

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

% **Date of decision: 29th May, 2018.**

+ **CS(COMM) 125/2017 & IAs No.21699/2015 (u/O XXXIX R-1&2 CPC), 3151/2016 (u/O VIII R-1 CPC) & 13417/2017 (of D-2&4 u/O XXXIV R-4 CPC) & CCP(O) Nos.123/2015 & 25/2016**

SANJAY KAPUR & ANR

..... Plaintiffs

Through: Ms. Suhasini Raina and Mr. Ashwin Kumar, Advs.

Versus

PLANTERS PRIDE & ORS

..... Defendants

Through: Mr. Manish Biala, Mr. Devesh Ratan and Mr. Ashutosh Upadhyaya, Advs. with Mr. D-4 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs, namely Sanjay Kapur as proprietor of 'AAP KI PASAND' and Naina Kapur as proprietor of 'AAP KI PASAND EXPORTS', carrying on business of marketing and export of tea, have instituted this suit to restrain the four defendants namely (i) Planters Pride; (ii) Holistic Healing; (iii) Amrita Chopra; and, (iv) Dhruv Baijnath, also in the business of market and export of tea, from advertising and selling their tea in packaging similar/slavish imitation of the packaging of the plaintiffs, resulting in infringement of the plaintiffs right in their packaging, and for ancillary reliefs.

2. It is the case of the plaintiffs, (a) that they have been in the business of tea for 34 years prior to the institution of the suit and have built enormous reputation and acquired a distinct niche in the market, with the

plaintiff No.1 being popularly known as “Tea Master of India”; (b) that the plaintiffs, in the year 1981 created a unique and innovative packaging for tea and which trade dress and get-up has also come to be exclusively associated with the plaintiffs and which rights of the plaintiffs have been protected in several orders of the Court; (c) that the defendants, who are related to the plaintiffs, in the past attempted to contact a prime retail partner of the plaintiffs located at Delhi International Airport and tried to get their own products approved for sale at the said outlet; (d) that the defendants have now started selling tea in an identical and similar packaging, trade dress, style and get-up as that of the plaintiffs; (e) that a look at the defendants’ product from a distance would give an unmistakable impression as if it were that of the plaintiffs, inasmuch as the defendants brand is almost invisible to the naked eye; (f) that the trade dress used by the plaintiffs consists of (i) soft paper pouch of cuboidal/rectangular shape, designed to make a unique look stand-up soft pack; (ii) the cuboidal shape is adorned with a textile packing bag over the primary cuboidal paper pouch; (iii) the packing bag is ornamented with a drawstring on top and flat rectangular bottom which facilitates a stand-up pouch; (iv) only Indian-look fabrics are used for the packaging; (v) the ornamentation with a centralised label and a ribbon to finish it constitutes a typical trade dress; (vi) the cuboidal shape is volume efficient as it makes a big faced pack, facilitating marketing messages over a large face of pack; and, (vii) the cuboidal and flat bottom pack with a fabric bag is light in weight and hence economical to transport even by air; (g) that the packaging of the plaintiffs is thus a brand identity of the plaintiffs; (h) that the plaintiffs place a printed card at the back of the pouch, containing details of the tea; (i) that these unique

elements constitute the brand quality of the product of the plaintiffs and has acquired a secondary meaning over the said brand and identity; (j) that a velvet pouch as used by the plaintiffs was in the past used only for packaging dry fruits etc. and was never used by any manufacturer to package tea; (k) that the plaintiffs, by conversion of a *potli* into definite cuboidal shape, have made it stackable on retail store shelves and such packaging is considered as “high export” quality tea packaging; (l) that the plaintiff No.2 Naina Kapur and defendant No.3 Amrita Chopra are sisters; (m) that the defendants have copied/imitated (I) cuboidal shape/erect standup position; (II) height of pack; (III) base size of the pack; (IV) primary tea packet covered with a fabric packing bag of various textiles; (V) drawstring to seal the bag; (VI) centralised label with a wraparound ribbon; (VII) central label in copyright style; (VIII) Indian Motifs typifying India; (IX) outer glossy BOPP wrapper with ribbed sides; and, (X) colors of the fabric of the packaging of the plaintiffs; (n) that the purchasers of the tea in such packaging of the plaintiffs are not always from English speaking countries but identify the product of the plaintiffs from the packaging of the plaintiffs and when come across the product of the defendants displayed/stocked in retail stores in packaging identical to that of the plaintiffs, are likely to pick up/purchase the product of the defendants and the product of the defendants being not of the same high quality as that of the tea of the plaintiffs, are likely to draw up an adverse opinion of the product of the plaintiffs.

3. The suit came up first before this Court first on 13th October, 2015, when while issuing summons thereof, vide *ex-parte* order, the defendants were restrained from infringing the plaintiffs’ copyright in packaging of

their product and a commission issued to visit the premises of the defendants and to take into custody the products in the packaging infringing that of the plaintiffs.

4. The defendants appeared in response to the summons and the matter was adjourned from time to time for completion of pleadings and finding the dispute to be between siblings, was also referred to mediation.

5. The defendant No.4 as proprietor of defendants No.1&2, without prejudice to his rights and contentions, also filed affidavit dated 8th March, 2016, not to use the cuboidal inner paper packaging with a rectangular base which allows the packaging to stand up; Indian textile outer packing bag which is ornamented with a drawstring on top; centralised label bearing the brand names which is affixed with a ribbon in the packaging of tea products sold by the defendants and also submitted an image of sample packaging which the defendants intended to use; it was further stated that in the affidavit that the defendants were also agreeable to the suit being decreed in terms of the undertaking contained in the affidavit, if the plaintiffs were willing to give up the relief of damages, costs etc. IA No.25776/2015 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) read with Order I Rule 10 of the CPC was also filed by all the defendants stating (A) that the defendant No.3 had been wrongly impleaded; (B) that the defendant No.4 is the proprietor of both, defendants No.1&2 and the defendant No.3 does not exercise any control over the activities of the defendants No.1&2; and, (C) that the defendant No. 4 as the proprietor of defendants no.1 and 2, was willing to undertake to change the allegedly impugned packaging and to use new packaging, images whereof were annexed to the application.

6. The plaintiffs have filed CCP(O) No.123/2015 and CCP(O) No.25/2016 averring violation by the defendants of the interim order in the suit.

7. Vide order dated 22nd August, 2017, the application aforesaid of the defendants under Order XXIII Rule 3 of the CPC was dismissed finding that the plaintiffs were denying any settlement and were contending that the changed packaging of the defendants also was deceptively similar to the packaging of the plaintiffs, though without returning any finding thereon.

8. The defendants No.2&4, on 13th September, 2017, have filed their written statement, also pleading that the defendant No.1 is merely a brand name of the defendant No.2 and not a legal entity. Vide order dated 22nd August, 2017, the suit was adjourned for hearing arguments on whether the said written statement could be taken on record, having been filed beyond the prescribed time.

9. Thereafter, the matter was adjourned from time to time and endeavors made to amicably settle the dispute between the parties, but to no avail. Finally, on 6th February, 2018, the parties were heard and the suit adjourned to 8th February, 2018 for personal presence of the parties but which also did not serve any purpose. Though orders were intended to be dictated in the Chamber on the same day but remained to be dictated and this order/judgment is being pronounced now.

10. A lot can happen, it seems, not only over a cup of tea but also over a packet of tea as is demonstrated by the present dispute which renders the words '*Chai Pe Charcha*' hollow. The parties, though connected by

familial bonds are unable to make peace or see themselves through over their respective cups of tea.

11. The plaintiffs, with their suit have filed the comparative photographs of the plaintiffs' packaging and the defendants' packaging as under:







RETAILERS SHELF VIEW DEPICTING THE PASSING OFF ATTEMPT

Q A P D J W



MIX VIEW (DEFENDANT VS PLAINTIFF)

12. The plaintiffs have also filed photographs of various packaging used by various third parties manufacturers/exporters of tea, to demonstrate as to how the packaging conceived by the plaintiffs was unique and novel to the product.

13. The defendants along with their application under Order XXIII Rule 3 of the CPC, though dismissed, demonstrated the packaging earlier used by the defendants and qua which the suit has been filed by the plaintiffs as under:



and their changed packaging as under:

Screened Packaging used by the Defendant

Packaging 1



AP
TPE

Packaging 2



AP
TPE



14. The crux of the argument of the counsel for the plaintiffs was that the packaging of the defendants impugned in the suit as well as the changed packaging is capable of causing confusion when the products of the plaintiffs and the defendants are stacked side by side in a retail shop as the two are indistinguishable. The counsel for the plaintiffs also referred to ***Sanjay Kapur Vs. Dev Agri Farms Pvt. Ltd.*** MANU/DE/1900/2014 and to ***Devagiri Farms Pvt. Ltd. Vs. Sanjay Kapur*** 2016 SCC OnLine Del 606.

15. The counsel for the defendants, besides controverting and contending that there is no uniqueness in the packaging of the plaintiffs and the plaintiffs have no right to restrain the defendants as sought, have contended that the plaintiffs obtained the *ex-parte* injunction by misrepresenting that they came to know of the impugned packaging of the defendants for the first time in October, 2015, while the email dated 19th January, 2012 of the plaintiffs shows otherwise. It was argued that the defendants had full knowledge of the defendants' usage of impugned packaging of tea at least since January, 2012.

16. Having pondered over the controversy, I am of the opinion that in the aforesaid state of affairs, there is no need for this Court to adjudicate, whether the written statement of the defendants No.2&4 is to be taken on record or not and whether there is any uniqueness in the packaging of the plaintiffs and whether the plaintiffs have any right to seek permanent injunction claimed against the defendants, or to put the plaintiffs or both the parties to evidence. I say so because the defendants, in their affidavit dated 8th March, 2016 supra as well as in their application under Order XXIII Rule 3 of the CPC aforesaid, have already stated, though without prejudice

to their rights and contentions, that they are willing to suffer a decree for injunction as sought, if the plaintiffs are willing to give up their claim for damages and other reliefs against the defendants. Once the defendants have so offered, I am of the view that there is no need for this Court to spend any time over the dispute ‘at this stage’.

17. I have used the words “at this stage”, being conscious that grant of a decree for permanent injunction may not put the lid on the acrimony brewing between the parties, inasmuch as if not in this suit, then in execution of the decree so passed, the question, whether the defendants are compliant with the decree or not, will have to be adjudicated. However, I am still doing so, not to evade adjudication of the dispute but in the sincere hope that having experienced litigation for the last over three years, good sense will prevail over the parties and they will realise that the acrimony leading to this suit is not capable of legal recourse but is caused by sibling rivalry and of which there is no legal recourse in a Court of law.

18. I also am of the view and hope that the parties too will realize that connoisseurs of tea, purchasing high value tea, have a strong nose and are unlikely to be fooled into buying tea which they do not relish.

19. I am also of the view that the role of the Courts is to ensure settlement of disputes and the Courts, in performing such role, ought to use whichever procedure is found most appropriate to the facts and ought not to consider themselves bound to the book thereby losing the objective for setting up of the Courts and causing disservice rather than service to the objective. It is felt that keeping this suit brewing is likely to further the acrimony between the parties rather than allowing the boiling waters to

settle. I am encouraged in my such assessment, also from the fact that neither party since 8th February, 2018 has made any application or mentioned the matter. It is not deemed necessary to unsettle the parties by disturbing the *status-quo* as appears to be prevailing. I am confident that the parties, over passage of time, have retained their respective market/patrons, by the aroma of their respective tea than by relying on the packaging thereof.

20. For the same reasons, though the applications under Order XXXIX Rule 4 of CPC and CCP(O) Nos.123/2015 & 25/2016 are pending, but it is not deemed appropriate to make any orders thereon since the suit itself is being disposed of in the aforesaid manner.

21. I also advise the parties to, if at all occasion for seeking execution of the decree arises, consider nominating a person of impeccable credentials in the industry of tea, who can be requested to intervene at that stage.

22. Accordingly, the suit is disposed of by passing a decree in favour of the plaintiffs and against the defendants, of permanent injunction in terms of prayer paragraph 51(a) of the plaint dated 12th October, 2015 and leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 29, 2018

‘bs’..