

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 28/2016, IA No.527/2016 (u/O XXXIX R-1&2 CPC) &
IA No.529/2016 (u/S 65A&B of the Evidence Act)
GLOBUS SPIRITS LTD & ANR Plaintiffs

Through: Mr. Shailen Bhatia & Ms. Priyanka
Anand, Advs.

Versus

PICCADILY AGRO INDUSTRIES LIMITED & ANR.... Defendants
Through: Mr. Abhay Batra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

16.01.2018

1. The two plaintiffs, viz. Globus Spirits Ltd. and Associated Distilleries, have instituted this suit against the sole defendant viz. M/s Piccadily Agro Industries Ltd., for i) declaration that the threats issued by the defendant of legal proceedings in respect of trade mark 'MALTA' for country liquor are groundless and the word 'MALTA' is generic and cannot be monopolized by one person; ii) permanent injunction restraining the defendant from issuing groundless threats of legal proceedings against use of trade mark 'MALTA' on country liquor; iii) mandatory injunction directing the defendant to produce affidavit filed by the defendant before the Registrar of Trade Marks pertaining to application No.2181434 in Class-33 along with all annexures thereto; iv) recovery of Rs.50 lacs as damages for issuance of illegal threats; and, v) recovery of Rs.50 lacs as damages for filing a false and malicious case against the plaintiffs and then withdrawing the suit.

2. The suit was entertained and summons thereof ordered to be issued.

3. The pleadings have been completed and the suit is ripe for framing of issues and for consideration of the applications of the plaintiffs under Order XXXIX Rules 1&2 CPC and under Sections 65A and B of the Evidence Act, 1872.

4. The counsel for the plaintiffs, though has handed over proposed issues, but at the outset states that the defendant, on an earlier occasion, not only instituted a suit against the plaintiffs in the Courts at Rohtak for permanent injunction restraining the plaintiffs from using the trade mark 'MALTA' with respect to country liquor and subsequently unilaterally withdrew the same, but has thereafter also, without filing any suit against the plaintiffs, been meting out threats of filing a suit, including to the distributors of the plaintiffs. It is further stated that the defendant should either file a suit against the plaintiffs or stop making such threats.

5. The counsel for the defendant states that this suit is misconceived. Attention is drawn to the title to the plaint, where the suit is described as under Section 142 of the Trade Marks Act, 1999 and it is contended that the trade mark of the defendant is not registered and thus the Trade Marks Act and Section 142 thereof would not apply and Section 142 of the Act has been wrongly invoked by the plaintiffs. It is yet further stated that the defendant, on an earlier occasion also, sued the plaintiffs at Rohtak Court for permanent injunction restraining the plaintiffs from passing off.

6. It is further argued by the counsel for the defendant that the defendant, has filed as many as five other suits in this Court for permanent injunction restraining passing off of similar goods by adopting the trade mark 'MALTA' of the defendant and the plaints in which suits have been

returned to the defendant for filing in the Haryana Courts. It is further stated when the suits were pending in this Court, injunction was granted in favour of the defendant.

7. The counsel for the defendant, upon enquiry, whether the defendant has instituted another suit against the two plaintiffs herein has replied in the negative.

8. The counsel for the defendant however states that the defendant has not been meting out any threats to the plaintiffs or to any distributors of plaintiffs or to any other person connected with the plaintiffs and the plaintiffs also have not produced any document in this regard.

9. The counsel for the defendant, on further query, whether the defendant at all wants to sue the plaintiffs for the reliefs flowing from the action of passing off, has replied in the affirmative and on further enquiry states that the said suit would be filed within one month of today and if the defendant does not file the said suit against the plaintiffs within one month of today, the defendant would thereafter not file a suit against the plaintiffs on the cause of action of the plaintiffs' passing off their goods as that of the defendant by adopting the mark 'MALTA'.

10. I have thus enquired from the counsel for the plaintiffs, why the suit should not be disposed of by binding the defendant to the aforesaid statement.

11. Though the counsel for the plaintiffs had earlier said that the defendant should make such a statement but now states that the suit of the plaintiffs for the relief of compensation for malicious prosecution by the defendant of the plaintiffs at the Rohtak Court would still go on.

12. I have further enquired from the counsel for the plaintiffs whether the mark of the defendant is registered.

13. The counsel for the plaintiffs states that the trade mark 'MALTA' of the defendant is not registered but the defendant in the plaint in the Rohtak Court claimed the mark to be registered.

14. I have perused the order dated 3rd November, 2015 of the Rohtak Court, when the suit filed by the defendant at Rohtak was withdrawn and the same records the presence of the counsel for the plaintiffs herein and also records 'Heard'. The plaintiffs herein, who were the defendants in that suit, did not oppose the withdrawal of the suit and are not found to have even pressed for costs of that suit.

15. Without the plaintiffs having pressed for costs before the Rohtak Court when the Rohtak suit was withdrawn, the plaintiffs in my opinion, cannot maintain this suit and no purpose would be served by framing issues in the suit qua the relief claimed of recovery of costs of the Rohtak suit which was withdrawn by the defendant.

16. The plaintiffs have instituted this suit as a commercial suit and as per the dicta in ***Godfrey Philips India Ltd. Vs. P.T.I. Private Ltd.*** 2017 SCC OnLine Del 12509, this Court is not bound to follow the same procedure as of an ordinary suit for commercial suits and if finds the suit to be deadwood, is entitled to dispose of the same. Moreover, the defendant in the present suit has already made a statement as was desired by the counsel for the plaintiffs and with which the defendant is being ordered to be bound.

17. I may also mention that the plaintiffs, in the plaint in the present suit, have not even pleaded the costs incurred by the plaintiffs in contesting the Rohtak suit. No relief also for recovery of costs of Rohtak suit has been claimed. The relief claimed is of recovery of damages for groundless threats and for damages suffered from the Rohtak suit filed by the defendant.

18. I have asked the counsel for the plaintiffs to point out the paragraph of the plaint where the pleadings with respect to damages suffered from the Rohtak suit are pleaded.

19. The counsel for the plaintiffs has drawn attention to para no.20 of the plaint and which paragraph is as under:

“20. That the Plaintiffs have suffered heavily due to these rumors and threats being issued by the Defendant. The Plaintiffs’ dealers are being restricted by such threats. The Defendant cannot stop the Plaintiffs from selling its goods country liquor which contains Malta flavour. Thus, the Plaintiffs are entitled to damages and costs to be recovered from the Defendant. Further, the Plaintiffs had to contest the suit in Rohtak. The Plaintiffs took all necessary steps including filing of Written Statement, attending hearing etc. Thus, the Plaintiffs were harassed by the malicious prosecution unleashed by the Defendant.”

20. The aforesaid paragraph also is found to contain vague averments and not giving particulars of any damages least damages in the sum of Rs.50 lacs of which recovery is sought. Such vague pleas, without any particulars, do not constitute material or substantive pleas on which issues under Order XIV Rule 1 of the CPC are to be framed.

21. Thus, need to proceed with this suit is not felt and for the reasons aforesaid, it is deemed appropriate to put an end to this suit at this stage so that the same does not consume the time of this Court at the cost of other deserving litigation.

22. Binding the defendant to the statement aforesaid, the suit is disposed of.

23. Though the counsel for the plaintiffs has not argued but I may record that the perusal of the order dated 3rd November, 2015 of the Rohtak Court does not show the defendant to have been granted any liberty to sue the plaintiffs afresh. It is thus deemed appropriate to clarify that the statement aforesaid of the defendant will not entitle the defendant to overcome Order XXIII Rule 1 of the CPC in view of the order dated 3rd November, 2015 and it will be open to the plaintiffs to, in the fresh suit if any filed by the defendant, take a plea of the defendant being not entitled to maintain that suit for the reason of having withdrawn the earlier suit without seeking leave to file afresh.

24. The parties to bear their own costs.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2018

‘gsr’..