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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1956/2015**

% ***Judgment dated 5th October, 2016***

SUGANDHI SNUFFKING & ANR Plaintiffs
Through Mr. N K Kantawala with Mr. Prakhar
Sharma, Advocate
versus

YASH KISHORE ENTERPRISES & ANR Defendants
Through Ms. Jubli Mohalia, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for permanent injunction restraining infringement of trademark, passing off of trademark, infringement of copyright, rendition of accounts, etc.
2. As per the plaint, plaintiffs are carrying on their business of manufacturing, marketing and selling of its various products like Chewing Tobacco, Pan Masala, Mouth Freshners, Khaini, Zarda, Qiwan and other allied products under its different trademark and label marks having original artistic work in it. The plaintiffs during course of trade uses various trademarks such as JAGAT, SAGAR, DHADKAN, SACHI, SAGAR SHAKTI, etc. and their respective label marks for manufacturing, marketing and selling the above said products and among them one of their celebrated trademark is JAGAT used for Chewing Tobacco. The trademark JAGAT was adopted and used for the first time in the year 1992 by Sh.Jagat Kishore Chaurasia in his plaintiff No.1-Firm Sugandhi Snuffking, Varanasi, Uttar Pradesh, as

the same was derived by him from his own first name and since then the same has been used openly, extensively and continuously. The said label/ packaging of the product of the plaintiffs i.e. Zarda/Chewing Tobacco under its trademark JAGAT is sold in a label/package on tin container having original artistic work, get up, layout, pattern and colour combination. By virtue of the original artistic work in the getup, layout, pattern and color combination/scheme in the label of the plaintiffs, there vests copyright protection under the provisions of the Copyright Act, 1957. The said trademark is registered; the details are mentioned in para 11 of the plaint.

3. It is averred in the plaint that on 9.6.2015, the plaintiffs for the first time from the tobacco market/traders learnt that in order to take the undue advantage of the pre-established goodwill and reputation of the product of the plaintiffs 'Chewing Tobacco' bearing trademark JAGAT also under its distinctive label/package, one Mr. Munauwer Ahmed Khatri trading as Red Sea Exports, Mumbai had intentions to sell and export the inferior quality of Chewing Tobacco under the impugned trademark GAJAT and that too under its impugned label/package which is identical/ deceptively similar to the trademark JAGAT and its distinctive label/ packaging of the plaintiffs. The plaintiffs immediately filed a suit for infringement of Trademark and Copyright before this Court, being CS(OS) No.1798/2015, and vide order dated 12.6.2015 this Court had restrained the defendants in the said suit from manufacturing, selling, using and exporting the chewing tobacco under the mark GAJAT and its label impugned therein observing the same as infringement and passing off of the plaintiffs' rights.
4. The complaint of the plaintiffs is that later, on 30.6.2015, the plaintiffs learnt that the said impugned mark GAJAT and its impugned label,

which were restrained by this Court vide abovementioned order dated 12.6.2015 passed in CS(OS) No.1798/2015, have been manufactured by the defendants herein and further to the shocking surprise, the plaintiffs have also come to know that after the abovementioned order of injunction against the use of the impugned mark GAJAT and its impugned label, the defendants have malafidely by using a different title PITARA but the same label started manufacturing, selling and intending to export the chewing tobacco under the mark PITARA in the impugned identical/deceptively similar colour scheme and pattern which was already restrained as impugned by the plaintiffs herein in earlier suit being CS(OS) No.1798/2015 which is infringement of the plaintiffs' copyright in the colour scheme, combination of colors under their title JAGAT.

5. I have heard learned counsel for the parties. It may be noticed that summons in the suit and notice in the application were issued on 10.7.2015. The defendants were restrained from manufacturing, selling, exporting, offering for sale and advertising/displaying, directly or indirectly, dealing in their products and allied products under the impugned mark GAJAT and its impugned labels under the marks GAJAT and PITARA with the impugned get-up, colour combination or any other trademark/label which are identical/deceptively similar to the plaintiffs' registered trademark JAGAT and its copyrighted colour combination, getup and layout label. Thereafter the defendants entered appearance and filed their written statement, however, it was informed to the Court that the parties are negotiating for a settlement. The matter was adjourned from time to time on the grounds that settlement talks were going on.

6. Today, counsel for the parties submit that the parties have entered into

an amicable settlement and pursuant to the said settlement, it is agreed that the present suit be decreed in favour of the plaintiffs against the defendants in terms of para 44 (i), (ii) and (iii) of the plaint. Counsel for the plaintiffs also submits that the plaintiffs give up their relief claimed in para 44 (iv) and (v) of the plaint. Counsel for the defendants on instructions to state that impugned labels, wrappers, export materials, cylinders, dies, cartons, boxes, pouches, tin containers and any other infringing copies of the impugned trademark will be destroyed within a period of six weeks from today, as per the inventory of the Local Commissioner or otherwise.

7. Accordingly, present suit stands decreed in favour of the plaintiffs against the defendants in terms of para 44 (i), (ii) and (iii) of the plaint. The relief claimed by the plaintiffs in para 44 (iv) and (v) of the plaint are given up by the plaintiffs. Defendants shall be bound by the undertaking given to Court by their counsel. Parties shall be bound by the settlement arrived at between the parties. Let an affidavit of compliance be also filed by the defendants.
8. No order as to costs.

IA No. 13593/2015 (U/O. 39, R-1 & 2)

9. Interim order dated 10.7.2015 stands confirmed.
10. Application stands disposed of.

G.S.SISTANI, J.

OCTOBER 05, 2016

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