



2024:DHC:728-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 31.01.2024*+ **FAO (COMM) 20/2024 CM APPL. 5693/2024 CM APPL.
5694/2024 CM APPL. 5695/2024**

V.R. INDUSTRIES PRIVATE LTD. Appellant

Through: Ms.Vandana Aneja, Mr.Rajat
Aneja, and Mr.Puneet Dhawan,
Advocates.

versus

RAJESH KEJRIWAL Respondent

Through: None..

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal impugning an order dated 18.11.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court in CS (Comm) No. 3752/2021 captioned ***Rajesh Kejriwal v. M/s. V R Industries Private Limited & Anr.***

2. By the impugned order the learned Commercial Court had allowed the respondent's application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**') and had restrained the appellant (arrayed as defendant in the suit) or its authorized agents from infringing/using the trademark "GOLDEN GATE" or any other trademark/label/ name identical with or



deceptively similar to the said trademark.

3. The respondent claims that it is carrying on business under the trading name of M/s Chemical Centre (India) at 139-Tilak Bazar, Khari Boali, Delhi-110006. The respondent claims that it deals in imports, processing and trading in various goods including industrial chemicals for use in the Food Industry, Sugar Industry, Paper Industry, Textile Industry and for preserving food stuffs and artificial resins. In addition, respondent also claims it deals in dry fruits, spices, essences and flavours, baking products, tea, yeast, sugar, confectionery, food grains, sauces, preserved, dried and cooked fruits and vegetables, jellies, jams, fruit sauces, milk and dairy products since inception.

4. It was the respondent's case that it has been using trademark "GOLDEN GATE" since 01.01.2006. It had applied for registration of the trademark in the year 2007 under Classes 1, 29 and 30. The said registration was granted and there is no dispute that the trademark "GOLDEN GATE" is registered in favour of the respondent. The details of the said registrations are as under:-

Registration No.	Class	Goods
1557072	01	Chemicals used in Industry, Food Industry, Sugar Industry, Paper Industry, Textile Industry, Artificial Resins and for preserving Food Stuffs Industry
1557073	30	All kinds of spices, salt and pepper, essences and flavours, baking products, tea, yeast, sugar,



		confectionery, pulses, food gram, sauces, vinegar.
1559011	29	Meat, Fish, Poultry and Game, Meat Extract, preserved, dried and cooked fruits and vegetables, jellies, jams, fruit sauces, eggs, Milk and other dairy products, edible oils and fats, Preserves, pickles, non-vegetarian preparations and other items falling in Class 29.

5. The appellant also adopted the trademark “GOLDEN GATE” and claims it has been using the same since the year 2009. The appellant is engaged in the business of food products such as Cornflakes, Chocolate Cereals, Muesli, Nutrition Bars, Oats, Premium Nuts and Snacks comprising of Roasted and Masala Peanuts, Almonds, Cashew Nuts, Chana etc. The appellant also claims that it is dealing in items such as Detergent Powder, Detergent Cake, Floor Cleaner, Liquid Dish Wash, Toilet Cleaner, etc.

6. The appellant claims that it had applied for the registration of the trademark “GOLDEN GATE” as well as device mark in the year 2009 and thereafter. The first application was filed on 05.01.2009 on a ‘proposed to be used’ basis. A tabular statement indicating the applications made by the appellant for registration of the trademark “GOLDEN GATE” is set out below:-

Trademark	Application No. and Date of Filing	Classes	Goods	STATUS



GOLDEN GATE	1771003 dated 05.01.2009	29	Nuts, almonds, cashew nuts, walnuts, peanuts raisins, pistachio, dry fruits, protein bars.	Opposed
		30	Breakfast cereals, chocolates, cereal based snack food, cereal bars, snack bars containing grains.	
GOLDEN GATE	1807096 dated 15.04.2009	32	Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.	Opposed
GOLDEN GATE CHOCOCHAMP	1837302 dated 07.07.2009	30	Corn flakes and breakfast cereals	Opposed
GOLDEN	2142928	29	Chickpeas; cuminseeds	Opposed

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RAWAL
Signing Date: 05.02.2024



GATES	dated 11.05.2011		flavoured chickpeas; asafoetida flavoured chickpeas; chana; jeera flavoured chana: hing flavoured chana	
	2142929 dated 11.05.2011	29	Nuts, Almonds, Cashew nuts, Walnuts, Peanuts, Raisins, Pistachio, Dry Fruits, Protein Bars; Chickpeas: Cumin-seeds flavoured Chickpeas; Asafoetida flavoured Chickpeas; Chana; Jeera flavoured Chana; Hing flavoured Chana	Opposed
		30	Breakfast Cereals, Chocolates, Cereal Based Snack Food, Cereal Bars,	

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		32	Snack Bars Containing Grains Minerals and aerated waters, and other non- alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages	
GOLDEN GATE	2280431 dated 09.02.2012	30	Oats, Oatmeal, Rolled Oats, Oat Cereal	Opposed
	2280432 dated 09.02.2012	30	Oats, Oatmeal, Rolled Oats, Oat Cereal	Opposed
CHOCOCHAMP	2366744 dated 19.07.2012	30	Corn Flakes and Breakfast Cereals	Registered
GOLDEN GATE	2759158 dated 19.06.2014	43	Services for providing food and drink; temporary accommodatio n	Opposed



GOLDEN GATE	2759159 dated 19.06.2014	35	Advertising, business management, business administration, office functions	Opposed
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7. The appellant's aforesaid applications for registration of the trademarks in question has been opposed by the respondent and third parties (it is claimed respondent has not filed any opposition to the first application filed on 05.01.2009). The applications filed by the appellant are pending. Consequent to the said opposition, the trademark "GOLDEN GATE" has not been registered in favour of the appellant.

8. Thus, admittedly, the trademark "GOLDEN GATE" has been registered in favour of the respondent and the appellant has yet not been able to secure registration of the said trademark or other formative marks.

9. The learned Commercial Court accepted that, *prima facie*, the respondent's use of the trademark "GOLDEN GATE" was prior to use by the appellant. As noted above, the respondent had applied for the registration of the trademark in the year 2007, which is almost two years prior to the appellant's application for registration of the trademark in question.

10. The appellant states on 19.02.2021, it filed an application for cancellation of the registration in favour of the respondent in Classes



29 and 30, alleging non-use of the said trademark. However, the said application has not been decided as yet.

11. The learned counsel for appellant contended that the impugned order is erroneous as the learned Commercial Court has not appreciated the grounds on which the appellant is resisting the said suit. He submitted that the appellant is contesting the suit on several grounds. First, that the respondent was not using the said trademark in respect of goods falling in Class 29 and Class 30. It is the appellant's case that the respondent was using the trademark in respect to industrial chemicals used in food industries but not in respect of food products.

12. Second, the appellant claims that the suit instituted by the respondent was delayed. Therefore, the respondent had forfeited its right to institute the said action. The appellant claims that 2009 onwards, the respondent had permitted appellant to increase and expand its business without seeking any interdiction of the use of the trademark in question. Therefore, it was now precluded from claiming any such claim.

13. Third, that the respondent had not approached the Court with clean hands and had suppressed material facts. According to the appellant, the respondent had concocted the cause of action by claiming that it became aware about sale of the products by appellant in March, 2021. This was apparently false as, the appellant had filed the response to the respondent's opposition in March, 2018, which



would disclose that the respondent knew that the appellant was using the trademark in question.

14. The learned Commercial Court had examined the aforesaid contentions and, *prima facie*, rejected the same. In so far as the appellant's contention that the respondent was not using the trademark in question, the learned Commercial Court had examined the material on record and found that the respondent had produced invoices on record, which reflect sale of dry fruits and spices under the trademark "GOLDEN GATE". In so far as the question of delay is concerned, the learned Commercial Court referred to the decision of this Court in *M/s. Hindustan Pencil Private Limited v. M/s. India Stationary Products and Others: 1989 SCC OnLine Del 34* and had held that the delay is fatal to the action instituted by the respondent.

15. The learned Commercial Court also found that the respondent had taken proactive steps in regard to the appellant's use of the trademark by filing opposition to the respondent's application for registration of the trademark in his favour in the year 2015. The Court reasoned that the filing of the opposition itself indicates that the respondent is opposing the appellant's use of the trademark in question. In the given facts, the learned Commercial Court concluded that the respondent had established a *prima facie* case and the balance of convenience was also in its favour. Accordingly, the learned Commercial Court passed the impugned order.

16. We find no infirmity with the aforesaid decision. Undisputedly,



there is material on record which would establish that the respondent is a prior user of the trademark “GOLDEN GATE”. There is no material on record to indicate that the appellant had adopted the trademark “GOLDEN GATE” prior to the year 2007 – the year in which the respondent had applied for registration of the trademark in question.

17. There is also material (invoices) on record – although the same is challenged by the appellant – that the respondent had sold the spices and dry fruits under the trademark “GOLDEN GATE” in the year 2011.

18. In so far as the question of delay is concerned, the learned Commercial Court had rightly noted that the respondent had filed its opposition to the respondent’s application for registration of the trademark in question in the year 2015. Thus, it would not be apposite to conclude that the respondent had not taken any steps in this regard.

19. More importantly, use of similar competing trademarks is required to be interdicted not only to protect the rights of the registered proprietor of the trademark but also for protection of the public at large. The trademark serves as a source identifier and the persons purchasing the said product identify the source of the product on the basis of the trademark. In this regard, use of a similar trademarks in respect of the same class of goods or connected goods, by different manufacturers/dealers, has propensity to cause confusion in the minds of the public. Therefore, such use of similar trademarks



has to be interdicted not only to protect the rights of the proprietor of the trademarks but also the public at large. In *M/s. Hindustan Pencil Private Limited (supra)* this Court had explained the said principle in the following words:-

“31. It would appear to me that there is an honest concurrent user by the defendant then inordinate delay or laches may defeat the claim of damages or rendition of accounts but the relief of injunction should not be refused. This is so because it is the interest of the general public, which is the third party in such cases, which has to be kept in mind. In the case of inordinate delay or laches, as distinguished from the case of an acquiescence, the main prejudice which may be caused to the defendant is that by reason of the plaintiff not acting at an earlier point of time the defendant has been able to establish his business by using the infringing mark. Inordinate delay or laches may be there because the plaintiff may not be aware of the infringement by the defendant or the plaintiff may consider such infringement by the defendant as not being serious enough to hurt the plaintiff's business. Nevertheless, if the Court comes to the conclusion that prejudice is likely to be caused to the general public who may be misled into buying the goods manufactured by the defendant thinking them to be the goods of the plaintiff then an injunction must be issued. The Court may, in appropriate cases, allow some time to the defendants to sell off their existing stock but an injunction should not be denied.”

20. In *Wander Ltd. & Anr. v. Antox India Pvt. Ltd.: 1990 Supp*



SCC 727, the Supreme Court had explained that the scope of the interference in discretion exercised by the courts of first instance and held as under:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion..”

21. In the present case, we are unable to accept that the learned Commercial Court has granted the interim relief arbitrarily or in ignorance of the settled principles of law regulating grant of



interlocutory injunctions. We are unable to accept that any interference with the impugned order is warranted.

22. In view of the above, the appeal is dismissed. All pending applications are also disposed of.

23. During the course of arguments, Mr. Aneja, the learned counsel for appellant has submitted that the respondent is holding unsold stocks of goods bearing the trademark “GOLDEN GATE” and it would cause immense loss if the appellant is not permitted to sell the same. In this regard, it is clarified that this order would not preclude the appellant from applying before the learned Commercial Court for permitting the sale of the manufactured stock. Needless to state if any such application is moved, the same would be considered on its own merits. It is also open for the appellant to apply before the learned Commercial Court for expeditious disposal in the suit.

24. It is further clarified that the observations made by this Court are only for the purpose of considering the appellant’s challenge to the interim order. The Commercial Court shall decide the suit uninfluenced by the observations in this order.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 31, 2024

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