouches claimed to be deceptively similar to the Plaintiff's "DHEEPAM".
6. The Defendant shall not further violate the Plaintiff's Copyright in the artistic work used in the packing pouches of the Plaintiff from the date of signing this Joint memo of compromise.
7. The Defendant undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

For Kaleesuwan Refinery Private Limited

SEIDHNEGA YALA 100

Authorized Signatory

For AJAY AGENCIES

N. Raj

Proprietor



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It is therefore prayed that this Hon'ble Court may be pleased to receive the Memo of Compromise and pass a decree in terms of the same and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.

Dated at Chennai on this the 25th day of October 2022

For Kaimaswari Refinery Private Limited

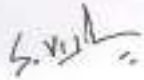

Authorized Signatory

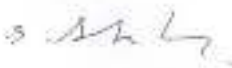
PLAINTIFF

For AJAY AGENCIES


Proprietor

DEFENDANT


COUNSEL FOR THE PLAINTIFF


COUNSEL FOR THE DEFENDANT



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ANNEXURE - B

OLD INFRINGING TRADEMARK OF THE DEFENDANT



For Plaintiff's Attorney Atty. Atty. Atty.

Authorized Signatory

PLAINTIFF

COUNSEL FOR THE PLAINTIFF

For AJAY AGENCIES

For Sign

Proprietor

DEFENDANT

COUNSEL FOR THE DEFENDANT



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IN THE HIGH COURT OF JUDICATURE
AT MADRAS

(Ordinary Original Civil Jurisdiction)

C.S. (Com. Div.) No. 131 of 2022

M/s. Kaleeswari Refinery Private
Limited

- Plaintiff

Vs

M/s. Agay Agencies,

- Defendant



JOINT COMPROMISE MEMO
FILED BY THE PARTIES

Vijayan Subramanian (1215/2007)
COUNSEL FOR PLAINTIFF
☎ 9840669573, 9841320723

S. Suresh Kumar (430/2009)
COUNSEL FOR THE DEFENDANT



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5. Adverting to the concluding paragraph in said JMOC, both learned counsel make a common / joint request that the captioned main suit may please be disposed of by way of a compromise decree in terms of said JMOC.

6. As regards the presence of parties, both learned counsel request for dispensing with their presence and in support of their request make the following submissions :

(a) There is difficulty for authorized signatory of the plaintiff company and Mr.N.Raj, carrying on business in the name of style of 'Ajay Agencies' as its sole proprietor;

(b) Aforementioned two parties to the *lis* have signed said JMOC in the presence of each other;

(c) The plaint has been verified and signed by one Mr.A.Saravanan, Manager (Legal) of the plaintiff company and the same natural person has signed said JMOC on behalf of plaintiff company. Likewise, vakalatnama of defendant has been signed by Mr.N.Raj (Proprietor, carrying



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on business in the name and style 'Ajay Agencies' as sole

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Proprietor) and this Commercial Division is informed that

the same person has signed said JMOC;

(d) Learned counsel on record for plaintiff and learned
counsel on record for defendant have also signed said
JMOC;

7. Considering the facts and circumstances of the case, the nature
of *lis* and trajectory the matter has taken, request for dispensing with the
presence of parties is acceded to.

8. In the light of the narrative thus far, captioned main suit is
disposed of in terms of said JMOC together with two annexures which
shall form part of judgment / decree. Consequently, captioned four
applications are disposed of as closed. There shall be no order as to
costs.

23.11.2022

Index : Yes/No
Speaking/Non-speaking order
mk

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mk

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