



Civil Suit No.100 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2024

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THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Civil Suit No. 100 of 2017

M/s.Kaleesuwari Refinery Pvt. Ltd.
Represented by its Director
Mr.K.Ashok Kumar
No.53, Rajasekaran Street
Opp: Kalyani Hospital, Radhakrishnan Salai
Mylapore, Chennai – 600 004.

... Plaintiff

Vs.

Sri Durgai Oil Stores
Represented by its Proprietor
Mr.I.M.Selvaraj
No.2240, TNHB Villapuram
Madurai – 625 011.

... Defendant

Prayer:-

Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules of this Court read with Order VII Rule 1 of Code of Civil Procedure, 1908 read with Sections 134 and 135 of Trademarks Act, 1999 read with Sections 61 and 62 of the Copyright Act, 1957, prays for a judgment and decree :-



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i) for a permanent injunction to restrain the defendant, its 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 "Gold Winner" registered vide Trade Mark No.605323 dated 27.08.1993 and Trade Mark No.1147963 dated 01.11.2002 for Refined Sunflower Oil in class 29 of the IV Schedule to the Trademarks Rules 1999 by using the offending words "Son Gold" or any word/mark deceptively similar to the aforesaid Trade Mark of the plaintiff's for any edible oil marketed by the defendant, its men, agents, associates and / or assignees or any person claiming rights from the defendant.

ii) for a permanent injunction restraining the defendant, its men, agents, assignee and / or associates or any person claiming rights from them from using the offending pouch/packing material bearing the offending words "Son Gold" or any other mark or word and color scheme and get up deceptively similar to that of the plaintiff packing material/pouch used for their refined edible sunflower oil with distinct color scheme, get up with their reputed and well known trade mark "Gold Winner" for refined sunflower oil and other oil registered vide Trade Mark No.605323 dated 27.08.1993 and Trade Mark No.1147963 dated 01.11.2002.

iii) for a permanent injunction restraining the defendant from violating the plaintiff's copyright registered vide Copyright Registration No.A-68242/2005 dated 27.01.2005 in the artistic work used in the



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plaintiff's packing material and for pouches for refined edible sunflower oil and other edible products bearing the reputed and well known registered Trademarks "Gold Winner" by using the offending words "Son Gold" with color scheme and get up in the offending pouches and packing material deceptively similar to that of the plaintiff's colour scheme and Trade dress of the plaintiff's pouches and packing with the Trademark "Gold Winner" registered vide the above copyright registration certificates.

iv) 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 "SON GOLD" 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".

v) for preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Son Gold".

vi) for directing the defendant, its men, agents, assignees, dealers and / or retailers, distributor, to surrender to the plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter heads, office stationery and all other material containing / bearing offending mark / label "Son Gold" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well-



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known trademark "Gold Winner" label for destruction by an order of this Court.

vii) 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 .

viii) to pay for the costs of the suit.

For Plaintiff : Mr.R.Anish Kumar

For Defendant : Ms.Elizabeth Ravi

J U D G M E N T

Today (12.07.2024), when the matter is taken up for hearing, the learned counsel for the plaintiff submitted that he is not pressing the suit, since the present suit was already decreed by the Honourable Division Bench of this Court in O.S.A.Nos.239 to 244 of 2018 and C.S.No.100 of 2017 on 30.01.2019. Hence, nothing survives for adjudication in the present suit. He has also made an endorsement to that effect.



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2. For useful reference, the judgment dated 30.01.2019 passed by the Honourable Division Bench in O.S.A.Nos.239 to 244 of 2018 and also this C.S.No.100 of 2017, is extracted hereunder:

" By consent, the suit itself has been taken up.

2. When the matter is taken up for hearing, learned Senior Counsel appearing on behalf of the respondent/defendant, placing reliance upon the affidavit dated 17.11.2018, submitted that the respondent has decided to close down the business carried on in the name and style "SON Gold Lite" in blended vegetable oil. Reliance has been made on paragraphs 4 and 6 of the aforesaid affidavit, which are recorded hereunder :-

"4. Pending the above Appeal, I have decided to close down by business, carried on by me, in the name and style of "SON Gold Lite" in blended vegetable oil, a refined lighting oil, for external use only.

X X X X

6. I shall not use the Trade Mark, allegedly infringed by me, being the subject matter of the suit in C.S.No.100 of 2017, on the



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file of this Honourable Court, also the label with all characteristics, as accepted by the learned Judge, being the subject matter of all the above Original Side Appeals."

Learned counsel appearing for the respondent/defendant would submit that the suit may be decreed in terms of the aforesaid affidavit.

3. Considering the same, the suit in C.S.No.100 of 2017 is decreed in terms of the above mentioned affidavit dated 17.11.2018. Accordingly, it is hereby ordered that the respondent shall not carry on any business in the name and style of "SON Gold Lite" in blended vegetable oil, a refined lighting oil. The respondent/defendant further shall not use the label with all characteristics as placed before the learned Single Judge and accepted thereafter.

5. In the result, the suit in C.S.No.100 of 2017 is decreed in the above terms and consequently, the appeals stand allowed with the aforesaid observations. No costs. Consequently, connected CMP Nos.11640 to 11644 of 2018 stand closed."



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3. In view of the above submission/endorsement and also extract of the judgment of the Division Bench, and as the present suit was already decreed by the Honourable Division Bench of this Court, while allowing O.S.A.Nos.239 to 244 of 2018, along with C.S.No.100 of 2017, in terms stated thereunder, on 30.01.2019 itself and hence, nothing remains to be adjudicated further in the present suit, recording the decree passed in this suit on 30.01.2019.

4. Since before the Division Bench, as far as costs are concerned, it was ordered that "No costs".

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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P.VELMURUGAN, J

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