

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO.270 OF 2016**

IN

COMMERCIAL I.P.SUTT NO.196 OF 2015

Khursheed Anwar Mohammad Ali & Anr.)....Applicants/plaintiffs

V/s.

Merit healthcare Pvt. Ltd.)....Defendant

And

Kostuv Kejriwal & Anr.)....Respondents

Mr.Alankar Kirpekar a/w Mr.Shekhar Bhagat i/by MAG Legal for plaintiffs/applicants.

Ms.Sonal a/w Ms.Kainaz Irani i/by Aishwarya Joshi for defendant.

[Mr.Purushottam Lal Kejriwal, Mr.Kostuv Kejriwal and Mr.Vibhu Kejriwal-directors of defendants present in Court].

CORAM : K.R.SHRIRAM,J

DATE : 13.8.2019

P.C.:-

1. Ms.Sonal for defendant states that respondents are present in court and identifies them. Ms.Sonal tenders an affidavit of Kostuv Kejriwal-respondent no.1 in which respondents admit that they have committed a breach of the order passed by this Court though according to them, it was neither intentional nor deliberate and it was an inadvertent error. I am not inclined to look at the breach as an inadvertent error or non intentional or non deliberate. What the defendant/respondents have done is after defendant was, by an order dated 15.1.2015, restrained from in any manner using the carton which was annexed as Exh.G to the plaint or any other label or carton

which was deceptively similar in any manner whatsoever to plaintiffs' trade mark "PUEGREY-100" and this order of restraintment was passed in presence of defendant, defendant willfully and disobediently started selling/exporting goods using art work as shown in Exh.G to the plaintiff. Plaintiff found product from the African market bearing the manufacturing date of December-2015 identical in all aspects to Exh.G to the plaintiff except minor change i.e., the words appearing on the product bearing Exh.G, i.e., exported by Merit Healthcare Pvt. Ltd. (Defendant) but its address and contact details are not mentioned. Even after the order dated 15.1.2015 was passed, the sister concern of defendant, i.e., Merit Organics Limited continued to use label/carton deceptively similar to Exh.G of the plaintiff because of which plaintiff filed another suit against the said Merit Organics Limited and obtained an ex-parte ad-interim order dated 19.9.2016, copy whereof is at Exh.E to the affidavit-in-support. The Court Receiver also found that defendant and its sister concern Merit Organics Limited are operating from the same office and the companies are floated by family members of directors of defendant. The address of the directors of both the companies are same and also office of both the companies is same. The manufacturing on behalf of both the companies is done under license of defendant's sister concern-Merit Organics Limited. One of the directors of Merit Organics Limited appears to be wife of

Kostuv Kejriwal -respondent no.1 and the other two directors appear to be father and brother of Kostuv Kejriwal. Therefore, it is rather obvious that defendant/respondents have deliberately committed breach of the order dated 15.1.2015. There can be no inadvertent or unintentional error. This is deliberate and willful.

2. Ms.Sonal states defendant/respondents are in settlement talks with plaintiff. Mr.Kirpekar states plaintiff is not interested in settlement talks unless defendant/respondents purged the contempt.

3. In my view, respondents and the party like defendant should be saddled with severe costs otherwise they will be emboldened to commit breach of the orders passed by this Court and orders passed by this Court will not be complied with. Ms.Sonal on instructions from directors of defendants who are present in Court states that any reasonable amount that Court feels to be paid as donation to any charitable cause by defendant/respondents is acceptable to them. Ms.Sonal on instructions from respondent no.1 said defendant has a turnover of Rs.24 crores.

4. When I informed Ms.Sonal that the amount, I am directing to pay as donation is sum of Rs.10,00,000/-, Ms.Sonal on instructions,

stated that Rs.5,00,000/- will be paid by defendants and Rs.2,50,000/- will be paid by each respondent.

5. Therefore, (a) defendant shall pay sum of Rs.5,00,000/- to K.E.M. Hospital to be used in the neurosurgery department and confirmation letter, alongwith a copy of this order, be sent to Dean, K.E.M. Hospital. The account details are as under :-

Bank Account of Hospital	:	Dean, Poor Box Charity Fund, K.E.M. Hospital, Mumbai
Bank Account Number of Hospital	:	011710004666 (S.B.)
Bank and Branch	:	Dena Bank, Parel Branch
Address, Tel. No., Fax No. and e-mail of the concerned Bank	:	Dena Bank, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24131112/24135820, PAREL@DENABANK.CO.IN
MICR Code Number	:	400018040
IFSC Number	:	BKDN0450117

(b) Respondent no.1 shall pay sum of Rs.2,50,000/- to Free Ophthalmic Hospitals Society. The account details are as under :-

“S.B.Account No.011710005365
IFSC Code : BKDN0450117
Dena Bank, Parel, Mumbai-400 012”

(c) Respondent no.2 shall pay sum of Rs.2,50,000/- to Tata Memorial Hospital, Parel, Mumbai.

All these amounts shall be paid by the respective parties

and compliance affidavit to be filed in the registry with copy to plaintiffs' advocate within two weeks.

Notice of Motion disposed accordingly.

6. There is another Notice of Motion No.2626 of 2016 in Suit (L) No.891 of 2016. In view of the above order, Mr.Kirpekar states that this Notice of Motion be treated as disposed. Notice of Motion accordingly disposed.

7. Stand over to 27.8.2019 for directions.

(K.R.SHRIRAM,J)