

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.M.A.No.71 of 2017

Between:

Jagdamba Phosphate, Kota,
Rep. by its Director.

... Appellant.

and

Coromandel International Ltd., Secunderabad,
rep. by its Vice-President - Legal.

... Respondent

JUDGMENT PRONOUNCED ON : 28.03.2017

HON'BLE SRI JUSTICE : SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE : U.DURGA PRASAD RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ? : Yes/No
3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment ? : Yes/No

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL No.71 of 2017

DATE: 28.03.2017

Between :

Jagdamba Phosphate,
(A Unit of Jagdamba Pesticides Pvt. Ltd.),
Represented by its Director.

.....Petitioner

And

Coromandel International Ltd., Secunderabad,
rep. by its Vice-President - Legal.

.....Respondent.

For appellant : Sri M. Govind Reddy, Advocate.

For Respondent : Sri S.Ravi, Senior Counsel &
Sri Ch.Pushyam Kiran, Advocate.



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> Head Note:

? CITATIONS:

1. AIR 2001 SC 1952
2. 2010 (44) PTC 293
3. 2011 STPL 1332 Delhi
4. 2009 (40) PTC 417
5. CMA.No.138 of 2016, dt.25.01.2017.

C/15

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL No.71 of 2017

JUDGMENT : (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant/defendant has challenged the order dated 19th December 2016 passed in I.A.No.782 of 2016 in O.S.No.56 of 2016, by the I-Additional Chief Judge, City Civil Court, Secunderabad.

2. The present appeal is filed on the grounds that granting of temporary injunction orders passed in aforesaid I.A. is arbitrary, illegal and against the principles of natural justice. It is wrongly held that the label on the Gunny Bag is similar and deceptive to the general public even before examining any one of the general public. On one hand, the learned Court holds that Gunny Bags look like having deceptively similar marks and on the other hand gives a finding that appellant/defendant adopted similar mark, which shows the total non-application of mind. Accordingly, learned Judge wrongly held that appellant/defendant has copied the logo of horse when horse, by itself, is not registered as trade mark of the appellant, leave alone, even the trade mark authorities themselves cannot register horse as trade mark to any person. It is wrongly held that all the artistic features are similar in nature, even before examining any of the witnesses, including expert witness.

3. We have heard learned counsel for the parties in length and perused the material on record.

4. Learned counsel Sri M.Govind Reddy, appearing on behalf of the appellant/defendant would submit that the learned trial Judge has wrongly held that arrangement of features and placing of features goes to show that

appellant/defendant has merely copied the “Trade Mark” and “Label” of the respondent/plaintiff whose trade mark was “Double Horse” and that of appellant/defendant was “Triple Horse”. The learned Judge, while relying on the decision of Hon’ble Supreme Court in **Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.**¹, completely failed to identify or assess in what way or otherwise in what manner the Logo/Mark of the respondent/plaintiff is similar to that of appellant/defendant either visually or phonetically, or otherwise connected, but gave a finding that using of similar trade mark by the appellant/defendant with minor changes is nothing but infringement of respondent/plaintiff’s ‘Mark’.

5. Learned counsel for appellant/defendant would further submit that the learned Judge wrongly held that farmers are illiterate, though the appellant/defendant never admitted that farmers are illiterate. The learned Judge ought not to have held that the Public are incapable of distinguishing the trade marks, without calling even one witness for examination. Moreover, the learned Judge has wrongly held that perusal of Exhibits B1 and B2 causes confusion in the minds of the farmers, without even calling one farmer to identify whether it causes confusion.

6. The learned Judge ought to have seen that the judgment in the case of **Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. V. Shree Sita Chawal Udyog Mill**² relied on by the respondent is based totally on different set of facts and circumstances which is squarely not applicable to the present case, as the said judgment did not consider the grounds raised in this case. The learned Judge ought to have seen that the requirement of S.S.P. in Rajasthan is 14.50 Kgs per Hectare, whereas, it requires 29.21 Kgs

¹ AIR 2001 SC 1952

² 2010 (44) PTC 293

per Hectare in Madhya Pradesh. So, it can be presumed that consumers are aware of the strength of their respective soils, and therefore, before purchasing such huge quantities, any reasonable person would at least glance at the 'Mark' and make his efforts to know the details of manufacturer or producer from whom he is purchasing it.

7. To strengthen his arguments, learned counsel for appellant has relied upon the case of **Wheels India v. S.Nirmal Singh & another**³, whereby, it is held that the continuance of an *ad interim* injunction granted in favour of the plaintiff *ex parte* and without disclosure of full facts is not warranted and the ends of justice will be met if pending disposal of the suit, the interim orders are vacated with a direction to the 2nd defendant (therein) to maintain accounts of profits earned by it and to file the same in the Court on a quarterly basis. Accordingly ordered that the 2nd defendant (therein) shall maintain regular accounts of its sales under the trade mark "PRINCE" and pending disposal of the suit, shall file the same every three months. It is further directed, it shall also publish public notices in 'Hindustan Times', 'The Hindu' and 'The Pioneer' within six weeks, informing prospective buyers of the relevant goods that the goods marketed by it under the trademark 'PRINCE' have no connection with the goods marketed by the plaintiff under the same trademark.

8. While concluding his arguments, learned counsel for appellant/defendant submits that the learned Judge, while granting the interim relief, failed to examine by comparing each of the mark wholly. Accordingly, the learned Judge totally failed to see whether the component images of the mark are matching while keeping in view that relevant

³ 2011 STPL 1332 Delhi

members of public would always keep dominant image of the mark in the minds.

9. On the other hand, it is submitted by the learned Senior Advocate Sri S.Ravi, appearing for respondent/plaintiff that the trade mark “Double Horse” was adopted by Liberty Phosphates Limited in respect of Single Super Phosphate fertilizer in the year 2004. The said trade mark was extensively used since 1994 by Liberty Phosphates Limited and registration certificate for trade mark “Double Horse” was registered under No.1156780 in class I on 10.12.2002 by trade marks office at Mumbai. Later in the year 2014, Liberty Phosphates Limited was merged with the respondent/plaintiff-Coromandal International Ltd., and the scheme of amalgamation was sanctioned by this Court on 07.04.2014. It is also accepted by the High Court of Gujarat on 24.04.2014. By virtue of amalgamation, rights, title and interest vested with the said Liberty Phosphates Limited have been transferred to the respondent and the respondent, being a subsequent proprietor of trade mark Single Super Phosphate Fertilizer, manufactured and marketed under the name “Double Horse” which is emanated by bunch of invoices. It has got a good reputation and goodwill and exclusive use in trade and it is associated with public through its label. The respondent in order to protect its right over the market “Double Horse”, obtained registration of the same under Registration No.1156780 in respect of powdered and granulated Single Super Phosphate and registration has been renewed from time to time.

10. Learned Senior Counsel further submits that respondent is also a proprietor of copyright in the artistic work in the label of “Double Horse” gunny bags/packaging with distinctive get up and layout including the

device of two horses along with a distinct arrangement of features and get up. The respondent's trademark "Double Horse" has acquired tremendous reputation and goodwill in the fertilizer market. Learned counsel submits that in the month of August 2015, it was brought to the knowledge of the respondent that the appellant/defendant is marketing Single Super Phosphate fertilizer under a deceptive similar mark "Three Horses" and label. The appellant has malafidely adopted similar trade mark and get up in its gunny bags with a malafide intention to ride upon the wide spread reputation and goodwill of the respondent. The appellant has not only adopted deceptively similar mark but has also copied the scheme and get up of the respondent's label. Accordingly, the respondent issued a desist notice to the appellant on 22nd August 2015 in order to amicably settle the matter. The appellant sent an evasive reply to the respondent on 18.09.2015, for which, on 09.10.2015, a rejoinder was sent by the respondent.

11. Mr.S.Ravi, learned Senior Counsel argued that fertilizers are purchased mostly by illiterate farmers who are incapable of distinguishing the products by trade name and certain minor changes in the label. They identify the products only with their over all get up. Hence, the imitation of the layout of the respondent's "Double Horse" mark and label by the appellant/defendant has been done with the malafide intention to deceive the minds of the purchasers and cause confusion that the product manufactured by the appellant/defendant actually emanates from the respondent. The fertilizer sold by the appellant/defendant with imitative "Three Horse" mark and label are of substandard and inferior quality. The appellant's activities are seriously hampering the business of the respondent and spoiling its hard earned reputation and goodwill attained for the goods sold under the

respondent's trade mark "Double Horse". As the products involved are identical and the channel of trade is also the same, there is every possibility of deception and confusion in the minds of traders and public.

12. In reply, the learned counsel for appellant has argued that the trade mark of the appellant is totally different from that of the respondent and the suit filed by the respondent is only to capture and monopolise the respondent's product in the market. The appellant is doing business under the name and style of 'Jagadamba Phosphates' under the brand name "Three Horses", accordingly, is supplying the products of Single Super Phosphate principally in Rajasthan and Madhya Pradesh. The production and movement of product is monitored by web based fertilizer monitoring system since 2011 onwards and thereby it is not causing infringement of any right of the respondent in marketing. The mark of the appellant is neither identical nor deceptively similar to that of the respondent and it is quite different one.

13. Before going into the issue, the comparison of the label of "Double Horse" and "Three Horses" is necessary to adjudicate the present appeal, which is as under :

Double Horse Label	Three Horse Label
The device of two horses one beside the other.	The device of three horses one beside the other.
The device of two horses in running posture.	The device of three horses in running posture.
The words DOUBLE HORSE BRAND which is written in Hindi.	The words THREE HORSE BRAND which is written in Hindi.
The DOUBLE HORSE BRAND label with device of two horses is placed to the top centre of the gunny bag/package.	The THREE HORSE BRAND label with device of three horses is placed at the top centre of the gunny bag/package.
A thin strip on the left side and thick strip on the right side of the gunny bag/package.	A thin strip on the left side and thick strip on the right side of the gunny bag/package.
The packaging/gunny bag is in the combination of green and red.	The packaging/gunny bag is in combination of green and red.

14. It is not in dispute that the respondent got copyright in the artistic work in the label of “Double Horse” gunny bags/packaging with distinctive get up and layout including the device of two horses along with a distinct arrangement of features. The learned trial Court, after seeing from the invoices, has observed that there was an extensive scale of sales said to be made by the respondent/plaintiff alone. The trial Court also perused Exhibit A-7, whereby, the respondent has invested huge sum of money for advertising, permission and sales promotion of fertilizer sold under distinctive trade mark “Double Horse” label.

15. It is also not in dispute that the respondent, in the month of August 2015, on noticing that the appellant is marketing Single Super Phosphate under deceptively similar mark of “Three Horses” label and the appellant has malafidely imitated the branding, colour scheme, get up and layout of the respondent’s “Double Horse” mark and label, issued desist notice and called upon the appellant for amicable settlement. The Court below also perused Exhibits B-1 and B-2, and observed that the gunny bags look like a deceptively similar trade mark and appellant adopted a similar mark on their gunny bags and as per the document covered under Exhibit A-8, the respondent got issued a legal notice to the appellant to seize and desist the product and also demanded for amicable settlement of the matter, for which, the appellant gave a reply covered under Exhibit A-9. No doubt, in which, the appellant denied and disputed the averments of the respondent. The Court below also perused the documents filed by the respondent covered under Exhibits A-1 to A-6 and observed that the label on the gunny bag of appellant is similar to that of the respondent’s gunny bag and is deceptive to the general public. Moreover, the respondent got issued rejoinder notice

under Exhibit A-10 intimating that if the appellant did not come forward for settlement, he will go for alternative remedy.

16. Based upon the aforesaid documents, the learned trial Court opined that the gunny bags and documents clearly go to show that the appellant has copied the logo of the horse. The concept of packing is similar and as evident from the gunny bags, however, the appellant has just changed the trade mark as “Three Horses” instead of “Double Horse” mark. All other artistic features are similar in nature. Thus, the arrangement of features and placing of features also clearly go to show that the appellant has merely copied the respondent’s trade mark and label. However, it is observed that there are some little variations between the labels like respondent’s is “Double Horse” and the appellant’s is “Three Horses”; respondent’s horses are one beside the other and the appellant’s horses are opposite to each other and the respondent’s horses are in running posture, whereas, the appellant’s horses are opposite to each other.

17. In the case of **Cadila Healthcare Ltd.** (1 supra), whereby, it is held that relevant similarities between marks must be considered and dissimilarities cannot be given importance. In an action for infringement, the plaintiff must make out that the use of defendant’s mark is likely to deceive and the similarities between the plaintiff and defendant’s trade marks are also close either visually, phonetically or otherwise.

18. In our country i.e. India, the farmers are illiterate and while purchasing the fertilizers, they being illiterate, incapable of distinguishing the product by trade name or minor changes in the label. Normally they will identify the products by over all get up of the product. Exhibits B-1 and

B-2, which are at pages 108 and 110 of the paper book, show that both the trade marks cause confusion in the minds of farmers, who used to use Single Super Phosphate. The appellant's trade mark is likely to be deceptive in nature and there are no distinctive features between the respondent's trade mark and the appellant's trade mark and the activity of appellant may hamper the business of the respondent, whose trade mark is registered under Exhibit A-2.

19. The case of **Kirorimal Kashiram Marketing & Agencies Pvt. Ltd.** (2 supra) is relevant in the facts and circumstances of the present case, whereby, it is held that the expression "Deer" is arbitrarily adopted with respect to the product rice and, "deer" is a prominent part of the trade mark "Double Deer" of the appellant therein, similar to the prominent word mark "Qilla" in the case of **Amar Singh Chawal Wala v. Shree Vardhman Rice and Genl Mill**⁴. In the above cited case, the respondent therein failed to give any satisfactory explanation as to why it adopted the expression "Deer" when there already existed a registered trade mark "Double Deer" of the appellant therein.

20. In the case of **Cadila Healthcare Ltd.** (1 supra), the Hon'ble Supreme Court held that in a country like India, where there is no single common language, a large percentage of population is illiterate and a small fraction of people know English, then to apply the principles of English law regarding dissimilarity of the marks or the customer knowing about the distinguishing characteristics of the plaintiff's goods, seems to overlook the ground realities in India. While examining such cases in India, what has to be kept in mind is that the purchaser of such goods in India may have

⁴ 2009 (40) PTC 417

absolutely no knowledge of English language or of the language in which trade mark is written, and for them, different words with slight difference in spellings may sound phonetically the same. While dealing with cases relating to such issues, one important aspect which has to be applied in each case is whether the misrepresentation made by the defendant is of such a nature as is likely to cause an ordinary consumer to confuse one product for another due to similarity of marks and other surrounding factors. What is likely to cause confusion would vary from case to case.

21. Coming to the case in hand, the respondent is a part of Murugappa group and such group is a Company incorporated in the year 1961 and doing business of manufacturing a wide range of fertilizers and pesticides and has multi-location product facilities and markets its products all over India. The trade mark “Double Horse” was adopted by Liberty Phosphates Limited in respect of Single Super Phosphate Fertilizers in the year 2004. The trade mark of “Double Horse” was extensively used since 1994 by Liberty Phosphates Limited and registration certificate of trade mark “Double Horse” was registered under Registration No.1156780 in Class I on 10.12.2002 by trade marks office at Mumbai. In the year 2014, Liberty Phosphates Limited was merged with the respondent-Coromandal International Limited and the scheme of amalgamation was sanctioned by this High Court on 07.04.2014. It is also accepted by the High Court of Gujarat on 24th April 2014. Accordingly, by virtue of amalgamation, rights, title and interest vested with the said Liberty Phosphates Limited have been transferred to Coromandal International Limited (respondent) and respondent being subsequent proprietor of trade mark, the Single Super Phosphate Fertilizer is manufactured and marketed by the respondent under

the name “Double Horse”. Whereas, the appellant started using similar mark somewhere in 2014 and it came in the notice of the respondent in the month of August 2015 that the appellant is marketing Single Super Phosphate fertilizers deceptively under a similar mark “Three Horses”. Moreover, from the table as shown in paragraph No.13 above and documents under Exhibits A-11 and A-12, which are copies of gunny bags of the respondent and appellant, that the gunny bags of appellant are having the disputed trade mark of the respondent with deceptive features. Exhibit A-8 whereby the respondent issued a desist notice and appellant made an attempt to distinguish the trade mark, but the alleged activity of the appellant with triple horse logo is in the deceptive nature, which causes substantial injury to the business of the respondent.

22. The Court below has restrained by way of injunction, not to proceed with the activities of “Three Horse” label or any other label deceptively similar to the registered trade mark of the respondent, which shall cause irreparable loss to the respondent.

23. It is pertinent to note here that in the case of **Patel Phosphate v. Coromandel International Ltd.**⁵, similar issue came before this Court, whereby, it is held as under :

“Perusal of the order under appeal reflects that the Court below examined the marks used by both the 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

⁵ CMA.No.138 of 2016, dt.25.01.2017.

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."

24. As discussed above, the farmers in India are illiterate. They are poor even in their regional languages, leave aside Hindi and English. Those who are illiterate, they just keep in mind one label and accordingly order for fertilizer. In the case on hand, the label used by the appellant is "Three Horses" whereas the trade mark of the respondent is "Double Horse". The farmers, specially in Hindi speaking areas, as the product of the fertilizer in issue before this Court is supplied in the States of Rajasthan and Madhya Pradesh, would only ask for "*Ghode wala Khad*" (fertilizer of horses). They

are not able to distinguish which horse going in which side or how many horses are exhibited there. They just keep in mind horses and the colour of the gunny bag. In the present case, the gunny bag used by the appellant and used by the respondent is of similar and in same colour with “Three Horses” and “Double Horses” label respectively. Thus, this type of deceptive label will certainly cause confusion in the minds of the illiterate farmers because the colour of the gunny bag is similar with horses thereon. The product sold by both the appellant and respondent is fertilizer. Therefore, majority of the farmers would be influenced by the pictorial depiction on the product. Admittedly, the respondent enjoys the registered trade mark “Double Horse” brand depicting two running horses for nearly more than a decade. The respondent’s product label indicates the pictorial depiction of two running horses towards 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 appellant’s product label bears the name “Three Horses” and depicts three horses in motion. This pictorial depiction of three running horses is bordered on the top side with a thin red band with words written therein, while on the right side, a wider band in green mentions the words “Triple Horses” with the same pictorial depiction of three horses in motion. Thus, there are similarities in both the labels visually, which certainly will confuse a gullible and un-informed customer. The farmers in our country may also innocently believe that use of three horses indicates more potency of fertilizers as compared to two horses.

25. In view of the facts and law cited above, and more importantly, the issue has already been decided by this Court vide the judgment dated 25th January 2017 in C.M.A.No.138 of 2016, wherein, the respondent was also

one of the parties, we are of the considered view that there is a similarity in the label used by the appellant and the registered trade mark of the respondent.

26. Finding no merit in the instant appeal, the same is accordingly dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand). Out of the costs amount, an amount of Rs.15,000/- shall be paid in favour of the respondent and an amount of Rs.10,000/- to be paid in favour of High Court Legal Services Committee within two weeks from the receipt of a copy of this judgment.

Pending miscellaneous applications, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

28th March, 2017

N.B:

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