

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RFA No.1310 of 2016 (O&M)
Date of Decision:25.04.2018**

Kohinoor India Private Limited ...Appellant

Versus

Mahajan Tyre Company ...Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Kamal Arora, Advocate and
Mr. Gaurav Arora, Advocate for
Mr. Himanshu Arora, Advocate
for the appellant.

Mr. M.S. Attwal, Advocate
for the respondent.

G.S. SANDHAWALIA, J. (ORAL)

Mr. M.S. Attwal, Advocate has filed Power of Attorney on
behalf of respondent.

CM-13542-CI-2017:

Application has been filed under Order 23 Rule 3 read with
Section 151 CPC for decreeing the appeal in favour of the appellants, on
the basis of compromise. It has been pleaded that the appellant-plaintiff
had instituted a civil suit and vide judgment dated 29.02.2016, the
Additional District Judge, Jalandhar partly allowed and decreed the suit
to the extent that the respondent-defendant shall not use his trade mark
Dhamaal like the trade mark of the appellant-plaintiff namely Dhamaka.
Further restrictions have also been put to the respondent-defendant that
he shall not use similar colour pouch as being used by the plaintiff but
the respondent-defendant can use trade mark in different style from the
company of the appellant-plaintiff in different colour pouch.

It is pertinent to notice that suit of the defendant had been dismissed. The effective portion of the judgment reads as under:

“In view of my findings on the above said issues suit of the plaintiff M/s Kohinoor India Pvt. Ltd. is partly decreed with costs to the effect that defendant is restrained from printing his trade mark Dhamaal like trade mark of plaintiff namely Dhamaka. Similarly, defendant M/s Mahajan Tyre Company is also restrained from using similar colour pouch as being used by plaintiff M/s Kohinoor India Pvt. Ltd. However, it is made clear that defendant can print his trade mark Dhamaal in different style from the style of plaintiff company and in a different colour pouch. Suit filed by M/s Mahajan Tyre Company Vs. M/s Kohinoor India Pvt. Ltd. is without merits and same is dismissed with costs. One copy of this judgment be placed in Civil Suit No.57838/2013. Decree sheet be prepared and accordingly, file be consigned to the record room.

It is further averred that now after the intervention of the some respectables compromise dated 16.11.2017 (Annexure A-1) has been entered into in the following terms and conditions:

A. *That the respondent (Mahajan Tyre Company, 26-27, Wariana Industrial Complex, Kapurthala Road, Jalandhar City-144013, Punjab) hereby acknowledges the common-law rights and statutory rights, titles and interests of the appellant in relation to the prior used, distinctive, popular & well known trade mark 'Dhamaka' and the artistic works thereof, as owned and used by appellant Kohinoor India Private Limited, Basti Bawa Khel, Kapurthala Road, Jalandhar-144021 (Punjab), since long from the year of 1980 and as got duly registered by the appellant in*

its favour vide the respective registrations thereof under the relevant provisions of 'The Trade Marks Act, 1999' and 'The Copyright Act, 1957';

B. That the respondent further sincerely acknowledges the appellant's hard earned goodwill and reputation over the years as earned by the appellant by virtue of prior adoption and long usage of the aforesaid trade mark 'Dhamaka' and artistic works/packaging/pouches thereof in respect of 'all kinds of tyres, tubes, brakes, brake-linings, axles, rims, seats, oil-seals, leaf-springs, bushes, thrust-washers, chains, wheels, steering-wheels, free-wheels, bells, spokes, handles, mudguards, pedals, hubs, air pumps, saddles, stands, clutches, clutch plates, chassis; propeller shafts, gears, radiators, speedometers, fan belts, wind-screens, pistons & piston rings of all kinds; vehicles (cars, motorcars, tractors, trolleys, trucks, buses) omni buses, mobile cranes, road-rollers, pavers, dumpers, excavators, loaders, four-wheelers, three wheelers, motorcycles, bikes, scooters, mopeds, auto rickshaw, cycle rickshaws, animal driven vehicles, bicycles & tricycles) and apparatus for locomotion by land, air and/or water as well as the parts, fittings, fixtures & accessories thereof, for sale in India and for export to foreign countries;

C. That the respondent accordingly apologizes for having committed the unlawful acts of infringement of the appellant's above referred registered trade mark 'Dhamaka' and artistic works/packaging/pouches thereof by way of using identical and/or deceptively similar trade mark 'Dhamaal' (with or without the identical and/or deceptively similar packaging thereof) in respect of the aforesaid goods and also the goods of same kind/description of the aforesaid

goods, and also the goods of allied and or cognate nature thereof and also the unlawful acts of 'passing off' thereof.

D. That the respondent thus hereby undertakes never to use the impugned trade mark 'Dhamaal' (with or without the identical and/or deceptively similar packaging/pouches thereof) and also any other trade mark/name comprising of the word 'Dhamaka' (either by addition or deletion of any prefix/suffix/vowel/word thereto or in any other manner, whatsoever), which is found by the appellant objectionable and or identical with and or deceptively similar to the appellant's aforesaid prior used, popular and registered trade mark 'Dhamaka' and registered copyrights or artistic works/packaging/pouches thereof in respect of the aforesaid goods/business either of same kind/description or of any allied/cognate nature thereof, either within the territory of India or outside India (inclusive to export purposes also) nor to indulge in committing any type of nefarious/unlawful activities of infringement and or passing off in any manner whatsoever;

E. That the respondent confirms to have discontinued the use of the impugned identical and or deceptively similar trade mark, as complained of, and accordingly, further undertakes to immediately surrender/hand over to the appellant for destruction/erasure, all the banners, hoardings, hand bills, labels, stickers, blocks, dies, catalogues and all the stationery and such other advertising/packaging material, bearing the impugned/imitated Mark/work (comprising of the word/trade mark 'Dhamaal' and or any other identical and or deceptively similar trade mark/logo/artistic work, as having earlier been used by the respondent and as lying in the possession of the

respondent;

F. That the respondent further undertakes to immediately and unconditionally withdraw the applications Nos.2521636 and 2521637 (and all the other applications, if any) seeking respective registrations of the impugned identical and or deceptively similar trade mark 'Dhamaal' and or any other trade mark, as found identical with and or deceptively similar/similar to the aforesaid registered trade mark 'Dhamaka' of the appellant, as filed before 'The Registrar of Trade Marks' and or 'The Registrar of Copyrights', if any, under proper confirmation to the appellant;

G. That the respondent further undertakes to also withdraw all the applications/petitions, if any and as filed seeking cancellations/rectifications/removals of the aforesaid registrations of the appellant, before the 'The Registrar of Trade Marks' and or 'Intellectual Property Appellate Board', 'The Registrar of Copyrights' and or before any other forum/court;

H. That the respondent has no objection of any kind whatsoever, if the aforesaid appeal is allowed by the Hon'ble High Court of Punjab and Haryana, and the aforesaid civil suit is accordingly decreed in entirety in favour of the appellant, especially in terms of all the respective sub-paragraphs (a) to (c) of the last unnumbered paragraph (constituting the prayer-clauses thereof) of the plaint;

I. That in case of any violation /contravention of the aforesaid compromise-deed by the respondent, then the respondent shall be liable to pay the costs and compensation thereto;

J. That the aforesaid 'compromise-deed' would always be binding upon both the parties, their partners/proprietors, directors, relatives, employees,

agents, dealers, successors, legal heirs and assigns for all time to come. The necessary affidavits, in support thereof, be also sworn and signed on behalf of both of the parties i.e. the appellant and the respondent.

5. That the photocopy of the aforesaid compromise-deed dated 16.11.217 (Annexure A-1) and the accompanying affidavits, in original, of the concerned parties are being filed herein and these be taken on record for kind consideration of this Hon'ble Court and exempted from filling certified/typed copy of Annexure A-1.

The statements of the parties through their director/partner have been recorded separately and they have stated they shall abide by the terms and conditions, of the compromise.

Keeping in view the above, the present application and appeal is allowed and the suit filed by the appellant-plaintiff is decreed in the terms of the compromise. Office shall prepare the decree in accordance with the above said terms.

25.04.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No