

C.S.No.85 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.08.2023

Judgment Pronounced on : 25.09.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.S.No.85 of 2023

M/s.Kaleeshwari Refinery Private Limited,
Represented by its Authorised Signatory,
Mr.A.Saravanan,
Senior manager (legal) Plaintiff

Vs.

Akshay A
Youtube Channel, 'DiCapScoop' Defendant

Prayer : Civil Suit filed under Order IV Rule 1 of CPC and Order IV Rule 1 of the Madras High Court O.S.Rules praying for a judgment and decree against the defendant for the following relief:

(a) directing the defendant to pay the sum of Rs.1,00,00,000/-(Rupees one Crore only) from the date of plaint till the date of payment, towards the damages and compensation to the plaintiff.

(b) for permanent injunction, restraining the defendant and their men and agents from in any manner making, uploading, writing, printing, publishing, broadcasting, distributing or disseminating in print media



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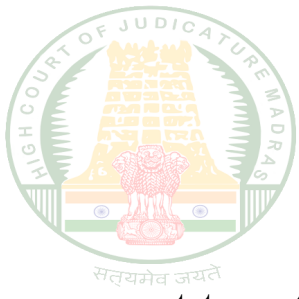
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or electronic media or Internet media or any form whatsoever any defamatory material, statements, continuing in uploading, publishing including the purported/video/audio any material or statement, and to remove/ delete the false and defamatory video /audio in all platforms relating to or arising from, relate-able to, the plaintiff's brand which is affecting and damaging the name and reputation of plaintiff's brand in any manner.

For Plaintiff : Mr.Vijayan Subramanian
For Defendant : Ex- Parte

JUDGMENT

This Civil Suit has been filed for seeking a relief of recovery of a sum of Rs.1,00,00,000/- (Rupees one Crore only) from the defendant along with interest from the date of plaint till the date of payment, towards the damages and compensation to the plaintiff and also to grant permanent injunction, restraining the defendant and their men and agents from in any manner making, uploading, writing, printing, publishing, broadcasting, distributing or disseminating in print media or electronic media or Internet media or any form whatsoever any defamatory material, statements, continuing in uploading, publishing including the purported/video/audio any material or

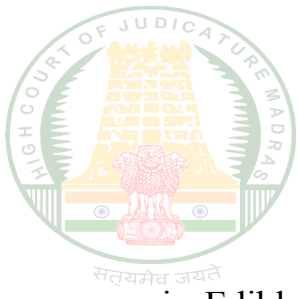


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statement, and to remove/ delete the false and defamatory video /audio in all platforms relating to or arising from relate to the plaintiff's brand which is affecting and damaging the name and reputation of plaintiff's brand in any manner.

2. The plaintiff is a leading market leader in the refined sunflower oil (RSO) and edible oil sector. He has been marking the product with its brand by name ' Gold Winner' over 30 years from 1993. The plaintiff manufactures and packs various edible oils such as sunflower oil, groundnut oil, palm oil, olive oil, blended oil (olive + corn combo) etc., with its well known trade mark namely 'Gold Winner'. The plaintiff has also filed an application for registration of trade mark for other edible oil products. The plaintiff is also in the business of manufacturing, marketing and selling lamp oil, agricultural products, food products, dals, dairy products, cosmetic products etc. The plaintiff has its factories in Palani, Tamil Nadu and in Tumkur, Karnataka from where he manufactures and markets these products. The plaintiff's Vengaivasal factory has also been certified as ISO 9001:2008, HACCP and ISO 2200:2005. The plaintiff's product is of high standard quality and earns good Will and reputation among the customers. As on today, the plaintiff is one of the premier

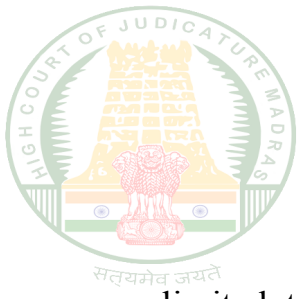


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in Edible Oil sector. The plaintiff was finding it hard against the unfair trade practice adopted by his competitors who attempted to sell their products through dubious manner by imitating their product as 'Good Winner'.

2.1. The defendant is a self-proclaimed social media influencer and he has accounts on several social media platforms including YouTube, Instagram and Facebook. He has approximately 3,35,000 subscribers for his YouTube account. The defendant posts various videos by criticising certain top brands by giving review about quality of the products and bringing negative attention on popular brands.

2.2. On 19.02.2023 the defendant had posted a video by comparing the plaintiff's product 'Gold Winner'. He had posted a video where he compared two different quantity range of 'Gold Winner' and alleged that one litre pocket of oil consists of only 7 pockets of 100 ml and claimed that one litre 'Gold Winner' oil is selling 300 ml less and the consumers got only 700 ml of oil, despite they paid the price for 1 litre oil. The defendant has made a conscious attempt to defame the product and he misled his viewers and the videos were posted just to bring down the hard earned reputation of the plaintiff's brand 'Gold Winner'. The video has been shared in all platforms including, but not



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limited to twitter, Facebook and YouTube. The videos are perceived to be defamatory. The action of the defendant has tarnished the image of the plaintiff's market more importantly among the general public. The defendant's action and misrepresentation was purposely done to gain attention. It was intended just to bring down the hard earned reputation of the plaintiff's brand. Due to the above action of the defendant, the plaintiff is constrained to initiate legal proceedings against the defendant for defamation. And thus the plaintiff has filed this suit for recovery of damages of Rs.1 Crore from the defendant along with permanent injunction for restraining the defendant and their men and agents from in any manner making, uploading, writing, printing, publishing, broadcasting, distributing or disseminating in print media or electronic media or Internet media or any form whatsoever any defamatory material, statements, continuing in uploading, publishing including the purported/video/audio any material against the plaintiff's brand.

3. The defendant was set *ex-parte* on 20.08.2023.

4. The senior manager (legal) of the plaintiff has examined himself as PW.1 and Ex.P1 to P12 were marked along with certificate issued under Section 65 B.



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5. PW.1 has stated in his evidence about the same facts which have been pleaded by the plaintiff in the suit. It is seen from the oral and documentary evidence produced by the plaintiff that the plaintiff is manufacturing and packing various edible oil products such as sunflower oil, groundnut oil, palm oil, olive oil, blended oil (olive + corn combo) etc., It is well known trade mark namely 'Gold Winner'. He has registered its trademark and trademark registration certificate has been produced in Ex.P1 to Ex.P4 . The plaintiff's Vengaivasal factory has also been certified as ISO 9001:2008, HACCP and ISO 2200:2005. The photographs and video stored in pen drive along with Sec.65-B certificate and played in the open court is marked as Ex.P12 would show that the defendant takes two jars and compares the product by pouring 7 pockets of 100 ml oil in a jar and claims that the 1 litre oil pocket of the plaintiff actually contains 700 ml oil. It is claimed by the plaintiff that jars used by the defendant in that video are not a proper measurement jars and the plaintiff has demonstrated some random measurements just in order to gain attention, cheat the public and defame the plaintiff's product.

6. The defendant has not appeared before the court to claim that whatever he had spoken in the video demonstrated in his YouTube channel

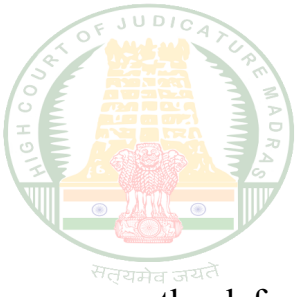


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namely "DiCapScoop" is true and he has reasons to alert the public from not buying the plaintiff's product.

7. There is no doubt that the plaintiff's product is a popular one and it gains a good reputation from the consumers. The plaintiff's product is in the market for 30 years and it has a large consumers base. The plaintiff's factories have also registered their trade mark and fought against several competitors who had tried to imitate their trade mark to pass their products. In such circumstances the defendants action to disparage the plaintiff's product in a misleading manner would no doubt invite negative attention from the viewers and that will influence them to switch-over to some other products. So the defendant's action appears to be with an intention to cause defame and damage the plaintiff's product.

8. Even though the plaintiff has claimed Rs.1 Crore as damages, he has not substantiated the damages that was alleged to have been suffered by him in monetary terms. However, the mental agony suffered by the plaintiff due to the action of the defendant is very much understandable. The damaging statements made by the defendant in the audio and visual mode has been transmitted in a social media like YouTube, which has large viewers base. So



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the defendant has not only made statements which are defamatory in nature but also transmitted it to be received and viewed by others.

9. So the plaintiff has proved all the essential elements that should be proved in a case for defamation. However the plaintiff has claimed Rs.1 Crore as damages without substantiating it with relevant materials. So it is understandable from the conduct of the plaintiff that his intention is mainly to stop the defendant from further transmitting the content to damage the plaintiff's brand. However the fact that the plaintiff has spent a sizeable amount to file the suit due to the reckless action of the defendant. Considering all these factors, I feel the plaintiff is entitled to recover a reasonable damages of Rs.7,00,000/-[Rupees Seven Lakhs only] from the defendant.

In the result, the suit is **partly decreed** in respect of the relief of permanent injunction and the suit is disposed by awarding costs of Rs. Rs.7,00,000/-[Rupees seven Lakhs only] in respect to relief of damages.

25.09.2023

Index : Yes
Speaking order
Neutral :Yes
jrs



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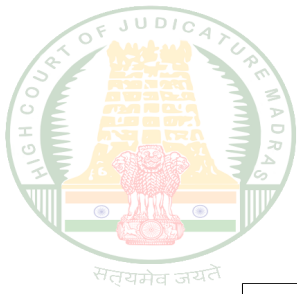
APPENDIX

I. Witnesses :

<i>Plaintiff :</i>	
PW.1	A.Saravanan

II. Exhibits :

Sl. No	Exhibits	Description of documents
1	Ex.P1	Print out of the Trade Mark Registration certificate for plaintiff 'Gold Winner' having Trade Mark No.605323 dated 27.08.1993 (affidavit under Sec.63B filed in common)
2	Ex.P2	Print out of the Trade Mark Registration certificate for plaintiff 'Gold Winner' having Trade Mark No.2320409 dated 11.02.2017 (affidavit under Sec.63B filed in common)
3	Ex.P3	Print out of the Renewal registration certificate of Trade Mark Registration certificate of plaintiff's 'Gold Winner' sunflower oil having Trade Mark No.605323 dated 08.09.2017 (affidavit under Sec.63B filed in common)
4	Ex.P4	Print out of the Trade Mark Registration certificate for plaintiff 'Gold Winner' having Trade Mark No.2934031 dated 27.10.2017 (affidavit under Sec.63B filed in common)
5	Ex.P5	Print out of the legal usage certificate for Trade Mark No.605323 dated 18.10.2019 (affidavit under Sec.63B filed in common)
6	Ex.P6	Print out of the legal usage certificate for Trade Mark No.2320409 dated 18.10.2019 (affidavit under Sec.63B filed in common)
7	Ex.P7	Print out of the legal usage certificate for Trade Mark No.2934031 dated 18.10.2019 (affidavit under Sec.63B filed in common)
8	Ex.P8	Certified true copy of the authorisation letter dated 21.07.2022.
9	Ex.P9	Printout of the certificate issued from the office of Inspector of Legal Metrology to the Plaintiff for weighing machine dated



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Sl. No	Exhibits	Description of documents
		24.11.2022 (affidavit under Sec.65B filed in common)
10	Ex.P10	Series of printouts of the screen shots of Photos taken from the video uploaded by the Defendant measuring the plaintiff's products in his YouTube Platform (5 pages) (affidavit under Sec.65B filed in common)
11	Ex.P11	Printout of the pictures comparing 1 litre and 10 packets of 100 ml by the plaintiff (affidavit under Sec.65B filed in common)
12	Ex.P12	Pen drive containing the impugned video of the defendant uploaded in various social media platforms (not viewed)(affidavit under Sec.65B filed in common)

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R.N.MANJULA.J.,

jrs

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