

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L) NO. 13 OF 2016
IN
SUIT NO. 2221 OF 2011

Jackson Paper Products Pvt. Ltd. & Anr.	...Petitioners
<i>Versus</i>	
Prakash Gokar Chamariya alias Prakash alias Chamariya	...Respondent

Mr. Atul S. Singh, *for the Petitioners.*
Mr. Rajesh B. Talekar, *i/b Mr. Abhijit B. Salve for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 13th July 2016

PC:-

1. The Respondent Mr. Prakash Gokar Chamariya is personally present in Court. This morning he tendered an Affidavit dated 10th July 2016. At the end of this Affidavit, he apologises unconditionally. Before that, however, he sets out his case, which is this: He says that he was served with a copy of an *ex parte* decree dated 22nd March 2013 in May 2015. The records indicate otherwise. But that is not the principal issue. The Respondent says that in November 2015 he spoke with one of the Plaintiffs' directors, one Mr. Dinesh Magia and sought permission to dispose of unsold stock. He says that he received this permission, stopped

manufacturing and by March 2016, had sold almost all his inventory. He sold his machinery by April 2016 and had very nearly vacated his shop by 17th May 2016. He was unable to repay the loan taken from his landlord and the premises were locked. He says in paragraph 4 that the goods seized on 14th July 2016 were not manufactured by him or acquired by him.

2. However, what is stated in paragraph 5 is that his wife Jayshree is the registered proprietor of two marks **SATIKSON** and **MARULIS**. With the assistance of his younger brother Dilip Chamariaya she sells tissue boxes under these marks. He claims that they have a distinctive colour scheme, artwork and get up that is completely different from the Plaintiff's trade mark and tissue box artwork, colour scheme, etc. Annexed to this Affidavit are some samples of the boxes. Actually, there is no difference at all, and the marks the Defendant uses are deceptively similar to those of the Plaintiffs. The decree is not restricted to the Defendant from using the Plaintiff's registered mark. The prohibition extends to the Defendant using any other similar mark or same get up. It is not open to the Defendant to run his business through his wife or brother in this manner either, and in a previous order, I noted that the box allegedly made by his wife has the Defendant's email id, website and phone number. This is not denied.

3. In the next paragraph, the Respondent says that there are other offenders in the market. It is his case that there others who also make almost identical boxes with very similar names but against whom the Plaintiffs have not proceeded. They use names like LACKSON, ZACKSON, JAISON, MACKSON, ACKSON. All of

these have a colour combination of yellow, white and red. All of them feature the Maruti vehicle, sometimes misspelled as Maartui. Each one of these marks is an infringing mark. Both of these constitute violation of an *ex parte* order. It is no answer for the Defendant in this contempt action to say that the Plaintiffs have not proceeded against other infringers.

4. In the morning session, I kept the matter back to enable Mr. Talekar to take instructions as to whether the Respondent's wife and brother would file Affidavits as well. They are also present in Court and they have also filed Affidavits today. In paragraph 3, they say that they will not engage in the business of selling tissue papers under the competing marks, including **SATIKSON** and **MARULIS**.

5. I accept all these undertakings and I accept the apologies too.

6. I must admit that I find it very difficult to accept Mr. Singh's argument for the Plaintiffs that there should be some sort of monetary penalty imposed on the Respondent-Defendant and his family. One look at them is enough to show that they are of meagre means, desperately scratching out a living in a city that never makes this easy. The Plaintiffs may have rights over their intellectual property. In pursuit of the protection of those rights, they cannot expect to use the law courts to grind a poor man and his family into the dust.

7. There will be no monetary penalty on the Defendant or his family. Their undertakings are enough. These are accepted.
8. The contempt notice is discharged.
9. The Petition is disposed of with these observations. There will be no order as to costs.
10. The Petitioner will be at liberty to destroy the goods that have been seized by the Court Receiver and are lying with the Plaintiffs.

(G. S. PATEL, J.)