

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NO.138 OF 2016

**J U D G M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)**

O.S.No.118 of 2015 on the file of the learned I Additional Chief Judge, City Civil Court, Secunderabad, was filed by Coromandel International Limited, the respondent in this appeal, seeking a perpetual injunction restraining Patel Phoschem Limited, the appellant herein and defendant in the suit, from in any manner infringing its registered trade mark 'Double Horse Brand' for fertilizers and for various other reliefs.

By order dated 13.08.2015 passed in I.A.No.3022 of 2015 filed by the plaintiff in the suit, the trial Court granted an *ex parte* injunction restraining the defendant from in any manner infringing the plaintiff's trade mark 'Double Horse Brand' label for fertilizers by use of its 'Triple Horse' label with the device 'horses' or any other label deceptively similar to the plaintiff's trade mark.

I.A.No.3292 of 2015 was filed by the defendant in the suit to vacate the said *ex parte* injunction order. By common order dated 28.10.2015 passed in both the I.A.s, the trial Court made absolute the injunction order earlier granted in favour of the plaintiff and dismissed the vacate stay petition filed by the defendant. Aggrieved thereby, the defendant is in appeal.

Heard Dr.Venkat Reddy Donthi Reddy, learned counsel for the appellant-defendant, and Sri S.Ravi, learned senior counsel representing Sri Ch.Pushyam Kiran, learned counsel for the respondent-plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

Dr.Venkat Reddy Donthi Reddy, learned counsel, would contend that the trial Court erred in making absolute the injunction order, overlooking the issues raised by his client which clearly disentitled the plaintiff to such interlocutory relief. Learned counsel would contend that the registered proprietor of the trade mark 'Double Horse Brand' was not the plaintiff but Liberty Phosphate Limited, which was not even made a party to the suit proceedings. He would assert that the suit was itself liable to be dismissed for non-joinder of a necessary party, apart from the fact that the plaintiff had no cause of action in relation to the said registered trade mark as the same had not been transferred or assigned to it. Learned counsel would contend that the suit claim was based upon a Trade Mark Registration Certificate, which was not to be used for legal proceedings and, therefore, the trial Court ought to have non-suited the plaintiff on this ground also. He would further state that in the light of the disclaimer clause in the Trade Mark Registration Certificate, the plaintiff could not claim any exclusive rights over the device 'Horse' used in its label. He would further state that the dissimilarities in the logo/label of the defendant in relation to its fertilizers, sold under the trade name 'Triple Horse' evidenced that there was no infringement of the plaintiff's registered trade mark 'Double Horse Brand' as alleged by it. Finally, he would state that the plaintiff approached the Court with unclean hands as it had suppressed relevant facts disentitling it from claiming any relief in the suit.

Per contra, Sri S.Ravi, learned senior counsel, would point out that Liberty Phosphate Limited was merged with the plaintiff

under orders of amalgamation passed by this Court and the High Court of Gujarat and therefore, Liberty Phosphate Limited stood subsumed in the plaintiff. He would argue that the plaintiff stepped into the shoes of Liberty Phosphate Limited insofar as its registered trade mark 'Double Horse Brand' was concerned and the question of transfer or assignment of the said trade mark in its favour would not arise. He would however concede that to avoid any complications in this regard, the plaintiff already applied for such transfer/assignment in accordance with the due procedure in June, 2015. He would point out that it is not in dispute that the trade mark in question, viz., 'Double Horse Brand' was registered by Liberty Phosphate Limited and assert that, being its successor-in-interest, the plaintiff was entitled in law to claim exclusive rights over the same. He would further state that once this was the admitted position, filing of the wrong Registration Certificate paled into insignificance and the defendant could not seek to non-suit the plaintiff on the technical ground that the certificate filed in the suit proceedings was not the right one. Learned senior counsel would further assert that the action-in-law initiated by the plaintiff was not just for infringement of its registered trade mark but also in relation to the passing off of its goods by the defendant by marking them so as to create confusion that they were the products of the plaintiff. Learned senior counsel would also point out that though the defendant was in the business of marketing fertilizers since 2006, it resorted to the use of the new 'Triple Horse Brand' in 2014 and applied for registration of 'Triple Horse Brand' trade mark only in February, 2014. He would state that prior to the year 2014, the defendant did not resort to use of this

brand/label and its dishonest intention in seeking to appropriate the registered trade mark of the plaintiff for marketing the same products, viz., fertilizers, was manifest. Learned senior counsel would further state that the disclaimer clause in the registration of the trade mark was of no avail to the defendant in as much as the disclaimer was made in relation to specific components of the registered trade mark i.e. the use of the device and word 'Horse' and that the infringement/passing off alleged by the plaintiff would have to be viewed by looking at the trade mark in its entirety. He would further state that once the trade marks, upon such comparison, were found to be deceptively similar causing confusion in the minds of the consumers, the infringement/passing off alleged by the plaintiff stood established.

As the suit, being of the year 2015, is still at a nascent stage, consideration of issues by this Court in the present appeal would have to be for the limited purpose of disposing of this appeal. The question that falls for consideration is whether the temporary injunction, made absolute by the trial Court, restraining the defendant from in any manner infringing the plaintiff's trade mark 'Double Horse Brand' for fertilizers by use of its 'Triple Horse Brand' warrants interference on any ground.

Section 29 of the Trade Marks Act, 1999 (for brevity, 'the Act of 1999'), deals with infringement of registered trade marks. Sub-section (1) thereof states to the effect that a registered trade mark would be infringed by any other person using, in the course of trade, a mark which is identical with or deceptively similar to the said trade mark in relation to goods or services in respect of which the trade mark is registered.

It is an admitted fact that 'Double Horse Brand' (Label) was the registered trade mark of Liberty Phosphate Limited since the year 2007 (under Trade Mark Application No.1156780). This registration is valid up to the year 2022 as on date. Separately, the trade mark 'Single Super Phosphate' (Label) was also registered by Liberty Phosphate Limited in 2006 (under Trade Mark Application No.1352446). Both the registrations still stand in the name of Liberty Phosphate Limited. It is however not in dispute that by virtue of the orders passed by the High Court of Gujarat and this Court, Liberty Phosphate Limited stood amalgamated with the plaintiff.

The question as to whether the registered trade mark of Liberty Phosphate Limited would have to be assigned/transmitted to the plaintiff by registration thereof under Section 45 of the Act of 1999 still requires to be properly examined by the trial Court. *Prima facie*, this Court finds merit in the submission of Sri S.Ravi, learned senior counsel, that the question of an assignment/transmission of the registered trade mark of Liberty Phosphate Limited in favour of the plaintiff may not arise in view of the merger of the two corporate entities. The question of assignment/transmission would normally arise in the context of a transaction taking place between two existing bodies. The fact remains that Liberty Phosphate Limited registered its 'Double Horse Brand' (Label) with the Registrar under the provisions of the Act of 1999 and, being its successor-in-interest, the plaintiff has every right to sue any person infringing the same. This Court therefore finds no error in the trial Court coming to this conclusion for the purpose of granting interlocutory relief.

As regards the issue of non-joinder of Liberty Phosphate Limited, as stated *supra*, the said company is no longer in existence after its amalgamation with the plaintiff. The question of it being impleaded in its own name thereafter would not arise as it is not even in existence. The contention urged in this regard is therefore rejected.

The argument of Dr.Venkat Reddy Donthi Reddy, learned counsel, is that the Certificate of Registration of the trade mark relied upon by the plaintiff was legally inadmissible inasmuch as it specifically stated that it was not for use in legal proceedings. He would rely upon Section 137 of the Act of 1999 which states to the effect that only a certificate issued by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted in evidence in all Courts without further proof or production of the original. Section 137(2) of the Act of 1999 elaborates that a certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorized to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done. This contention is however hyper-technical as it is not in dispute that the Liberty Phosphate Limited registered 'Double Horse Brand' (Label) with the Registrar of Trade Marks. It is also clear from the response of the defendant to the legal notice dated 23.01.2015 addressed to it by the plaintiff that it admitted the registration of 'Double Horse Brand' in respect of Single Super Phosphate Fertilizer by Liberty Phosphate Limited. In the light of this admission, non-production of the proper certificate is a mere technicality. At best, non-production of the proper certificate is

only a curable defect and does not have the fatal effect of rendering the plaintiff liable to be non-suited on that ground.

As regards the plaintiff's suppression of the disclaimer clauses in the Certificates of Registration, it is no doubt true that one of the conditions of registration of 'Double Horse Brand' (Label) was that the registration of this trade mark gave no right to the exclusive use of the device and 'Single Super Phosphate' and insofar as the trade mark 'Single Super Phosphate' (Label) is concerned, the condition was that the same would give no right to the proprietor of the trade mark to the exclusive use of the word, brand and device 'horse' and descriptive matters appearing on the label. However, it is not each component of the trade mark which requires to be examined independently in the context of infringement of a registered trade mark being made by adopting a trade mark which is identical or deceptively similar thereto. Use of the device 'horse' by itself may be of no significance but the pictorial depiction of the 'horse' in a manner similar to that in the registered trade mark of the plaintiff would make all the difference. The scope and effect of the disclaimer clauses in the trade mark registrations of the plaintiff's trade marks would necessarily have to be examined by the trial Court but at this stage, the said disclaimer clauses are of no avail to the defendant to ward off the injunction order granted against it.

Both sides pressed into service an abundance of case law to support their respective contentions.

In **TEJU SINGH V/s. SHANTA DEVI**¹, a Division Bench of this Court observed that the true test for determining whether

¹ CDJ 1973 APHC 098

words or marks claimed as trade-marks are descriptive or whether they are suggestive or arbitrary and fanciful must be decided with respect to the articles to which they are applied and the mark must be considered as a whole. The Division Bench further observed on facts that the words 'One Day' do not come under the category of fanciful/distinctive words, as they are purely descriptive.

In **OM PRAKASH GUPTA V/s. PRAVEEN KUMAR**², a learned Judge of the Delhi High Court was dealing with a case based on a false plea of the trade mark being registered and a material document was withheld. On the other hand, a document not intended to be used in legal proceedings was used at the time the *ex parte* hearing of the interim injunction application was taken up. The learned Judge therefore held that the plaintiff had not only concealed material facts but had also misrepresented the facts thereby misusing the process of the Court by fraudulent means. The case on hand is completely distinguishable on facts and this judgment therefore does not further the case of the defendant.

In **A.ANURADHA V/s. CANARA BANK REP. BY ITS CHIEF MANAGER, M.G.ROAD BRANCH, SECUNDERABAD**³, a Division Bench of this Court held that the Court should not grant a hearing to a person who does not approach it with clean hands. The Division Bench observed that a person who touches the fountain of justice with tainted hands or who makes an attempt to pollute the course of justice by making false or misleading statements or by suppressing facts must be shown the door at the threshold. There can be no dispute with the aforestated proposition but each case would have to be tested on its own individual facts to determine as

² ILR (2000) II DELHI 124

³ (2006) 4 ALT 581 (DB)

to whether there is suppression and if so, whether it is of material consequence. In the case on hand, mere non-disclosure of the disclaimer clauses assumes very little significance as the action is not only for infringement but also for passing off.

In ***JHAVERI INDUSTRIES V/s. MAJETHIA MASALA***⁴, a learned Judge of the Bombay High Court held on facts that infringement of the trade mark 'Badshah Rajwadi' was not established as the use of the word 'Rajwadi' was disclaimed while registering the word 'Badshah'. The defendant was therefore held entitled to use the word 'Rajwadi' in relation to one of its spices. This case turned on its own facts and is therefore of no relevance.

In ***M/s. ARAVIND LABORATORIES V/s. MODICARE***⁵, a learned Judge of the Madras High Court was dealing with the registration of the trade mark 'EYETEX Dazler'. However, there was no separate registration of the word 'Dazler'. The question was whether the defendant committed infringement of this trade mark by using the words 'Daily Dazzler'. The learned Judge observed that the word 'Dazler' had not acquired distinctiveness as had the word 'Eyetex' and therefore held that there was no infringement or passing off by applying the tests prescribed in the classic form.

In ***UNITED BREWERIES LIMITED V/s. KHODAYS BREWERIES LIMITED***⁶, a learned Judge of the Karnataka High Court was dealing with beer which was sold by both parties. The plaintiff sold it under the trade name 'Kalyani Black Label', while the defendant did so under the name of 'Hercules Black Label'. The learned Judge observed that the words 'Black Label' were generic

⁴ CDJ 2007 BHC 2702

⁵ 2011-4-L.W.55

⁶ CDJ 2013 Kar HC 198

in nature and were used across the world by various manufacturers of liquor. The learned Judge therefore held that the plaintiff could have no right over the words 'Black Label'.

In **WHITE HORSE DISTILLERS LIMITED V/s. UPPER DOAB SUGAR MILLS LIMITED**⁷, a learned Judge of the Delhi High Court found on facts that there were great dissimilarities in the devices in the marks used by both parties. The device of the plaintiff consisted of the picture of a white horse on a black background, while the defendant's consisted of a horse with quite large and conspicuous wings in a flying posture as against the standing horse in the device of the plaintiff. These devices were used in relation to the whisky sold by both the parties. The learned Judge therefore held that the plaintiff did not have a clear cut case in its favour and refused to grant a temporary injunction.

In **ORCHID CHEMICALS & PHARMACEUTICALS LIMITED V/s. WOCKHARDT LIMITED**⁸, a Division Bench of the Madras High Court opined that without registering the assignment of the trade mark in its favour under the Act of 1999 the appellant, which was desirous of using the said trade mark, could not seek an order of injunction. However, as already stated *supra*, the question whether such a requirement would even arise in the present case is itself open to question as there was no assignment/transmission of the trade mark of Liberty Phosphate Limited in favour of the plaintiff as the said company stood merged with the plaintiff.

In **TRINETHRA SUPER RETAIL PRIVATE LIMITED V/s. MEE TRINETRA TRADING PRIVATE LIMITED**⁹, a Division Bench

⁷ CDJ 1984 DHC 360

⁸ 2013 (3) CTC 841

⁹ 2011 (4) ALT 692 (D.B.)

of this Court observed that when an action for infringement of a trade mark is instituted, the onus is on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered is deceptively similar and there is likelihood of confusion or deception arising from such similarity. The Bench further observed that in determining phonetic similarities, the sequence of consonants and vowels in a word or a compound of words would also be significant and similarly, visual violation would also be of equal importance for the obvious reason that in all commodities for sale to a group of people - literate or illiterate, the visual representation causes the real impact. The Bench however cautioned that a person who has a registered trade mark cannot stop all others whose trade marks have even the slightest similarity with his trade mark from doing business. Considering the issue of balance of convenience, the Bench observed that Courts would have to consider the statutory right and the greater chance of the success of the plaintiff and balance it with the harm that may be caused to the defendant if ultimately the plaintiff does not succeed.

In **OM PRAKASH GUPTA²**, a learned Judge of the Delhi High Court was dealing with a case where registration of the trade mark 'Suraj Chhap' was subject to the condition that it would give no right to the exclusive use of the device 'sun' and the word 'suraj'. The fact of the disclaimer was not mentioned in the plaint and the basis of the *ex parte* injunction granted in favour of the plaintiff was therefore held to be misrepresentation of a material fact to the Court. This case also turned on its own facts and this Court finds that this decision does not further the case of the defendant.

In **SHAIK NAZEEMUDDIN V/s. MOHD. ASLAM**¹⁰, a learned Judge of this Court, relying on case law, observed that without registration of a trade mark, no infringement thereof can be alleged but an action for passing off is an action for deceit and would therefore lie as a common law remedy.

In **CARLSBERG INDIA PRIVATE LIMITED V/s. RADICO KHAITAN LIMITED**¹¹, a Division Bench of the Delhi High Court observed that as per Section 17 of the Act of 1999, a registered proprietor of a composite mark cannot seek exclusivity with respect to individual components of the trade mark. On facts, the Bench held that it would not be open to the plaintiff which was the registered proprietor of the composite mark '8 PM' to seek protection against a party who merely used the numeral '8', since no exclusivity can be claimed in a single numeral.

In **RICH PRODUCTS CORPORATION V/s. INDO NIPPON FOODS LIMITED**¹², a learned Judge of the Delhi High Court was dealing with a case where the plaintiff had registered the trade mark 'Rich's Whipped Topping' in the year 1991, while the defendant used the trade mark 'Bells Whipped Topping' from the year 1995. The disclaimer in relation to the words 'Whipped Topping' in the registration was not disclosed. The learned Judge held that 'Whipped Topping' by itself was not a registered trade mark and, therefore, the plaintiff could only claim exclusivity over the whole expression 'Rich's Whipped Topping' and not over the expression 'Whipped Topping' independently as the words 'Whipped Topping' were only descriptive of the product itself.

¹⁰ C.M.A.No.879 of 2015 decided on 29.04.2016

¹¹ 2012 (49) PTC 54 (Del.)(DB)

¹² CDJ 2007 DHC 1134

In **BAJAJ AUTO LIMITED V/s. TVS MOTOR COMPANY LIMITED**¹³, the Supreme Court reiterated its earlier observations in **SHREE VARDHMAN RICE & GENERAL MILLS V/s. AMAR SINGH CHAWALWALA**¹⁴, and held that in suits relating to trade marks, copyright and patents, the trial Court should comply with the proviso to Order 17 Rule 1(2) CPC and take up hearing of the suit on a day-to-day basis and endeavour to render a final decision within four months from the date of filing of the suit.

In **BAWA MASALA COMPANY V/s. GULZARI LAL LAJPAT RAI**¹⁵, a learned Judge of the Delhi High Court set out the principles applicable in trade mark infringement/passing off thus:

“(39) It is not necessary to notice any further authorities cited by the parties. Suffice it to say that the principles that emerge from a consideration of all the cases cited before us as well as authoritative treatise, like Kerly’s Law of Trade Marks and Trade Names, are:

- (A) The plaintiff must prove infringement.
- (B) The plaintiff must prove passing off by producing witnesses who have actually been deceived or that what the defendant is doing – is calculated to deceive.
- (C) The disclaimer in a registration of trade mark has an important bearing inasmuch as the disclaimed portion of the mark has to be ignored while considering infringement.
- (D) The plaintiff must prove that the defendant’s mark is likely to deceive particularly vis-à-vis the essential features.
- (E) In an action for passing off in spite of similarity in, essential features defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.
- (F) The question of infringement or passing off has to be decided by comparison of the two marks.

¹³ (2009) 9 SCC 797

¹⁴ (2009) 10 SCC 257

¹⁵ 11 (1975) DLT 270

- (G) Irrespective of what witnesses may say, it is ultimately the court which has to come to its own conclusion by seeing the marks in suit and decide whether an unwary purchaser is likely to be deceived. By unwary purchaser is not meant a negligent purchaser but a purchaser who uses due diligence and knows what he is going to purchase but may not have a very clear recollection of what he had purchased earlier or what had been advertised.
- (H) If there is some specific mark which has been advertised or popularized which has to be seen in purchasing a party's goods then that would be the most essential feature to be considered in an action for infringement or even passing off.'

Decisions cited by Sri S.Ravi, learned senior counsel:

In **PARKSONS CARTAMUNDI PRIVATE LIMITED V/s. SURESH KUMAR JASRAJ BURAD**¹⁶, a Division Bench of the Bombay High Court observed that the provisions of Section 45 of the Act of 1999 underwent a sea change after its amendment in the year 2010 and registration of assignment is now a mere formality. The Bench therefore held that even without registration of such assignment, an action for infringement/passing off could be maintained by the assignee.

In **CADILA HEALTH CARE LIMITED V/s. CADILA PHARMACEUTICALS LIMITED**¹⁷, the Supreme Court observed that while English cases may be relevant in understanding the essential features of trade mark law, while dealing with sale of consumer items in India, the difference in the situation between England and India would have to be kept in mind. It was pointed out that in a country like India where there is no single common language and a large percentage of the population is illiterate what has to be kept in mind is that the purchaser of goods who may

¹⁶ 2012 (114) BOMLR 1991

¹⁷ (2001) 5 SCC 73

have absolutely no knowledge of English or the language in which the trade mark is written may be confused by the misrepresentation made so as to constitute passing off of one product for another due to similarity of the marks or other surrounding factors.

In **KIRORIMAL KASHIRAM MARKETING AND AGENCIES PRIVATE LIMITED V/s. SHREE SITA CHAWAL UDYOG MILL¹⁸**, a Division Bench of the Delhi High Court was dealing with a case where the plaintiff registered the trade mark 'Double Deer' and sought an injunction against the defendant from using the trade mark 'Golden Deer' in relation to the product rice. The Division Bench found that the word 'deer' was a prominent part of the trade mark of the plaintiff and copying of this prominent part by the defendant led to a deceptive similarity, especially when the product of both the parties was the same. The Division Bench observed that the expression 'deer' was arbitrarily adopted by the defendant as a 'deer' had no connection or correlation with rice. The Division Bench therefore held in favour of the plaintiff.

In **SANOFI INDIA LIMITED V/s. UNIVERSAL NEUTRACEUTICALS PRIVATE LIMITED¹⁹**, a learned Judge of the Delhi High Court observed that, notwithstanding a disclaimer clause in the registration of a trade mark, an action for passing off is maintainable if it is established that the defendant was infringing the common law rights of the plaintiff. Referring to **REGISTRAR OF TRADE MARKS V/s. ASHOK CHANDRA RAKHIT LIMITED²⁰**, wherein it was held that the real purpose of requiring a

¹⁸ 2010 (44) PTC 293 (Del)

¹⁹ 2015 III AD (Delhi) 505

²⁰ AIR 1955 SC 558

disclaimer is only to define the rights of the proprietor under the registration so as to minimize, even if it cannot wholly eliminate, the possibility of extravagant and unauthorized claims being made on the score of registration of the trade mark, the learned Judge held that the trade marks of both parties would have to be compared as a whole to see whether passing off was established.

In **CADBURY INDIA LIMITED V/s. NEERAJ FOOD PRODUCTS²¹**, a learned Judge of the Delhi High Court was dealing with a case where the plaintiff had not disclosed the disclaimers in the registration of its trade mark. The learned Judge, upon examination of the Trade and Merchandise Marks Act, 1958 and the Act of 1999, opined that the Act of 1999 does not impact the common law rights and remedies of the proprietor of a trade mark which are not related to or arise out of any statutory registration of the trade mark. The learned Judge relied upon Section 27 of the Act of 1999 which reserves the right to institute an action for passing off notwithstanding the provisions of the Act and concluded that the impact of a disclaimer in a registration certificate is that such a person is precluded from bringing an infringement action but the statute does not prohibit the right given to such a person to bring a passing off action in respect of a trade mark which, though registered, contains a disclaimer with regard to any portion thereof.

In **S.M.DYECHEM LTD. V/s. CADBURY (INDIA) LTD.²²**, the Supreme Court elaborated on the tests to ascertain infringement of a trade mark. The first is whether there is any special aspect of the common feature which has been copied? The second test is with

²¹ 142(2007)DLT724

²² (2000) 5 SCC 573

reference to the mode in which the parts are put together differently, and the third is whether there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding common parts.

As already pointed out *supra*, this Court is presently concerned only with the validity or otherwise of the injunction which has been made absolute by the trial Court pending disposal of the suit. It is therefore wholly premature for this Court to go into the merits of the matter in depth.

Perusal of the order under appeal reflects that the Court below examined the marks used by both parties and found them to be deceptively similar. The products sold by both parties are fertilizers. Needless to state, consumers of fertilizers would be, by and large, illiterate. They would therefore be majorly influenced by the pictorial depiction on the product. Admittedly, the plaintiff/Liberty Phosphate Limited enjoyed the registered trade mark 'Double Horse Brand' depicting two running horses for nearly a decade now. The plaintiff's product label indicates that the pictorial depiction of the two running horses is bordered on the left side with a green band with the words 'Gromor' written in different languages, while on the right side, a band in green mentions the word 'Gromor' in large font. The defendant's product label bears the name 'Three Horse' and depicts three horses in motion. This pictorial depiction of three running horses is bordered on the left side with a thin red band with words written therein, while on the right side, a wider band in green mentions the words 'Triple Horse' with the same pictorial depiction of three horses in motion.

Visually, there are enough similarities in the two to confuse a gullible and uninformed consumer.

It is an admitted fact that the defendant, having started its business in fertilizers in 2006, did not choose to adopt this label till 2014. It only applied for registration of this label in February, 2014, clearly indicating that its usage started roughly around the same time. An illiterate farmer is liable to be influenced by the similarity in the words 'Double Horse' and 'Triple Horse' and may also innocently believe that use of 'three horses' indicates more potency of the fertilizer as compared to 'two horses'. The pictorial depiction on both the products also is not dissimilar so as to dispel any such misconception. This Court therefore finds no reason to disagree with the finding of the trial Court that there is every possibility of the consumer being misled and confused.

Though Dr.Venkat Reddy Donthi Reddy, learned counsel, would contend that this Court must take into account the fact that continuance of the injunction pending the suit would cause irreparable loss to his client which cannot be compensated, it may be noticed that the injunction granted by the trial Court is not in absolute terms. The trial Court merely enjoined the defendant from using its 'triple horse' label with the device 'horses' only until it obtained registration of the said trade mark or pending the suit, whichever is earlier. The defendant is therefore left free to pursue its application with the Registrar of Trade Marks and, in the event it succeeds in getting the same registered under the provisions of the Act of 1999, the injunction ceases to operate. There is however no indication of what has happened to the said application of the

defendant and as to whether it pursued the same with the authorities concerned.

Be it viewed from any angle, this Court finds no error or irregularity in the order passed by the trial Court warranting interference in exercise of appellate jurisdiction at the interlocutory stage.

The Civil Miscellaneous Appeal is accordingly dismissed. Needless to state, any observations made in this order shall not influence the trial Court while adjudicating the issues that arise for consideration in the suit. The trial Court shall however be mindful of the edict of the Supreme Court in **BAJAJ AUTO LIMITED¹³** and **SHREE VARDHMAN RICE & GENERAL MILLS¹⁴** and strive to act accordingly.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

ANIS, J

25th JANUARY, 2017

PGS