$~12

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

***Date of Decision: 7th September, 2018***

\+ **CS (COMM) 224/2018**

M/S DHARAMPAL PREMCHAND LTD ..... Plaintiff
Through: Mr. Piyush Joshi, Advocate. (M:9873116191)

versus

M/S SHANKAR TRADERS & ORS ..... Defendants
Through: None.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. The Plaintiff has filed the present suit seeking injunction restraining infringement of trademark, copyright and damages. The Plaintiff is the owner of the trademark 'BABA' which was introduced in 1955 for flavoured chewing tobacco, zarda and pan. The trademark of the Plaintiff is registered in several classes as stated in paragraph 8 of the plaint. According to the Plaintiff, the trademark 'BABA' has become a well-known mark in India owning to the sales of the products being more than Rs.520 crores in the year 2013-14. The trademark 'BABA' along with the label is also registered in several foreign countries.

2. The Plaintiff claims to have acquired knowledge of the Defendants' use of the mark 'SHIV BABA' for "pan samagri". The label and pouch used by the Defendants is placed on record which shows that the word 'Shiv' is written in very small font along with the word `BABA' in a much bigger font. Accordingly, the Plaintiff filed the present suit seeking an injunction

restraining infringement, passing off, as also rendition of accounts of profits.

3. The suit was first listed on 17th December, 2014 when this Court passed an ad interim injunction in the following terms: -

> *"__I.A. 25465/2014__*
>
> *Let original documents be filed within ten weeks from today.*
>
> *Application stands disposed of.*
>
> ***__CS(OS) 3889/2014__***
>
> *Plaintiff has filed the present suit for permanent injunction restraining infringement of trade mark, copyright, dilution, unfair completion* ***[sic competition]****, rendition of accounts of profits/damages, delivery up, etc.*
>
> *Issue summons in the suit to the defendants, by all modes, including dasti, returnable on 12.2.2015.*
>
> ***__I.A. 25464/2014__***
>
> *This is an application filed by plaintiff under Order XXXIX Rules 1 and 2 CPC for grant of ex parte ad interim injunction.*
>
> *Issue notice in the application to the defendants, by all modes, including dasti, for the date fixed.*
>
> *As per the plaint, business venture of the plaintiff started as a partnership firm in the year.1968, however, the same was converted into a private limited company in the year 1972. Plaintiff is a multi-diversified conglomerate, which has a strong presence in sectors such as Tobacco, Oral Gratifier, Personal Care Silver Leaves, Silver Coated Elaichi and Supari and Rose Myst Olive Oil. Plaintiff is the registered proprietor of the trade mark BABA. Details of registrations of the plaintiff have been extracted in the plaint. The mark of the plaintiff has been in existence since the year 2009, which mark has been extensively advertised through various media including print and television network. Details of sales and promotional*

*expenses have been extracted in the plaint. The goods of the plaintiff bearing the trade mark BABA are available in many countries worldwide. The plaintiff claims registration of this trademark in various countries all over the world, details of which have been extracted in the plaint.*

*Learned counsel for the plaintiff submits that the plaintiff has learnt that the defendants have started marketing pan samagri under the trademark Shiv Baba, which is likely to mislead public at large that the goods being sold by the defendants are emanating from the plaintiff. It is further submitted that the goods sold by the defendants are allied goods and the impugned mark BABA of the defendants is phonetically identical, structurally, visually and deceptively similar to the plaintiff's trade mark/name BABA. Counsel further submits that the use of the impugned mark Shiv Baba by the defendants is with a dishonest intention and with a view to cause confusion or deception amongst the public and the trade Counsel further submits that the conduct of the defendants are targeted to earn unlawful and easy profit at the cost of tarnishing the goodwill and reputation of the plaintiff. Counsel contends that the illegal trade activities of the defendants are causing irreparable loss, injury and damage to the business, goodwill and reputation of the plaintiff. Counsel, in these circumstances, prays for grant of ex parte ad interim injunction.*

*I have heard learned counsel for the plaintiff and also perused the plaint, application and the documents filed along with the plaint. I am satisfied that it is a fit case for grant of ex parte ad interim injunction. Accordingly, till the next date of hearing, defendants, their proprietors, partners, assigns in business, franchisees, licensee, distributors and agents are restrained from manufacturing, packaging, selling, offering for sale, directly or indirectly dealing in any other products under the trade mark Shiv Baba or any* *other deceptively similar trade mark, which is identical to the plaintiff's trade mark BABA.*

*Plaintiff shall comply with the provisions of Order XXXIX Rule 3 CPC within seven days from today.*

*DASTI."*

4. Thereafter the Defendants put in appearance in the matter and there were talks of settlement which were going on between the parties. On several dates, adjournments were sought to finalize the settlement, but even till date, there has been no settlement which has been arrived at.

5. For the last several hearings, the Defendants have also stopped appearing in the matter. The Defendants have complete knowledge of the suit but have now stopped appearing. There is no defence also which has been filed on record. Judgment is thus liable to be pronounced under Order VIII Rule 10 of the CPC.

6. This Court has perused the pleadings as also the documents placed on record. The Plaintiff has placed on record the various trademark registration certificates and the images of infringing products of the Defendants. The Plaintiff has also placed on record, the investigation report which reveals the manner in which the Defendants are using the trademark 'SHIV BABA'. The use of the mark 'SHIV BABA' is completely violative of the Plaintiff's rights in the brand 'BABA' which is used by the Plaintiffs. The products for which the Defendants are using the infringing mark are also "pan samagri" which is an identical class of products. Thus, the use by the Defendants is violative of the Plaintiff's rights. A perusal of the manner of usage by the Defendants reveals that the entire intention is to encash upon the Plaintiff's goodwill and brand equity:


**PLAINTIFF’S PRODUCT**


**DEFENDANT’S PRODUCT**

7. The image above shows that there is a deliberate intention to use the word *SHIV* in very small font and the word *BABA* in big font. The Defendants are in the same industry as the Plaintiff. The adoption of the mark *BABA* is neither innocent nor bonafide. It is with complete knowledge of the Plaintiff's mark. The Plaintiff has thus made out a case for grant of relief.

8. The suit is decreed as per paragraph 26(a) and (b) of the plaint. No other reliefs are pressed for. Decree sheet be drawn. All pending IAs are disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**SEPTEMBER 07, 2018**
*Rekha*