

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9317 OF 2017
WITH
WRIT PETITION NO. 9318 OF 2017

Nagpur Distillers Pvt. Ltd
Kamtee Road, Nagpur
Through its authorized signatory /
Shri Gurmeet Singh
s/o Virsa Singh Mulla ..Petitioner

Versus

Karmveer Shankarao Kale Sahakari
Sakhar Karkhana Limited (Formerly
known as Kopargaon Sahakari
Sakhar Karkhana Ltd.) having its
office at Gautam Nagar, Post Kolpewadi,
Taluka Kopargaon, Dist. Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri Yadkikar Amit A
Advocate for Respondent : Shri Gaware Niteen V.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4.. In both these matters, the petitioners and the respondents are identical. These petitioners are aggrieved by the identical order both dated 6.7.2017, passed by the trial Court, by which the prayer of the petitioners to frame proper issues has been rejected. It is informed that only one substantive issue has been framed and issue No.2 is as regards whether relief can be granted and issue No.3 is as regards what order is to be passed in RCS Nos.8 of 2011 and 7 of 2011, respectively.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides and I have gone through the petition paper book and the affidavit-in-reply.

6. The dispute in between the litigating sides is with regard to the label and the design used by the original defendant and which is branded by the original plaintiff to be in violation of the trade mark and copyright of the plaintiff.

7. The core issue framed by the trial Court reads as under:-

" Does plaintiff prove that defendant is using the label, for selling country liquor which, is deceptively similar?"

8. The petitioner / original defendant has proposed ten issues, pertaining to the limitation, jurisdiction of the Court, infringement of Section 2(c), 13 and 17 of the Copyright Act, design and colour, exclusivity of the label etc. The trial Court has considered the identical application filed in both the suits under Order XIV Rule 5 of the CPC and has passed the following order (*in verbatim*) :-

" The issues framed by this Court at Exhibit 42 has covered the entire dispute between the parties, defendant is intending to protract litigation by filing applications hence rejected."

9. I have considered the proposed issues in both these matters, keeping in view the earlier issue framed by the trial Court. With the assistance of the learned Advocates for the respective sides, the additional issues that the trial Court shall frame would be in terms of issue Nos. 1, 2, 3, 8 and 9, of the proposed issues.

10. The impugned order is, therefore, set aside and the above numbered proposed issues will be added to the issues already framed by the trial Court.

11. Learned Advocates inform that this Court had directed the adjournment of the proceedings before the trial Court by its order dated 7.8.2017. On 14.9.2017, this Court again permitted the litigating sides to inform the trial Court by requesting it to adjourn the matters. On 16.9.2017, it is informed that the trial Court refused to adjourn the proceedings and rejected the joint application filed by the parties seeking an adjournment. I find that the trial Court has not acted judiciously and despite the order of this Court, has chosen to ignore the order and reject the application for adjournment filed by the parties. Such a conduct from the trial Court was not expected and it calls for an explanation.

12. It is further informed that before passing the impugned order on application Exhibit 54 and Exhibit 51, in both the suits respectively, the trial Court had first ordered, "*Other side to say*". The said order was signed. Thereafter, the said order was scored out by vertical lines and the impugned order was passed on the last page of the two applications on the same day. Certified copies of the said documents are before me and I can notice that what is conveyed by the learned Advocates for the parties, appears to be correct. Once the trial Court had written an order,

"*Other side to say*" and signed it, the said order could not have been scored out in such a fashion.

13. It is further informed that in these two matters, as the defendants wanted to adopt the written say to the application for injunction as their written statement, a purshis was tendered for adopting the written say as the written statement and an application for condonation of delay was also filed by the defendants for seeking condonation and to permit adoption of the written say as the written statement. The trial Court has not yet passed an order on the application for condonation of delay, though an Exhibit number has been granted to the purshis.

14. Considering the above, both these petitions are partly allowed. The impugned order is quashed and set aside and applications Exhibits 54 and 51 are partly allowed in RCS Nos.8 and 7 of 2011, respectively. As noted above, the said issues shall be added by the trial Court.

15. Rule is made partly absolute in above terms.

16. Learned Advocates pray for expeditious disposal of the proceedings. They are at liberty to cooperate the trial Court and

make such a request.

16. The learned Registrar (J) is directed to place a copy of this order before the learned Principal District Judge, Ahmednagar. The learned Principal District Judge, Ahmednagar shall call for an explanation from the learned District Judge - 2, Kopergaon, who has passed the impugned order, in view of the observations of this Court in paragraph Nos.11 and 12. He shall thereafter invite the concerned learned Judge for counselling and shall submit the report to this Court, preferably within eight weeks.

(RAVINDRA V. GHUGE, J.)

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akl/d