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

+ **CS(OS) 810/2015**

M/S. RSPL LIMITED Plaintiff
Through: Mr. D.K. Yadav, Advocate.

versus

PRITHVI CHEMICALS Defendant
Through: None.

% Date of Decision: 12th January, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, copyright, passing off, delivery up and rendition of accounts etc. against the defendant. The prayer clause in the suit is reproduced hereinbelow:-

"47 That the Plaintiff, therefore, prays:-

(A) For a decree of permanent injunction restraining the Defendant by themselves as also through their individual partners/proprietors, directors, agents, representatives, distributors, assigns, stockiest etc., and all others acting for and on behalf of the Defendant from manufacturing, selling, using, displaying, advertising, importing/exporting or by any other mode or manner

dealing with the impugned trade mark GHANTI and trademark/ label/ packaging/ wrapper/ trade dress of GHANTI or any other trade mark/label/packaging and trade dress identical with or deceptively similar to the Plaintiff's said well known trade mark GHARI and/or trademark / label / packaging / wrapper /trade dress of GHARI and GHARI LABEL in relation to the impugned goods or in relation to any other goods/products and/or services or from doing any other acts or deeds amounting to:-

i. infringement of Plaintiff's said well known trade mark GHARI and/or trademark/label/ packaging/wrapper/trade dress of GHARI and GHARI LABEL.

ii. passing off or otherwise violation by way of passing off of the Plaintiff's said well known trade mark GHARI and/or trademark/label/ packaging/wrapper/trade dress of GHARI and GHARI LABEL.

iii. infringement of Plaintiff's copyrights in the artistic work involved in Plaintiff's said well known trademark / label / packaging / wrapper /trade dress of GHARI and GHARI LABEL.

(B) For an order for delivery up of all the impugned finished and unfinished material of the Defendant bearing the impugned trade mark GHANTI and/or trade mark/label/packaging/ wrapper/trade dress GHANTI including any other trade mark/label/wrapper/trade dress identical with and deceptively similar to it including blocks and labels, display boards, sign boards, trade literature, advertisement material etc. to the Plaintiff for purposes of destruction/erasure.

(C) For an order for rendition of accounts of profits earned by the defendant by their impugned illegal trade

activities and a decree for the amount so found in favour of the plaintiff on such rendition of accounts.

(D) In the alternative to the rendition of accounts, for a decree of Rs.20,00,500/- (Rupees Twenty Lakh and Five Hundred Only) on account of damages sustained by the Plaintiff due to the impugned acts of the Defendants.

(E) For an order for costs of the proceedings; and

(F) For such other and further relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. At the outset, learned counsel for plaintiff gives up prayers (B), (C) and (D) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 24th March, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendant, which was confirmed vide order dated 29th May, 2017 till disposal of the suit. This Court further appointed a Local Commissioner to visit the premises of the defendant. The relevant portion of the order dated 24th March, 2015 is reproduced hereinbelow:-

"...This court is of the view that the Plaintiff has made out a prima facie case for ad interim ex parte injunction and in such case an ex parte ad interim order is not granted at this stage, irreparable prejudice would be caused to the plaintiff. The balance of convenience too is in favour of the plaintiff. The balance of convenience too is in favour of the plaintiff.

In the circumstances, the plaintiffs are granted ad interim ex parte injunction in terms of prayer made in the application...”

4. Since the defendant did not appear despite service, it was proceeded ex-parte vide order dated 29th May, 2017.

5. In the plaint, it has been averred that the plaintiff is an established business concern and engaged in the trade and business of manufacture and sale of different kinds of washing soaps and detergents.

6. It is stated that the plaintiff adopted the trademark/label GHARI in the year 1975 and has registrations for the mark GHARI in Classes 1 to 34 of the Trade Marks Act, 1999. However, the plaintiff became the proprietor of the device of GHARI / (watch), by virtue of Release/Relinquishment Deed dated 13th July, 1997, along with goodwill in favour of the predecessor of the plaintiff company. The plaintiff also coined, conceived and adopted the GHARI trademark/label/packaging/trade dress.

7. It is stated in the plaint that the plaintiff is the registered proprietor of the copyright involved in the artistic work namely getup, lettering style, colour scheme, placement of words, artistic features etc. of the GHARI trade mark/label/packaging/trade dress. The art work involved in the plaintiff's said trade mark/label/packaging/trade dress is original within the meaning of the Copyright Act, 1957. The copyrights in the artistic work of the said trade mark/label/packaging/trade dress are also duly registered in favour of the plaintiff under the provisions of Copyright Act, 1957. It is further stated that the plaintiff

has been commercially using and reproducing all its aforesaid copyrights in the course of its trade and business.

8. It is averred in the plaint that the plaintiff is a 3800 crores diversified conglomerate, which is committed for value for money propositions and credited with several innovations over last four decades. It is stated that the GHARI Detergents brand is one of the well known brand in the FMCG market and is currently ranked as largest selling brand in its category with more than 26% market share and that the plaintiff company has achieved a turnover of more than Rs. 364479.57 lacs for the year 2013-14. It is further stated that the plaintiff has been continuously advertising and promoting its said trade mark/label/packageging/trade dress and the expenditure on advertising and promotion for the year 2013-2014 was Rs. 4768.83 lacs.

9. It is stated in the plaint that the plaintiff's GHARI trade mark/label/packageging/trade dress have already become distinctive indicium of the plaintiff and plaintiff's goods and business. The said trade mark/label/packageging/trade dress have acquired secondary significance, denoting the goods and business of the plaintiff. It is stated that the public and members of the trade associate, identify and distinguish the said trade mark/label/ packageging/trade dress with the plaintiff and plaintiff's goods and business alone.

10. Learned counsel for the plaintiff states that in the first week of March, 2015, it came to the plaintiff's knowledge that the defendant dishonestly and unauthorisedly adopted the impugned trade mark/label/packageging/wrapper. He states that the defendant has copied

the plaintiff's GHARI trade mark/label/ packaging/trade dress in exactitude and the impugned goods and business of the defendant are also of the same/similar and allied/cognate nature as that of the plaintiff. He states that the juxtaposition of the rival trademarks/label speaks volume of the dishonest adoption of the defendant. A pictorial representation of the plaintiff's and defendant's product is reproduced hereinbelow:-

Plaintiff's product



Defendant's product





11. Learned counsel for the plaintiff states that the defendant has scanned the complete wrapper of the plaintiff's GHARI trade mark/label/packaging/trade dress and has replaced the Hindi word GHARI with the Hindi word GHANTI which is visually and

phonetically, visually, structurally identical each and every respect in its basic idea and essential feature to the said trade mark/label of plaintiff. He states that the colours, colour combination of the packaging/trade dress of the defendant and that of the plaintiff are identical.

12. Learned counsel for the plaintiff states that the defendant has also adopted a similar device of bell in yellow colour identical and deceptively similar to plaintiff's GHARI device. He further states that the defendant has substantially copied the GHARI mark/label/packaging/ wrapper with its all features and artistic works, layout design, lettering style, get up, make up, colour combination and idea thereof.

13. Learned counsel for the plaintiff states that the defendant is fully aware of the rights, users and reputation of the Plaintiff's said trademark and copyright, which is unique and arbitrary.

14. The plaintiff has filed its ex-parte evidence by way of affidavit of Mr. Manoj Singh (PW1), authorized representative of the plaintiff to prove the facts in the plaint and has examined Mr. Vinay Kumar (PW2) official of the Trade Marks Registry as well as Mr. Basudev Ghatak (PW3) official of the Copyright Office to prove the registration of the trademark and copyright certificates of the plaintiff.

15. The PW1 has proved the sale bills/invoices as Ex.PW1/3(Colly) and advertisement material of the plaintiff as Ex.PW1/4(Colly). The PW1 has further proved various order passed in favour of the plaintiff as Ex.PW1/6(Colly).

16. The PW2 has proved the registration certificates of the plaintiff's trademarks as Ex.PW2/1(Colly). The PW3 has proved the certified copies of copyright certificates of the plaintiff as Ex. PW3/1 (Colly).

17. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive use over substantial period of time, the plaintiff's GHARI mark and logo have acquired reputation and goodwill in the marks in India.

18. From the evidence on record, it is apparent that without any explicit permission or authorization to use the plaintiff's trademark and trade name, the defendant had malafidely infringed the trademark GHARI of the plaintiff and was engaged in the sale of washing soaps, powder, detergent etc. under the mark GHANTI. The relevant portion of the Local Commissioner's report dated 15th April, 2015 is reproduced herein below:-

"5. That I along with aforesaid plaintiff counsel and two representatives, inspected and search the aforesaid defendant premises, I found the following articles bearing the trade mark Ghanti whose packaging and trade dressing is similar to the plaintiff:

- a) 14 bags containing 100 gms packet and each bag containing 360 packets*
- b) 25 bags containing 20 gms packet and each bag containing 29 packets*
- c) Six bags containing 250 gms packet and each bag containing 140 packets*
- d) Six bags containing 1 kg packet and each bag contained 25 packets*
- e) 5 rolls bearing trade mark ghanti*
- f) 7 bags containing the rapper."*

19. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33.In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

20. Consequently, the allegation that the trademark, logo and label GHANTI used by defendant amounts to infringement of plaintiff's trademark and copyright, is correct. The use of the impugned mark by the defendant is bound to cause loss and injury to the plaintiff and immense public harm.

21. Accordingly, present suit is decreed in accordance with the paragraph 47(A) along with the actual costs incurred by the plaintiff. The cost shall amongst others include the lawyers' fees, Local Commissioner's fee as well as the amounts spent on purchasing the

Court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

JANUARY 12, 2018

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