

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1944 OF 2015

Devkrupa Tea Company through its
Proprietor Jagdish Shrikishan Sarda .. Appellant

Versus

Vikram Tea Processor Pvt. Ltd.
Through its Authorized Signatory
and Power of Attorney Vishal .. Respondent

Shri Pawan K. Lakhotiya, Advocate for the Appellant.
Shri S. S. Patnkar, Advocate h/f J. P. Legal Associates, Advocate
for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 09TH OCTOBER, 2015.

PER COURT :

. Mr. Lakhotiya, the learned counsel for the appellant submits that, the present respondent had filed suit U/Sec. 27(2), 28 and 29 read with Sec. 134 and 135 of the Trade Marks Act and U/Sec. 51, 55 and 62 of the Copy Rights Act. The learned counsel further submits that, after service of summons, the appellant appeared in the matter and filed his written statement. However, subsequently plaint was amended and thereafter the defendant could not attend the matter. The learned counsel submits that, defendant had engaged the advocate, but the defendant was not intimated by the advocate. As such, the appellant/defendant could not participate in the further

proceedings. The learned counsel submits that, the absence of the appellant was not intentional, but due to the aforesaid reasons. Even the advocate for the appellant did not appear subsequently in the matter. One opportunity be given to the appellant to participate in the proceedings.

2. The learned counsel for the respondent/plaintiff submits that, it was the duty of the defendant to participate in the proceedings. No plausible reason has been given for not participating in the proceedings. The defendant was aware that the suit against him is pending for infringement of trade mark and copy right. It was also duty of the defendant to know further stages in the proceedings.

3. I have considered the submissions canvassed by the learned counsel for respective parties. The present appeal is also filed on merits.

4. It would appear from the judgment that, after the written statement was filed by the present defendant, the plaintiff had amended the plaint. Subsequently, the defendant did not amend the written statement, nor thereafter participated in the proceedings and did not cross examine the plaintiff's witness also. Even the advocate engaged by the defendant did not appear before the Court, as such, reasons stated by the appellant that he was not intimated by the advocate can be accepted. However, it

was also the duty of the present appellant to know the stages of the proceedings and whether matter is proceeding as present appellant had appeared in the suit.

5. Considering the fact that, case is of infringement of trade mark and copy right and the fact that, the matter had proceeded ex-parte, I am inclined to grant one more opportunity to the appellant. However, appellant also deserves to be mulct with cost. In the result I pass following order.

6. The impugned judgment and decree is quashed and set aside. The parties are relegated before the District Court. The suit bearing R.C.S. No. 07 of 2009 is restored to its original position on condition that the appellant/defendant pays cost of Rs. 30,000/- (Rs. Thirty Thousands only) to the plaintiff/present respondent on or before 16.11.2015. The parties shall appear before the District Court in R.C.S. No. 07 of 2009 on 16.11.2015.

7. The appellant is entitled to file amended written statement and shall co-operate in expeditious disposal of the suit. Considering the fact that, the matter is remitted back, the District Court shall endeavour to dispose of the suit expeditiously and preferably within a period of nine (9) months from the date of appearance.

[S. V. GANGAPURWALA, J.]