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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.Nos.264 & 265 of 2025
and A.No.1347 of 2025
in C.S.(Comm.Div.) No.74 of 2025

M/s Kaleesuwari Refinery Private Limited
Represented by its Authorised Signatory
No 53 Rajasekaran Street Opp Kalyani Hospital
Dr Radhakrishnan Salai Mylapore Chennai

... Applicant

-VS-

Veera Traders
456, Nithyanandam Nagar, Elisatheram Road,
Vazhdareedy, Villupuram Collectorate,
Villupuram, 605 602.

... Respondent

For Applicant : Mr.Vijayan Subramanian

ORDER

In a suit seeking relief in respect of alleged infringement of trade mark and passing off, the plaintiff has presented these three applications seeking interim injunctions to restrain infringement and passing off and to join the causes of action.



WEB COPY 2. At the hearing on 17.03.2025, notice was issued to the respondent returnable on 09.04.2025 and private notice was permitted. Pursuant thereto, the plaintiff has filed affidavit of service dated 02.04.2025 stating that private notice was delivered to the respondent on 20.03.2025. The track consignment report annexed thereto evidences service of notice on the respondent on 20.03.2025. The bailiff's report discloses that notice in the application and suit summons were served on the respondent on 15.04.2025. In spite of service of notice, the respondent is not represented either in person or through counsel. Therefore, the matter is proceeded with in the absence of the respondent.

3. Learned counsel for the plaintiff invited my attention to the registration certificate for the word mark "DHEEPAM" and to the legal use certificate in respect thereof. The legal use certificate discloses that the word mark is being used since 14.10.2009 in relation to lamp oil and illuminating oil for non-edible purposes. The suit was preceded by a cease and desist notice dated 10.12.2024. By reply dated 17.12.2024, the



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respondent asserts that it conceived, coined and adopted the trademark “DHEEPAM” in relation to its business. No further details as to the date of adoption or use is specified therein.

4. In the plaint, the plaintiff has set out details of the sales turnover and advertising expenditure in relation to the sale of goods bearing the trade mark 'DHEEPAM'. The turnover in financial year 2021-2022 is mentioned as Rs.125.18 crores and the advertising expenditure in the said year is stated to be Rs.4.90 crores. As noticed earlier, the plaintiff asserts use since 2009. In these circumstances, there is a *prima facie* case that the plaintiff's trade mark has acquired secondary significance. On comparison of the two marks, it is *prima facie* noticeable that they are nearly identical, as regards the element, DEEPAM, which is exhibited prominently by the defendant. It also appears that the rival marks are used in relation to identical goods. The balance of convenience is also in favour of the plaintiff and, if relief is denied, irreparable loss would be caused. Consequently, the plaintiff is entitled to relief.



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5. For reasons aforesaid, both these applications are allowed as prayed for by clarifying that this order will not stand in the way of the defendant using the mark “Sri Murugan”, albeit without using the impugned mark “DEEPAM”.

6. The plaintiff has also prayed for joinder of causes of action. The plaintiff has sought to combine the reliefs of infringement and passing off against a common defendant. With a view to avoid multiplicity of proceedings, it is just and necessary that this application is also allowed as prayed for. Consequently, this application is also allowed.

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