

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 763 OF 2012****IN****SUIT NO. 2846 OF 2011**

Sabmiller India Ltd.,
(formerly known as SKOL Breweries Ltd.)

...Plaintiff

vs.

M.P. Beer Products Pvt.Ltd.

...Defendant / Applicant

Mr.Himanshu Kane i/b. M/s.W.S. Kane & Co. for Plaintiff.
Mr.S.J. Khera for Defendant.

CORAM : S.C. GUPTE, J.**03 FEBRUARY 2015****P.C. :**

This Chamber Summons is taken out by the original Defendant for inspection of documents relied upon in the plaint. The Defendant has annexed the schedule of documents of which inspection has been sought. The first item in this schedule is a general entry, namely, of the documents referred to and relied upon in the plaint. Since the documents of which inspection is sought are particularized in the schedule, this general entry need not be considered.

2 Item Nos.2, 8 to 22 and 24 of the schedule of documents pertain to papers and proceedings in the various suits and proceedings filed by the Plaintiff or its predecessor against various infringers concerning their trade mark as also passing off of goods. Learned Counsel for the Plaintiff has clarified that the Plaintiff simply relies upon various orders passed by different courts in these suits and proceedings and not the papers and proceedings themselves. The reference to the particular suits and proceedings in the plaint whilst referring to the orders passed therein is simply by way of prefatory remarks. It is not that the papers and proceedings in these suits and matters are actually relied upon by the Plaintiff in the present suit. That takes care of the items at Serial Nos.2, 8 to 22 and 24 of

the schedule to the Chamber Summons, which need not, therefore, be considered.

3 Item Nos.3 and 23 of the schedule of documents refer to particulars regarding the statement of annual sales, and publicity and sales promotional expenses incurred by the Plaintiff from 1993 till 2005 and details of invoices in respect of the years from 1993 till 2005 referred to in Exhibit A to the plaint. Para 4 of the plaint refers to the sales of the Plaintiff's products bearing the subject trade mark and the sums spent on publicity and sales promotional expenses by the Plaintiff for its products. The statement itself is annexed as Exhibit-A to the plaint. It gives year-wise figures of sales, publicity and sales promotional expenses during the years from 1993-94 and 2004-05. These are statements of facts, which need to be proved by the Plaintiff at the trial of the suit. The requisite particulars as also evidence in support of these statements is a matter of trial. If no particulars are furnished and no documents are relied upon in support of these statements, it is needless to record that the Plaintiff will take consequences for the same. The Defendant is not, as of right, entitled to either the particulars or the documents at this stage unless such particulars or documents are referred to by the Plaintiff in its pleadings.

4 As far as Item No.6 of the Schedule of documents is concerned, my observations in connection with Item nos.3 and 23 are on the point. Besides, it is submitted by the learned Counsel for the Plaintiff that the Plaintiff has given inspection of the original certificate prepared by the Chartered Accountant in connection with the sales and promotional expenses figures and also given inspection of particular invoices relied upon by the Plaintiff in this behalf. The reference to these documents is to be found in the letter addressed by the Plaintiff to the Defendant on 14 August 2012 regarding the inspection offered.

5 As regards Item Nos.4 and 5 of the schedule of documents, learned Counsel for the Plaintiff submits that certified copies of proceedings as far as the application referred to in Item No.4 is are concerned, have been given inspection of by the Plaintiff. As far as Item No.5 is concerned, since the mark is not yet

registered, copies of the application as well as the advertisement in the journal have been furnished to the Defendant. The application referred to in Item No.4 now having been allowed and the mark being registered, a certified copy for use in legal proceedings in connection with trade mark is also furnished by the Defendant. Besides this, the Plaintiff is not liable to show anything to the Defendant as far as these two items are concerned.

6 As far as Item No.7 in the schedule of documents is concerned, the item seems to be too vague. It is clarified by the Defendant that what the Defendant means by the item is that the Plaintiff should be asked to authenticate the documents referred to by it in para 10 of the plaint. There is no such requirement at the stage of inspection of documents and the prayer cannot be allowed.

7 Item No.25 of the schedule of documents is the Resolution of the Board of Directors of the Plaintiff company authorizing Mr.Gordon D'Souza to institute the present suit. Mr.D'Souza has signed the plaint and the declaration forming part thereof in pursuance of this resolution. Learned Counsel for the Plaintiff points out that a certified copy of the resolution is already shown to the Defendant. Learned Counsel for the Defendant, however, insists on the original Minute Book of the Plaintiff being shown to the Defendant. The Defendant is not entitled to the original Minutes. The Plaintiff relies on a certified copy of the resolution and it is that document which is produced by the Plaintiff. If the Plaintiff relies upon the original Minutes in the book maintained by the Plaintiff company, the Plaintiff will have to show that book to the Defendant.

8 The last item of the schedule of documents contains documents which have been referred to in the Deed of Assignment dated 27 May 2005, which, in turn, is referred to in para 6 of the plaint. This Deed of Assignment is executed in favour of the predecessor of the Plaintiff. The Deed of Assignment has been registered and the predecessor of the Plaintiff has, thus, become a registered subsequent proprietor of the trade marks in question. The Plaintiff relies upon the certified copy of the entries of the register as well as Deed of

Assignment, both of which have been shown to the Defendant. The Defendant has now asked for inspection of the documents, which have been referred to in the Deed of Assignment. These documents merely contain a recitation of the manner in which the predecessor of the Plaintiff has come to be an assignee of the subject trade marks. These documents themselves are not necessary for the purposes of the present trial.

9 The Chamber Summons is disposed of in the above terms.

(S.C. Gupte, J.)