

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL SUIT (L). NO 564 OF 2017
ALONG WITH
NOTICE OF MOTION (L) NO. 646 OF 2017

Sopariwala Exports & Anr.

...Applicants (Org. Plaintiffs)

IN THE MATTER BETWEEN :

Sopariwala Exports & Anr.

...Plaintiffs

V/s

Syed Mohammed Rafey trading as
M/s. Saras Tobacco Company & Ors.

...Defendants

Mr. Aditya Thakkar, along with Ms. Smriti Yadav i/b Khaitan & Co, for the Plaintiffs;
Mr Hiren Kamod, along with Mr. Vikrant Zunjarrao i/b Zunjarrao & Co, for
Defendant Nos. 1 and 4.

Mr Vishal Shriyan, for Defendant Nos. 2 and 3.

Dr. M.S. Deshpande, Court Receiver OSD, present.

Mr. Shetty, Court Receiver, present.

Mr. Kher, OSD, Court Receiver, present.

Ms. Poonam Mankame, authorized representative of the Plaintiff present.

Defendant Nos. 1 to 4 present in person.

CORAM: S. J. KATHAWALLA, J.

DATE: OCTOBER 24, 2017

(IN CHAMBERS)

P.C.

1. Heard the learned Advocates appearing for the parties and the following order is passed by consent :

i) Suit is decreed against the Defendants in terms of prayer clauses (a), (b), (c), (e) and (f) of the plaint.

ii) The Defendants, jointly and severally undertake, agree and declare that they/their representatives/agents are not in possession of and/or control of and/or have access to the infringing labels/materials/goods bearing the infringing labels.

iii) Defendant No 1 agrees and undertakes to pay as costs in the Suit a sum quantified at Rs.10,00,000/- (Rupees Ten Lakhs only) on or before 7th November 2017 by demand draft/s or pay order/s or through RTGS to Fazlani Aishabai and Haji Abdul Latif Charitable Trust. The undertaking is accepted.

iv) In light of the above, the Plaintiffs are not pressing for damages in terms of prayer clause (d) of the plaint.

v) Subject to due compliance of this Order by the Defendants, the Plaintiffs agree that in the event of proceedings being filed before the Competent Court by the Defendants for quashing of the FIR No II/138/2017 dated 28th August, 2017 registered in Petlad Police Station by Mr. Pankaj Gupta (authorised representative of the Plaintiffs) against the Defendants, then the Plaintiffs and Mr. Pankaj Gupta shall consent to the complaint being quashed. The Plaintiffs agree that they will file an Affidavit, or any other document, if required, in the proceedings seeking quashing of FIR, the costs of which shall be borne by Defendant No.1.

vi) The Plaintiffs are at liberty to forward a copy of this Order before the Commissioners of Customs. The Commissioners' of Customs shall take due cognizance of the rights of the Plaintiffs in and over its mark 'ISFAHAN', label marks



and



to ensure that no products bearing marks identical/ similar to the Plaintiffs' marks 'ISFAHAN',



and



are exported by any of the Defendants.

vii) The Defendants shall be at liberty, after due payment of the costs is made to the Plaintiffs, to approach the concerned police authorities viz. Anand Police Station, Petlad, Gujarat with a request to release their packets of tobacco as seized pursuant to the FIR No. II/138/2017 dated 28th August 2017 only after removing the infringing labels therefrom. Upon receiving such request from the Defendant No.1, the entire stock of raw tobacco with or without the impugned trade mark label seized by the police authorities (total 8960 packets of 500 gms each) pursuant to the FIR No. II/138/2017 dated 28th August 2017 registered with Anand Police Station, Petlad, Gujarat would be returned by the police authorities of Anand Police Station, Petlad, Gujarat to the Defendant No.1, save and except 69 boxes containing 1380 packets of half kg. each, which will be handed over to the Defendant No.2, only after removing the impugned trade mark labels. The Defendants shall remove the seized tobacco at their costs proportionately. The infringing labels so removed shall be destroyed by the police authorities. It is clarified that the removal of infringing labels, handing over the packets of tobacco without the infringing label and the destruction of the infringing labels shall be done in the presence of the representatives of the Plaintiffs and the Defendants.

viii) The infringing labels seized by the Court Receiver as also the infringing labels handed over by the Defendant No 2 in court today shall be handed over to the Plaintiffs' representative for destruction. The Plaintiffs undertake to destroy the same within two days from receipt of the same.

ix) The Court Receiver stands discharged without passing accounts subject to payment of his costs, charges and expenses.

x) Liberty is granted to the Plaintiffs to take appropriate proceedings against Milano General Trading LLC and/or its group companies and/or its or their directors, partners, agents, employees or any other person claiming through them including Mr Habib Ullah and Mr Hafiz Ullah Achakzai.

xi) Subject to the compliance of the present terms, the Plaintiffs agree that they would not initiate and/or pursue any action including criminal action against any of the Defendants on the basis of the subject consignment involved in the present suit.

2. Suit is decreed in the above terms. Notice of Motion stands disposed off.

3. Refund of Court fees, if any, as per Rules.

4. Though the Suit is disposed off, place the same before this Court to report compliance on 7th November, 2017 at 3.00 p.m.

5. Liberty to apply.

6. All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.

(S. J. KATHAWALLA, J.)