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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 476/2018 & IA Nos. 6899/2003 & 37/2010 (both u/O
XXXIX R-1 & 2 CPC)
AMAR SINGH CHAWALWALA Plaintiff
Through : Mr. Gurvinder Singh, Adv.

versus

BANI EXPORTS & ORS. Defendants
Through : None

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **08.05.2018**

1. The suit is listed today, being more than ten years old.
2. Only *ex parte* arguments are to be addressed by the counsel for the plaintiff but he states he is not ready.
3. The suit being more than ten years old and having been listed for this purpose only, adjournment is refused and the file has been perused and the counsel also, to whatever extent has argued, has been heard.
4. The plaintiff, claiming to be registered proprietor of the word marks 'LAL QILLA CHAAP', 'NEELA QILLA BRAND' and of device of 'QILLA', 'GOLDEN QILLA', 'LAL QILLA BRAND' and 'NEELA QILLA BRAND', all in Class 30, instituted this suit for permanent injunction restraining the four defendants, namely, (i) Bani Exports, Amritsar, (ii) Bush Foods, New Delhi, (iii) Johnsons J-B Coffee & Food Sales Ltd., Canada and, (iv) Golden Boy Foods Incorporated, Canada

from selling rice under the mark 'QILLA', 'J.B QILLA' and or device of 'QILLA' or any other mark which may be identical to and/ or deceptively similar to the plaintiff's registered trade marks bearing nos.180418, 201760, 202329, 249547, 337140, 378902 and 512975, amounting to infringement of the registered trade marks of the plaintiff and to the defendants passing off their goods as that of the plaintiff and for the reliefs of destruction and rendition of accounts.

5. The suit was entertained and summons thereof ordered to be issued though no ex parte interim relief granted.

6. The order dated 29th August, 2003 records that the plaintiff had reached a settlement with the defendant No. 2 Bush Foods, New Delhi as set out in Exhibit C-1 and the suit, insofar as against defendant No. 2, was decreed in terms of the said settlement.

7. Written statement was filed on behalf of defendant No.1. Joint written statement was also filed on behalf of defendants No. 3 and 4.

8. On the pleadings of the parties, vide order dated 24th November, 2005, the following issues were framed:-

"1. Whether the plaintiff is the proprietor of the trademark consisting of the device of QILLA in respect of rice? OPP

2. Whether the plaintiff is the proprietor of the trademark GOLDEN QILLA (word and device) in respect of rice? OPP

3. Whether the plaintiff is the proprietor of the trademark LAL QILLA (word and device) in respect of rice and other articles for human consumption? OPP

4. Whether the plaintiff is the proprietor of the trademark NEELA QILLA (word and device) in respect of rice? OPP

5. *Whether the plaintiff is the registered owner of the trademark Nos. 180418, 201760, 202329, 249547, 337140 and 378902 in respect of rice? OPP*
6. *Whether the use of the trademarks, QILLA, JB QILLA and/or device of QILLA on the part of the defendants in respect of rice constitute an infringement of plaintiff's registered trademarks 180418, 201760, 202329, 249547, 337140 and 378902? OPP*
7. *Whether the use of the trademarks, QILLA, JB QILLA and device of QILLA on the part of the defendants in respect of rice tantamount to an act of passing off? OPP*
8. *Whether the plaintiff is entitled to an order of rendition of account and profits earned by the defendants for use of the impugned mark; of so, to what amount? OPP*
9. *Whether this Court has territorial jurisdiction to entertain and try the present suit? OPP*
10. *Whether the suit of the plaintiff suffers from delay, acquiescence and laches as alleged in the written statement? OPD*
11. *Relief."*

and the suit set down for trial.

9. Pursuant to the amendment of the plaint, the issues no. 5 and 6 aforesaid were, vide order dated 2nd December, 2009, recasted as under:-

- “5. Whether the plaintiff is the registered owner of the trademark Nos. 180418, 201760, 202329, 249547, 337140, 378902 and 512975? OPP
6. Whether the use of the trade marks, QILLA, JB QILLA and/or device of QILLA on the part of the defendants in respect of rice constitute an infringement of plaintiff's registered trade marks 180418, 201760, 202329, 249547, 337140, 378902 and 512975? OPP”

10. Vide order dated 20th December, 2010, the defendant No. 1 Bani Exports, Amritsar, was restrained from selling or exporting rice under the name of 'QILLA' and 'J.B. QILLA' till further orders.

11. The counsel, who was earlier appearing for defendants No. 1, 3 and 4 sought discharge on 20th December, 2010 stating that he was not receiving instructions and was discharged and court notice ordered to be issued to the defendants No. 1, 3 and 4.

12. The court notice issued to the defendants No. 1, 3 and 4 was refused and/or was served but none appeared for the defendants No. 1, 3 and 4 and vide order dated 4th April, 2013, the defendants No. 1, 3 and 4 were proceeded against *ex parte*.

13. The plaintiff has examined its partner in its *ex parte* evidence and closed its evidence.

14. The counsel for the plaintiff has stated that the defendant No.1 Bani Exports having a factory/office in the vicinity of the factory/office of the plaintiff at Amritsar and being aware of the export by the plaintiff to the defendant No. 3 at Canada, of rice under the trade mark 'LAL QILLA', with an intent to ride over the reputation and goodwill of the plaintiff, approached the defendant No. 3 and commenced export under the impugned deceptively similar mark to the defendants no.3 and 4 at Canada which led to the filing of the present suit. Qua defendant No. 2, it is stated that the defendant No. 2 was also exporting rice to the defendants No. 3 and 4 under the infringing marks but the counsel is unable to state whether the defendant No. 2 was exporting in collusion with the defendant No. 1 or on his own.

On further enquiry, it is stated that the defendant No. 2, under the compromise, recognized the marks of the plaintiff and undertook not to use the impugned marks or any other marks similar or deceptively similar to the plaintiff's mark.

14. The plaintiff, on the basis of averments in the plaint and its unrebutted ex parte evidence, has made out a case for grant of relief of permanent injunction as claimed.

15. The counsel for the plaintiff does not press for the relief of destruction and / or accounts since the interim order has been operating for the last eight years.

16. Accordingly, a decree is passed in favour of the plaintiff and against the defendants No. 1, 3 and 4, of permanent injunction in terms of prayer paragraph 46 (i) and (ii) of the plaint dated 6th March, 2006, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 08, 2018

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