

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.03.2008

+ **CS (OS) 2190/2007**

SOCIETE DES PRODUITS NESTLE, S.A. & ANOTHER ... Plaintiffs

- Versus -

**M/S GOPAL BAKERS & CONFECTIONERS
(DISTRIBUTOR) AND OTHERS**

... Defendants

Advocates who appeared in this case:-

For the Plaintiffs : Mr Hemant Singh with Ms Mamta Jha and Ms Pallavi Singh

For the Defendants : Mr Anil Kukreja (Prop. of Defendant No.1), Mr Bharat Bhushan,
(Defendant No.2-in-person), Mr Naseem Ahmed (Defendant
No.3-in-person) & Mr Rajesh Pasricha (Defendant No.4-in-person).

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

IA No.3346/2008 (U/O 23 Rule 3 Read with Section 151 of CPC)

1. During the pendency of the suit, the plaintiffs and the defendants have arrived at a settlement/compromise. The plaintiffs had filed this suit for permanent injunction restraining the infringement of their registered trade marks 'NESTLE MILKYBAR', 'MILKYBAR', 'POP CHOC' and 'HEART AND MOUTH' device. The plaintiffs had also instituted this suit for infringement of copyright, dilution and unfair competition as well as passing off.

2. By way of the settlement / compromise arrived at between the parties, the defendants have acknowledged the plaintiffs to be the proprietors of the aforesaid trade marks and the 'SPLASH OF MILK' device. The defendants have also acknowledged the plaintiffs to be the owners of the copyright in 'MILKYBAR' and 'POP CHOC' packaging, including their get-up, layout, colour combination and arrangement of features. The defendants have undertaken not to manufacture, sell, offer for sale, advertise, or directly or indirectly, deal in any food products, including confectionery under the impugned trade marks, 'MILKYBALL', 'POPCHOC' or using the 'HEART AND MOUTH' device or any other trade mark or logo which may be identical or deceptively similar to the aforesaid trade mark(s) of the plaintiffs. The defendants have also undertaken not to do anything as would amount to passing off their goods as those of the plaintiffs'. The defendants have agreed to pay a sum of Rs 55,000/- towards token damages to the plaintiffs. The said amount stands paid and the same is acknowledged by the learned counsel for the plaintiffs. The defendants have also undertaken to deliver all the impugned goods and packaging which were taken in custody and given on superdari within a week from the date of this order to the authorised representative of the plaintiffs for the purposes of destruction.

3. The rest of the terms of the settlement / compromise are recorded in the application itself. The application has been signed by Mr Anil Kukreja, who is the proprietor of the defendant No.1 [Gopal Bakers & Confectioners (Distributor)]. The said Mr Anil Kukreja is identified through his driver's licence No.P08022002283466 issued on 19.02.2002 by the Transport Department, National Capital Territory of Delhi. It is also signed by Mr Bharat Bhushan, who is the defendant No.2. He states that his name has incorrectly been typed in the memo of parties as 'Bharat Singh', when, in fact, it is 'Bharat Bhushan'. He has produced his Election Commission of India Identity Card No. DL\04\041\135761. The said ID Card was issued in respect of the Gandhi Nagar Assembly Constituency at Delhi on 18.04.1995. It is also signed by Mr Naseem Ahmed (defendant No.3) who has produced his driver's licence as proof of identity being No.P05112002225611 issued on 13.11.2002 by the Transport Department, National Capital Territory of Delhi. Mr Rajesh Pasricha (defendant No.4) has also signed this application and is identified by his driver's licence bearing No. P07012000151297 issued on 04.01.2000 by the Transport Department, National Capital Territory of Delhi. On behalf of the plaintiffs, Ms Venita Gabriel has signed as the Constituted Attorney on behalf of the plaintiffs. All the aforesaid persons have also signed affidavits in support of this application. The said defendants are also present in court and have endorsed the settlement / compromise that has been arrived at between them and the plaintiffs and the terms set out in this application. The application

is also signed by the counsel for the plaintiffs. The same be marked as Exhibit C-1.

4. I have examined the terms of settlement / compromise arrived at between the parties and am satisfied that the same are lawful. The settlement is taken on record and the suit is decreed in terms thereof as also in terms of the prayers contained in paragraph 38 (i) to (iv) of the plaint. Rest of the prayers are dropped by the plaintiffs. The parties are left to bear their respective costs. The formal decree be drawn up. Exhibit C-1 shall form part of the decree.

This application, the suit and all pending applications stand disposed of.

(BADAR DURREZ AHMED)
JUDGE

March 18, 2008
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