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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMERCIAL DIVISION
COMMERCIAL SUIT NO. 58 OF 2016
WITH
NOTICE OF MOTION NO. 34 OF 2016
AND
CONTEMPT PETTION (L) NO. 2 OF 2016**

**THE CHOCOLATE SPOON COMPANY
PVT LTD**

...Plaintiffs/
Petitioners

~ VERSUS ~

1. ANAND DESHMUKH

2. VRUSHALI ANAND DESHMUKH

...Defendants/
Contemnors

**Dr. Abhinav D. Chandrachud, with Mr. Amol Joshi & Ms. Tasneem
Kanthawala, i/b Ms. Poorvi Kamani, for the Plaintiffs.**

**Mr. Nikhil Sakhardande, i/b Mr. Mandar Soman, for the
Defendants.**

**Anand Deshmukh & Vrushali Anand Deshmukh, contemnors,
present.**

CORAM: G.S. PATEL, J

DATED: 20th December 2016

PC:-

1. I have before me a commercial Suit filed by the owners and proprietors of a popular restaurant in South Mumbai and in Bandra by the name and under the mark “**The Sassy Spoon**”. On the Plaintiffs’ application, there was an ad-interim order dated 29th July 2016. That application was moved after notice. The Defendants did not appear. They were restrained from using the rival mark “**Sassyy Spoon Pure Veg Restaurant**” for their eatery in Aurangabad.

2. On 19th September 2016, I noticed that the Defendant had filed an Affidavit acknowledging receipt of copies of papers and proceedings. At that time, Dr. Chandrachud for the Plaintiffs points out that service was effected on Anand Deshmukh (now the 1st Defendant) in Aurangabad at the restaurant using the offending mark. In his Affidavit, the 1st Defendant tried to contend that he had nothing to do with the restaurant. I observed that it was necessary to explain how he came to accept the service at that restaurant and that it was unclear whether he was merely suggesting that he was not the *proprietor* of the restaurant as described in the cause title of the suit but was connected to it in some other way.

3. On 5th October 2016, the 1st Defendant was represented in Court. His Advocate said that he was not the proprietor. On further questioning he admitted that the proprietor was none other than his own wife, Vrushali. I directed Vrushali Anand Deshmukh be joined as Defendant No. 2. The ad-interim order dated 29th July 2016 was continued till further orders.

4. On that date, 5th October 2016, I noted a statement now made on behalf of both the Defendants that after the date of service of the ad-interim order they had ceased use of the mark and name on and for their restaurant. This was a statement made directly to Court. Even at that time, Dr. Chandrachud said the statement was incorrect, and that he had even then photographs properly date- and time-stamped showing this to be untrue. I directed that material to be placed on Affidavit and made it clear that if I found that there was a breach of the order, action would follow.

5. We come now to the order dated 20th October 2016. On that day, Mr. Joshi appeared for the Plaintiffs. He said with some considerable justification that the Defendants continued to be in breach of the injunction of this Court. I noted some of the previous events, and also that in the latest Affidavit filed by the Plaintiffs there were photographs as recently as in October 2016 showing Defendants' continued use of the offending mark despite the ad-interim order of 29th July 2016, one that was obtained after service, and service of which was itself effected in August 2016. The Plaintiffs' October Affidavit showed that the Defendants' restaurant's signboard remained. It still had the **Sassy Spoon** name on it. The Defendants had only attempted to hang a bunting or awning over it. The infringing use of the mark on invoices and menu cards continued unabated. When the Plaintiffs sought information from the Food and Drugs Administration about the Defendants under the Right to Information Act, 2005, they were informed that the Defendants had refused to disclose the information. Mr. Joshi sought leave to adopt suitable proceedings under Order 39 Rule 2A of the Code of Civil Procedure, 1908. I observed that the Plaintiffs

always had that liberty.¹ I also directed notices to be separately issued to the Defendants to remain personally present in Court, and made it clear that the presence of both Defendants was required on the next date.

6. On 27th October 2016 I noted that *prima facie* both the Defendants were in contempt of the orders of 29th July 2016 and 5th October 2016. I issued notice in contempt to both. That notice was served. On 2nd December 2016, I noted that the Defendants had deliberately chosen to remain absent despite notice and, therefore, directed issuance of bailable warrants. It is pursuant to this warrant being issued and served that the Defendants are present in Court.

7. The 1st Defendant now says that he was not absent on the previous occasion. He claims he came to Court and met the Court Associate. In Court before me, he instructs Mr. Mandar Soman² to say so. My Court Associate confirms the 1st Defendant has never met him. The 1st Defendant is asked to step into the witness box. He now says that it was not this person he met (his words: “I did not meet this fellow”), but some other person outside my Court Room.

8. In the meantime, the Plaintiffs have filed Contempt Petition (L) No. 2 of 2016.

1 For entirely separate reasons, I discharged the Advocate then appearing for the Defendants.

2 Since the last occasion, Mr. Mandar Soman has filed his vakalatnama both in the Suit and today in the Contempt Petition.

9. Today, Dr. Chandrachud points out that till as recently as 13th December 2016 the Defendants' use of the offending name continued. They were still in breach. He is instructed to show me a photograph (with no date and time stamp) showing the signboard on the restaurant has been effaced and is now blank. On further questioning and on taking instructions from the Defendants, who are personally present in Court, Mr. Soman is compelled to state that the signboard was removed only after 13th December 2016, the date of the photograph Dr Chandrachud shows me.

10. Yesterday, Mr. Sakhardande appeared on Mr. Soman's brief. One of these two matters was not on board and both were stood over to today. In fairness, Mr Sakhardande did not attempt a defence. His brief was limited even then. Today, he withdraws, saying it is not possible for him to continue as counsel in a situation like this. Mr Soman does not, unfortunately, have that option having now filed his vakalatnama in both matters.

11. I make it clear that nothing in the unfolding of this matter, or in the order that follows, is in the least attributable to either Mr Sakhardande or Mr Soman. Indeed, but for Mr Soman's continued presence, as the rest of this order shows, the consequences to the Defendants would have been far more serious. For, the less said of the Defendants' conduct the better. There is simply no excuse for it. No cause is shown why they should not both be punished in contempt; and in contempt they are, without the slightest shred of doubt. If anything, this is a case of aggravated contempt. As a general rule, I am extremely slow to invoke the power of contempt. But this seems to me to be a case that is beyond egregious. From the

start, the Defendants have defied orders of this Court. They have been brazen about it. Their conduct is contumacious — indeed, it defines the word. Every attempt is made at misdirection, beginning with the 1st Defendant saying “I am not the proprietor of the restaurant, though I received notice there” and then actively concealing the truth till it was drawn out by the Court, *viz.*, that the restaurant was being run by his wife; and going on from there to outright and open defiance by continuing the use of the infringing mark despite service and knowledge of the restraint order against them. These Defendants must be made to understand that every disobedience of the orders of this Court has consequences, and these consequences are serious. When a Court finds that its orders have been disobeyed, it will act, and it will act quickly, and it will act without mercy. There can be only one response to persons with such manifest disdain and, yes, this is the correct word for it now, *contempt* for our orders. To jail they must go, the both of them, and there they must stay for long enough for it to matter.

12. In this invidious and unenviable position not of his but entirely of his clients’ making, Mr Soman rises to the challenge. He seeks, quietly and directly, a moment to take instructions. That cannot be denied to him, and it is not. He takes instructions in Court from both Defendants. He then responds by saying this: first, that both Defendants accept responsibility and agree that they are in wilful breach of Court orders of which they had notice and which were properly served. Through him, they seek clemency. They say, again through him, that they will demonstrate their remorse and show penitence in an appropriate manner. They ask that their apology, on separate affidavits dated 20th December 2016 filed by

each of the two Defendants and tendered today be accepted. That affidavit is generally worthless given the subsequent conduct, but I will not, only on Mr Soman's request, disregard it altogether for now, awaiting what next follows. Mr Soman then says that the Defendants accept that in the facts of such an extreme case, even this is not enough. The Defendants submit to a decree in the suit in terms of prayers (a) and (c):

- “(a) That the Defendants by himself/herself/ themselves, servants and agents be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner using the impugned mark or name SASSY SPOON by itself or in combination with any other word(s), or any other mark or name deceptively similar to the Plaintiff's mark and name SASSY SPOON so as to pass off or enable others to pass off the Defendants' goods or services/trading style as and for the goods or services of the Plaintiff or as being associated with or emanating from or having any connection with that of the Plaintiff;
- (c) The Defendants be ordered and decreed by this Hon'ble Court to deliver up for destruction all the infringing articles, goods, dyes, papers, signs and other things bearing the impugned trademark SASSY SPOON;”

13. That, in the circumstances of the case, is inevitable and is the very least I expect. There is still the question of damages. The claim

in the plaint is for an amount of Rs. 1,50,00,000/-. Mr Soman immediately confirms that he has instructions, obtained in Court, to offer an amount of Rs. 2 lakhs as compensation or damages. This figure has come from the Defendants. I did not suggest it — I suggested no figure at all — but I will accept it. But even this is not nearly enough: this order, however strongly worded, is but a slap on the wrist; the Defendants' apology on its own is hollow; in the minds of persons like these two, the decree is probably yet another irrelevancy; and the amount of Rs. 2 lakhs is perhaps small change. This is even now insufficient demonstration of remorse. There is no reason why the Defendants should at all be allowed to continue to run this restaurant given their conduct of deliberately misleading the Court and lying to it. Mr Soman takes instructions again, and now says that the Defendants also agree in Court to the appointment of the Receiver as a Receiver of the restaurant in Aurangabad and to his sealing it so as to shut down all operations for such reasonable time as the Court orders.

14. I will accept this as a composite and sufficient demonstration of regret and apology. The Defendants agree to the following order:

- (a) The Defendants' apology personally tendered in their Affidavits is, at Mr. Soman's request, accepted;
- (b) The Defendants unequivocally submit to a decree in terms of prayer clauses (a) and (c) set out above;
- (c) The Court Receiver is appointed as Receiver of the Defendants' entire restaurant at Disha Sankul, Stadium Road, Garkheda, Near Reliance Mall, Aurangabad 431 009 till 6th January 2017. The Court Receiver will take

immediate physical possession of the restaurant. He will seal it and that seal will remain until 6th January 2017. The restaurant will be unsealed at 5.00 p.m. on 6th January 2017. Even after unsealing, the decree continues in perpetuity and no resumption of the restaurant's business can be with use of the offending mark or any other similar or deceptively similar mark. The Defendants confirm that have understood this order and accept it, *viz.*, this restaurant at Aurangabad is not carry out any business of any nature whatsoever between the time the Court Receiver seals the premises and 6th January 2017.

- (d) The Defendants' volunteered offer of payment of Rs 2 lakhs as compensation is accepted. I will not direct this payment to be made to the Plaintiffs, but have asked Dr Chandrachud to nominate a worthy cause. He suggests that it be directed to be paid to the Tata Memorial Hospital. That is accepted. The amount of Rs. 2 lakhs is to be paid by the Defendants to the Tata Memorial Hospital on or before 4th January 2017. Proof of payment is to be given to the Court Receiver before he unseals the premises. In default of payment, the order of sealing will continue.
- (e) The Court Receiver will also destroy, at the Defendants' cost, all material, including menus, invoices, challan books, stationery, signage, etc., bearing the infringing mark. This is to be done no later than by 13th January 2017.

15. The foregoing statements made by the Defendants are accepted by them as personal undertakings to the Court. Both Defendants are personally present in Court and Mr. Soman once again confirms that they have clearly understood these terms. They have also understood that should this Court find that there is a slightest breach of this order hereafter there will be no further clemency of any kind shown, and this will result directly and inevitably in the maximum possible imprisonment term permissible in law.

16. The Suit is disposed of in these terms. The Contempt Petition is kept pending and will be listed on board for final disposal and compliance on 9th January 2017.

17. I cannot end this order without expressing my appreciation of Mr Soman's conduct. It has been exemplary in every regard. He has fulfilled his primary duty to the Court, and as an officer of the Court, balancing this in impeccable fashion with his duty to his clients: I note that he did not once request that be allowed to take a discharge. His was conduct of honour and dignity, in the finest traditions of this Bar, with no sign of agitation or harshness, but instead unwavering poise and calm even in the face of so much adverse material self-generated by his own clients. They would do well to remember that if they have found reprieve today, it is not on account of anything they did or I did not do, but is solely to the credit of Mr Soman. From the beginning, the Defendants have been wrong in almost everything — except now, late in the day, in their choice of Mr Soman as their advocate. In increasingly trying times, Mr Soman's conduct of this case was not merely refreshing; it was a

reassurance that the future of our Bar and our Court is secure in the hands of advocates like him.

(G. S. PATEL, J.)