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

\+ FAO 408/2018, CAV 791/2018 & CM APPL. 35484-35485/2018

GOLDEN PRINCE WINES INDIA PVT LTD ..... Appellant

Through Mr. Dayan Krishnan, Sr. Adv. with Mr. Sidharth Chopra, Mr. Nitin Sharma, Mr. Sumant Narang, Mr. Sohrab Singh Mann, Mr. Shobhit Srivastava, Advs.

versus

CHHATTISGARH DISTILLERIES LTD ..... Respondent

Through Mr. Akhil Sibel, Sr. Adv. with Mr. S.K. Bansal, Mr. Amit Chanchal Jha, Mr. Nikhil Chawla, Mr. Vinay Kr. Shukla, Mr. Kapil Kumar, Mr. Avi Bhandari, Advs.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

<u>O R D E R</u>

% **31.08.2018**

Mr. Akhil Sibel, Senior Advocate is present on advance notice.

Vide the present appeal, the appellant assails the impugned order dated 07.06.2018 of the learned ADJ-04 in T.M. No. 78/18 vide which an ex-parte injunction was granted in favour of the plaintiff i.e. the respondent herein and against the appellant from manufacturing and selling its products with the deceptive similar aforesaid trade mark / trade name Golden Goa Deluxe Whisky with the shape of bottle and shape and colour combination of cap of the bottle in any manner whatsoever and from any forum whatsoever till the next date of hearing which as per the said proceedings dated 07.06.2018 is listed for the dated 03.10.2018.

Vide the impugned order dated 07.06.2018, a Local Commissioner was also appointed to visit the premises of the defendant i.e. the appellant herein with the directions to the effect : -

> ***“(i) visit the premises and take in his custody all the impugned goods including other incriminating materials like stationery, packing material, cartons, containers, display boards, sign boards, advertising material, dies or blocks, finished, unfinished, packed, unpacked impugned goods or any other documents, wrapper etc. bearing impugned ; trademark/label/trade name/domain name, and/or any other word/mark/label/name which may be identical with and/or deceptively similar to the plaintiff's said trademark/label/trade name/ domain name.***
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> ***(ii) Visit other premises also at the identification of the plaintiff where the impugned activities are being carried on by or on behalf of the defendant or where the impugned pods/materials bearing impugned trademark/label are expected to be found.***
>
> ***(iii) sign the account book including ledgers, cash register, stock register invoices books etc. of the defendant.***
>
> ***(iv) prepare inventory of all the infringing goods, articles and documents of defendant. A copy of the inventory be handed over to the concerned defendant and the Representative of the plaintiff.***
>
> ***(v) seize and seal the impugned products and release the same to the concerned defendant or Superdari.***
>
> ***(vi) break and open the locks, if required, for taking possession of the impugned goods.***

(vii) take photographs of the impugned goods/documents of the defendant or get the same video-graphed as per feasibility and convenience at the expense of plaintiff.

(viii) seek police assistance from the local police station, if required, for execution of the commission.

Local Commissioner is directed to execute the commission within 15 working days of passing of this order and file his report thereafter immediately.

The plaintiff and defendant are directed to co-operate and assist the Local Commissioner in execution of the commission.

The local SHO/ACP/DCP are directed to provide all possible help to Ld. Local Commissioner on his request for smoothly carrying out the commission. All the police officers/officials are directed to maintain absolute secrecy for successfully effecting the commission.

The present restrain order shall start operating since the time Local Commissioner first visit the premises of the defendant for execution of the commission. The plaintiff is directed to comply the directions mentioned in Order 39 Rule 3 of the CPC at the earliest immediately after execution of Local Commission.

Nothing stated herein shall tantamount to an expression of an opinion on merits of the case."

It is informed on behalf of the appellant that the commission was executed on 23.07.2018. Vide the said order dated 07.06.2018, the application Under Order 39 Rule 1 & 2 of the CPC was kept pending for disposal.

On behalf of the appellant it has been submitted that the application Under Order 39 Rule 4 r.w.s. 151 of the CPC was filed on 27.07.2018 qua which the matter was renotified for reply and arguments on 30.07.2018 at 12.30 p.m. and submissions of either side qua the application Under Order 39 Rule 1 & 2 of the CPC filed by the plaintiff i.e. the respondent to the present petition and on the application Under Order 39 Rule 4 of the CPC filed by the present appellant herein were partly addressed on 30.07.2018 and further opportunity was granted on 31.07.2018, and also on 06.08.2018 further an application under Section 151 of the CPC was filed on behalf of the defendant i.e. the appellant herein seeking the permission that the defendant may be permitted to sell its products in Chhatisgarh and that the proceedings were renotified for completion of arguments on the said applications to the date 13.08.2018 with the interim restraint having been extended till the next date of hearing.

It has been submitted on behalf of the appellant that on the date 13.08.2018, during the course of the proceedings as reflected by the order dated 13.08.2018 whereby both the parties produced their respective bottles physically in the Court and the requisite slips with the signatures of the Court were affixed on each bottle with the same returned to the parties for keeping the same in safe custody with directions for production of the same in Court at the time of trial, have also been so complied with in terms of the order dated 13.08.2018 of the learned Trial Court and the matter vide order dated 13.08.2018 was renotified for the date 27.08.2018 by the learned Trial Court on the application of the defendant i.e. the appellant herein under Section 151 of the CPC and the other pending applications of the parties for the date 27.08.2018 in view of the pendency of the proceeding in T.M. No. 78/2018 whereby there were directions of this Court directing the learned Trial Court to dispose of the application under Order 7 Rule 11 of the CPC within a period of three days from the date of hearing and another application of the defendant under Section 151 of the CPC on 27.08.2018.

On behalf of the appellant, it has been submitted that the said orders on the said application under Section 151 of the CPC, the application Under Order 39 Rule 1 & 2 of the CPC filed by the plaintiff of the said suit i.e. the respondent and order on the application Under Order 39 Rule 4 r.w.s. 151 of the CPC filed by the present appellant as defendant to the said suit have not yet been made and that vide order dated 27.08.2018, the matter has been renotified for 10.09.2018 for perusal of the record and passing of the orders on the pending applications of the defendant i.e. the appellant herein under Section 151 of the CPC seeking an order on the interim applications Under Order 39 Rule 1 & 2 of the CPC and the application Under Order 39 Rule 4 r.w.s. 151 of the CPC of the respective parties.

Taking into account the pendency of the proceeding before the learned Trial Court in relation to both the applications Under Order 39 Rule 1 & 2 of the CPC and the application Under Order 39 Rule 4 r.w.s. 151 of the CPC, it is considered appropriate that the present proceedings in relation to FAO No. 408/18 are disposed of without any observations on the merits and demerits of prayers made by either side nor the impugned order dated 07.06.2018 with the request to the Trial Court to endeavour to dispose of the applications under Section 151 of the CPC filed by the appellant herein seeking protection orders and the application Under Order 39 Rule 1 & 2 of the CPC and the application Under Order 39 Rule 4 r.w.s. 151 of the CPC of the appellant herein after perusal of the record as observed by the learned Trial Court itself vide order dated 27.08.2018 within a period of five days from the date 10.09.2018 and by the date 15.09.2018.

The appeal FAO No. 408/18 is disposed of accordingly.

ANU MALHOTRA, J

AUGUST 31, 2018/MK