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

+ **CM(M) 365/2017 & CM Nos. 12799/2017 and 12800/2017**

MANOJ R CHOTHE & ANR Petitioners
Through Mr.Nagendra Rai, Senior Advocate
with Mr.Pankaj Kumar and Mr. Prerna Singh,
Advocates

versus

M/S RSPL LIMITED Respondent
Through Mr.Akhil Sibal, Mr.Veerendra Sinha,
Mr.Pankaj Kumar and Mr.Ajay Amitab,
Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
30.03.2017

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CM No.12800/2017

Exemption allowed subject to all just exceptions.

CM(M) 365/2017 & CM No.12799/2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 02.03.2017 to the extent directions have been given for the petitioners to remain present on the next date of hearing.

2. The respondent filed a suit under sections 134 and 135 of the Trade Marks Act, 1999 stating that the respondent is engaged in the business of manufacturing and marketing of various products adopting the trademark Ghari (Ghadi) alongwith a device ghari/watch/clock. It is stated that the

respondent's trademark is registered in class 30 and also in several other classes in India. It was stated in the plaint that the defendant in the suit, namely M/s.Vedanta Tea Agro Industries is engaged in the manufacture of tea and related goods which are included in class 30 and that the defendants in the suit have adopted the trademark Ghadi of the respondents.

3. The trial court by its order dated 30.8.2016 apart from other reliefs appointed Shri Love Deep Gaur, Advocate as the Local Commissioner to inspect the premises of the defendant in the suit and search and seize all the goods with the infringing trademark. The Local Commissioner was also to sign account books, ledger, cash register etc. Other detailed directions are also given to the Local Commissioner.

4. After having visited the office of the defendant in the suit, the Local Commissioner has filed his report. As per the report dated 21.10.2016 the Local Commissioner alongwith a representative of the respondent Shri Manoj Kumar Singh and with police protection provided by SHO Dhanbad, Police Station had visited the premises of M/s.Vedanta Tea Agro Industries. There he met Shri Janardan Prasad Singh who had introduced himself as the father of the owner Shri Pawan. The Local Commissioner has also carried out an inspection and search of the premises. The infringing products were seized, sealed and after making an inventory were handed over to Shri Manoj Kumar Singh representative of the respondent on superdari.

5. It appears that subsequently the son of the defendant /Shri Janardan Prasad Singh has filed a criminal complaint against the Directors of the respondent, namely, Shri Murlidhar Gyanchandani and his two sons Rohit Gyanchandani and Shri Rahul Gyanchandani. In addition, the complaint also mentions other persons including Shri Manoj Kumar Singh, Allegations in

the complaint are that the same persons at the behest of the accused have barged into the premises of the complainant without showing any court order and they have done videography. They are also said to have destroyed design of tea and wrappers worth Rs.20,000/- to Rs.25,000/- and have left the premises. Hence, it was claimed that the accused have conspired together and without showing any court order have entered into the office of the complainant and destroyed the goods. Based on the said complaint the court of Chief Judicial Magistrate, Dhanbad by a non speaking order has forwarded the complaint to officer-in-charge, Police Station Dhanbad under section 156(3) Cr.PC for instituting a case. The concerned police station has now registered an FIR under section 341/379/448/419/420/500/504/120-B IPC.

6. Notices were received by the said accused from the police. It is then that the respondent has filed an application for reference to the High Court under section 15(2) of the Contempt of Courts Act for initiating criminal contempt. As per the said application respondents have pointed out that a perusal of the report of the Local Commissioner would show that the commission has been executed only after a copy of the order was handed over to Shri Janardan Prasad Singh who has acknowledged receipt of copy. The entire commission was carried out in the presence of the police provided by concerned SHO of Dhanbad Police Station. The complaint has now been got initiated by Shri Ravi Kumar complainant-cum- proprietor Denn Jorden, son of Shri Janardan Prasad Singh. The respondent further submits that it is clear that the act of filing a false criminal complaint tantamount to obstructing the process of judicial proceedings and amounts to criminal contempt hence the application has been filed.

7. The trial court has issued notice to the petitioners, namely, the SSP of Dhanbad; SHO, Dhanbad Police Station; Shri Ravi Kumar the complainant and Shri Janaardan Prasad Singh the person in whose presence the Local Commissioner has completed the commission.

8. I have heard learned counsel for the parties.

9. Learned senior counsel who is appearing for the petitioners i.e. SSP Dhanbad and SHO concerned submits that the two officers have nothing to do with the controversy and that they have only acted as per the orders of the concerned Magistrate having jurisdiction in the area.

10. Having seen the record of the case one cannot help coming to a prima facie conclusion that the criminal complaint has been instituted by the defendants in the suit prima facie only as a counter blast to the Local Commission carried out pursuant to orders of the trial court dated 30.8.2016. The trial court is currently proceeding with the matter. No final adjudication has been done. The limited grievance of the petitioners who were police officers is that the direction of the trial court directing them to remain present on the next date of hearing be quashed.

11. I may note that in the application filed by the respondent there are no allegations made against the SSP Dhanbad. Keeping in view this fact, I quash the order of the trial court to the extent it directs personal presence of the said officer.

12. As far as petitioner No.2 the SHO is concerned, there are allegations made against him in the application. The Local Commission is said to have been executed in the presence of police which was provided by the SHO. Without further commenting on the merits of the case, I grant liberty to the concerned SHO to move an appropriate application before the trial court

seeking exemption. In case such an application is filed the trial court may deal with it as per law keeping in mind the facts and circumstances of the case.

13. With the above directions, the present petition stands disposed of. All pending applications if any also stand disposed of.

14. Dasti.

JAYANT NATH, J

MARCH 30, 2017
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