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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 15th July, 2019

+ **CS (COMM) 383/2018 & I.A. 10439/2015**

TATA SONS LTD. Plaintiff
Through: Mr. Pravin Anand, Advocate with Mr.
Akshay Agarwal and Mr. Achuttam,
Advocates (M: 9899926591).
versus

MR PRAKASH YADAV & ORS. Defendants
Through: Mr. Ashok Kotnala, Advocate for
Contemnor No. 2 (M: 9599158309).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit is for permanent injunction restraining infringement of registered trademarks, passing off, dilution and tarnishment of trademarks, damages, rendition of accounts, delivery up, etc. The suit has been filed by M/s Tata Sons Limited, which is now known as M/s Tata Sons Private Limited. The Plaintiff was established in 1917 and is the promoter and principal investment holding company of the House of TATA, which had a turnover of more than 100 billion US dollars in 2013-14. Tata is one of the most well-known brands of India and is engaged in the business of a wide range of goods and services including industrial core sectors, pioneering textiles, iron & steel, power, chemicals, hotels and automobile industries in India. It has also expanded into a large number of IT services including computer software, electronics, as also financial services. The trademark TATA is registered in favour of the Plaintiff in a large number of

classes including in Class 5.

2. Defendant No. 2, M/s Vardhman Chemicals, is owned by Mr. Prakash Yadav, the Defendant No. 1. He operates various shops under the name of Vardhman Chemicals. The said M/s Vardhman Chemicals used to distribute its products through M/s Tonic House - Defendant No.4. The grievance of the Plaintiff is that the Defendants started using the trademark TATAZYME and TATA GOLD for various agricultural products. An investigator had been deputed to investigate the activities of the Defendants and had submitted a report from which it is clear that the Defendants were using the marks TATA and TATA GOLD.

3. The Plaintiff had issued notice dated 24th August, 2009 to the Defendants, which was replied to vide letter dated 3rd September, 2009. Vide the said letter, Defendant No. 1 on his behalf and on behalf of Defendant No. 2 gave an undertaking that they would not use the mark TATAZYME in respect of its bio-products and that they would also change the packaging of the product. The relevant portion of the said letter reads as under:

“3. That, as far as the question that the use of name 'Tata' in my client's bioproduct is infringing your client's registered trade mark, is concerned, my client specifically denies this allegation and maintains that the name of my client's product is 'Tatazyme' which is neither deceptively similar to your client's registered Trade mark 'Tata' nor creates any impression in general public or members of trade to believe that your client has any nexus with or has endorsed my client's product. Hence, it is not correct to say that my client is doing anything wrong by using the name Tatazyme for its product. However, my client, to avoid any dispute in this regard which may be raised by your client and to avoid any unnecessary litigation, because my client's

business is well established and renowned, wishes to say that if your client has an objection with my client's product's name i.e. Tatazyme, my client is ready to forgo his right to use this name for his product in future from today. My client also says that only to avoid unnecessary litigation, my client will stop using the name Tatazyme for his bioproduct, and will change the packaging of product without the name Tatazyme in future from today. As far as complying with requisitions stated in Para 1 (a) to (f) of your notice dt. 24.8.2009, my client wish to state that except condition (b) which relates to withdrawing of product from market, it would not be practically possible for my client to recall/requisition all quantity which is already sold in the market before today, because the persons who have purchased these products before today are not willing to cooperate by sending the product purchased by them back to my client. However, as per the assurance given hereinabove by my client, no further selling/packaging of product in name of Tatazyme would be done on my client's part. Apart from this, nothing more can be done by my client in this regard/context."

4. Thus, it was agreed by Defendants No. 1 and 2 that they would not use the mark TATAZYME and also change the packaging. However, on a follow up enquiry, the Defendants were found to be using the trademarks TATAZYME and TATA GOLD, leading to the filing of the present suit. On 27th February, 2015, this Court had granted an *ex-parte ad interim* injunction restraining the Defendants from using the impugned marks and had also appointed Local Commissioners. The Local Commissioners were appointed to visit the premises of M/s. Vardhman Chemicals at two addresses and M/s. Tonic House at one address. M/s. Tonic House is Defendant No.4 and Defendant No.3 is the proprietor thereof. The said Defendant Nos.3 & 4 are

retailers of M/s. Vardhman Chemicals as per the Plaintiff.

5. One of the Local Commissioners, who visited the premises of M/s. Vardhman Chemicals has reported that when he reached Indore, Mr. D. S. Bhagel, SHO of the concerned police station refused to cooperate and even refused to acknowledge receipt of the order. Under such circumstances, the Local Commissioner was forced to go to the premises to execute the commission. At the premises of M/s. Tonic House, the Local Commissioner was informed that the main owner of the shop was Mr. Anurag Sankala and M/s. Tonic House was merely a retailer of M/s. Vardhman Chemicals. Relevant portion of the Local Commissioner's report is set out herein below:

"4. Upon reaching the said shop, the undersigned was introduced to Mr. Brijesh who stated that the main owner of the shop is Mr. Anurag Sankala. After 15-20 minutes, Mr. Sankala came up and he has stated that his shop is merely a retailer and the main manufacturing activity is carried out by Mr. Prakash Yadav who is Defendant No. 1. It was informed by Mr. Sankala that the entire material available at his shop is belonging to/ manufactured by M/s Vardhman Chemicals owned by Mr. Prakash Yadav. Mr. Sankala fairly cooperated and has shown bottles of tonics and pesticides bearing the marks Tata Zyme, Tata Power etc. The said bottles were placed at the counter of the shop and thereafter the inventory was prepared by the undersigned."

The products found at M/s. Tonic House were then inventorized. Thereafter, the Local Commissioner was told that the shop of M/s. Vardhman Chemicals was closed. When Defendant No.1 - Mr. Prakash Yadav was contacted, he refused to come. Paragraphs 7 & 8 of the report are set out herein below:

“7. In the meantime, Mr. Prakash Yadav was called up twice by Mr. Anurag Sankala and even by Mr. Bhandari on telephone. The Local Commissioner Mr. Bhandari also talked to him and informed him to come. In answer thereto, Mr. Yadav stated that he will come within 30 minutes to the premises of Tonic House. Even after elapse of 1 hour, nobody had turned up and therefore the proceedings against Vardhman Chemicals at Deodhar Complex remain unconcluded up till 3pm.

8. Lastly, again at 3:30pm, Mr. Yadav was again called up and he straightaway stated he may not be able to come to Deodhar Complex. Mr. Bhandari also talked to him in detail, still he maintained the position that he will not be able to come and his shop is closed. Considering the refusal of Mr. Prakash Yadav to come and open the shop at 305A of Deodhar Complex and also the hostile version of police expressing their inability to provide assistance in the matter, the option of breaking open of the locks of the shop without police assistance of the place/shop is not exercised keeping the totality of circumstances in mind.”

Defendant No.1 was told by Mr. Anurag Sankala about the visit of the Local Commissioners and in fact, Defendant No.1 informed Mr. Sankala that he would reach the Deodhar Complex address soon. The said extract of the Commissioner’s report is set out below:

“5. Mr. Sankala also informed Mr. Prakash Yadav whose shop located at No. 305A was closed within the same complex by calling him that the proceedings are going on at his premises and his presence may be required at the premises. Mr. Yadav informed Mr. Sankala on phone that he is likely to come to Deodhar Complex very soon.”

6. The second Commissioner visited the second address of M/s.

Vardhman Chemicals. The shop was found closed. Only photographs were taken. At the said site, Mr. D.S. Bhagel was present. He refused to sign the application for breaking open the lock and claimed that he did not understand the order of the Court. Telephone number of Mr. Prakash Yadav has been mentioned in the report as 9826099896. The Local Commissioner also spoke to him. He assured the Local Commissioner that he would reach the site but did not turn up. In effect therefore, both the Commissioners had to return without executing the commission in respect of M/s. Vardhman Chemicals and Mr. Prakash Yadav.

7. In the application under Order XXXIX Rule 2A CPC, alleging non-compliance of the orders and contempt, the Plaintiff has extrapolated the Commissioners' reports to highlight as to how the SHO did not cooperate and was extremely hostile and Defendant No.1 also did not allow the Commissioners to execute the commission by opening the premises. Thus, the directions are sought that both Mr. D.S. Bhagel and Defendant No.1 Mr. Prakash Yadav ought to be punished for their acts of contempt.

8. On 17th August, 2016, the following issues were framed in the suit and thereafter evidence was led by the Plaintiff.

“(i) Has the Plaintiff proved that it is the owner of the registered trade mark TATA and the other marks set out in para 15 of the plaint? OPP

(ii) Is the Plaintiff entitled to a permanent injunction to restrain the Defendants from manufacturing, selling, offering for sale, distributing, advertising, directly or indirectly dealing any business of agricultural products namely organic manures, pesticides, fertilizers and high crop yielding stimulants in any whatsoever using any trademark/name/description/device/ domain name bearing the trademark

TATA/TATAZYME/ TATA GOLD/ SUPERTATAZYME or any mark/name confusingly or deceptively similar to the Plaintiffs well-known trademark TATA amounting to infringement of the registered trademarks mentioned in paragraph 15 of the plaint as well as the other registered trademarks mentioned in the list of TATA word mark registrations filed in the present proceedings? OPP

(iii) Is the Plaintiff entitled to a injunction to restrain the Defendants from manufacturing, selling, offering for sale, distributing, advertising, directly or indirectly dealing any business of agricultural products namely organic manures, pesticides, fertilizers and high crop yielding stimulants in any whatsoever using any trademark/name/description/ device/ domain name bearing the trademark TATA/TATAZYME/ TATA GOLD/SUPERTATAZYME or any mark/name confusingly or deceptively similar to the Plaintiffs well-known trademark TATA amounting to passing off of the Defendants' services/goods as that of the Plaintiff? OPP

(iv) Is the Plaintiff entitled to delivery up of all the goods (tangible and intangible), bearing the impugned mark/device, dies, blocks, cartons, labels, and any other infringing material to the authorized representatives of the Plaintiff for the purposes of destruction? OPP

(v) Is the Plaintiff entitled to damages in the sum of Rs.20,05,000 as prayed for? OPP

(vi) Relief.”

Vide order dated 17th November, 2017, it was noticed that Defendant No.1 did not file the affidavit in evidence and therefore costs of Rs. 5,000/- were also imposed on Defendant No.1. Finally, on 25th April, 2018, the Joint Registrar

placed the matter before Court as Defendant No.1 had not filed any evidence.

9. Notice was issued in the contempt application but Mr. Bhagel and Defendant No.1 - Mr. Prakash Yadav did not appear despite service. Bailable warrants were issued on 9th May, 2018 against Mr. Bhagel and Mr. Prakash Yadav. On the same day, Defendant Nos. 3 and 4 stated that they have no objection if the suit is decreed in accordance with paragraph 46(i) and (ii) of the Plaint. The said Defendants also paid costs of Rs. 25,000/-. Insofar as Mr. Prakash Yadav and Mr. D.S. Bhagel were concerned, bailable warrants in the sum of Rs.5, 000/- each were issued to them. On 18th March, 2019, Mr. D.S. Bhagel, Dy. Superintendent of Police, Rajpur, District Badhwani, Madhya Pradesh was present in person in Court and was permitted to file a reply affidavit within four weeks. Since there was no appearance for Mr. Prakash Yadav, the bail bonds furnished by him were directed to be forfeited and non-bailable warrants were issued against him. On 20th March, 2019, Defendant No. 1 moved for recall of the non-bailable warrants, which were recalled, subject to payment of costs. Ld. counsel for Defendant No. 1 confirms that costs of Rs. 50,000/- have been deposited with the AIIMS Poor Fund Account. He has placed on record the bank statement of Defendant No. 1's wife, Smt. Meera Yadav, confirming the said deposit. On 11th July, 2019 the adjournment was sought on behalf of Mr. Yadav by proxy counsel.

10. Today, Mr. Prakash Yadav – Defendant No.1 was present in Court and his statement has been recorded. The said statement is set out herein below:

“Statement of Mr. Prakash Yadav son of Mr. Bhagwati Prasad Yadav, aged about 54 years, R/o

66/B, Vaibhav Nagar, Kanadia Road, Indore-452016.

On S.A.

I was using the trademarks TATA and TATAZYME earlier in respect of plant growth promoters. Apart from these trademarks, I also used the trademarks SUPER PAUSHAK-G, DHANVARSHA, BIOMAGIC, SUPER DHANZYME, KARISHMA. My office address is B-9, B. C. Chamber, 47, Jarora Compound, Indore-452001. The address at Tonic house, Shop No. 2 Deodhar Complex, Chhawani, Indore-452001 belongs to Mr. Anurag Sankala. He also used to make SUPER TATAZYME. I have no connection with that particular premises. I have no connection with Mr. Anurag Sankala. When the Local Commissioner called me, I informed him that I was out of station. I was told by the Local Commissioner that the locks would be broken open. I did not object to the same. Since the last four years, I have not been using the trademark TATAZYME. M/s. Vardhman Chemicals is my firm. The photograph at page 53 of the documents showing title Vardhman Chemicals belongs to my shop. The visiting card at page 54 does not belong to me. The photograph at page 55 also belongs to my firm. The product at page 56 does not belong to my firm. The photograph of a bottle at page 58 belongs to my firm. The photographs of bottles at pages 61 and 63 do not belong to my firm. I admit that I had engaged ld. counsel Mr. Sameer Athawale.”

11. A perusal of the above statement shows that Mr. Prakash Yadav has made several false statements. The incorrect and false statements made by him are as under:

1) That he is not connected with M/s. Tonic House or Mr. Anurag Sankala –

“The address at Tonic house, Shop No. 2 Deodhar Complex, Chhawani, Indore-452001 belongs to Mr. Anurag Sankala. He also used to make SUPER TATAZYME. I have no connection with that particular premises”.

The Local Commissioner report clearly shows that Mr. Anurag Sankala is the retailer of M/s. Vardhman Chemicals of which Mr. Prakash Yadav is the proprietor. During the execution of the commission, Mr. Anurag Sankala was continuously in touch with Mr. Yadav. They knew each other very well. In the written statement filed by Defendant Nos.3 & 4, it is stated that Defendant No.4 is an independent retailer of Defendant Nos.1 & 2 and that as soon as they came to know the facts, they immediately removed the infringing goods from the shop. This written statement is duly supported by an affidavit of Mr. Shivratan Sankhla. Thus, the statement of Mr. Prakash Yadav that he is not connected with M/s. Tonic House or Mr. Anurag Sankala is wrong and is also contrary to the established facts on record.

2) That he was out of station when the Local Commissioner called him—

“When the Local Commissioner called me, I informed him that I was out of station”

This is again clearly a false statement because Mr. Prakash Yadav was repeatedly telephoned by Mr. Anurag Sankala in the presence of the Local Commissioner and he informed that he will reach the premises soon. Extract of the Local Commissioner’s report is set out above. Even the second Local Commissioner contacted Mr. Prakash Yadav on his mobile number 9826099896 and he informed the Local Commissioner that he will

reach within 20 minutes but never turned up. Thus, Defendant No. 1's statement that he was out station, is blatantly false.

3) **That he does not use the trademark TATA GOLD –**

“The product at page 56 does not belong to my firm. The photograph of a bottle at page 58 belongs to my firm”

The photographs at pages 56 and 58 are extracted below:



As is evident from the photographs, page 56 is the front view of the TATA GOLD product and page 58 (DW 1/3) is the rear view of the TATA GOLD product. In his statement today, Defendant No. 1, Mr. Prakash Yadav, denies the bottle and label at page 56 and but admits the rear view of the label at page 58 (DW 1/3). This is also clearly a false statement. Admitting one and

denying the other clearly shows the dishonest conduct of Mr. Yadav.

12. The conduct of Mr. Prakash Yadav clearly constitutes contempt. In ***Louis Vuitton Malletier v. Omi, (2018) 251 DLT 472***, a Ld. Single Judge of this Court has held that in case of false and misleading statements being made before the Court, the Court can invoke its contempt jurisdiction. Following the judgment of the Supreme Court in ***Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757***, the Court observed that the swearing of false affidavit in judicial proceedings results in obstruction of the administration of justice and reveals the parties intention to pervert the course of justice. The relevant portion of the judgment is as under:

“32. Contempt in the face of the Court may be criminal or civil contempt. However, in both cases of contempt in the face of the Court, the procedure under Section 14 of the Act, 1971 is attracted. For all other cases of criminal contempt Section 15 is applicable.

33. Further, this Court is of the opinion that a contemnor is not in a position of an accused and contempt proceedings are separate and distinct from criminal proceedings. In a criminal trial where a person is accused of an offence, there is a Public Prosecutor who prosecutes the case on behalf of the prosecution against the accused, but in contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by the Supreme Court in Debarata Bandopadhyay v. State of West Bengal, AIR 1969 SC 189. In fact, contempt proceeding is sui generis. It has peculiar features which are not found in criminal proceedings. In this view the contemnors do not stand in the position of a person accused of an offence and the Court is free to evolve its own procedure consistent with principles of fair play and natural justice. The Supreme Court in Delhi Judicial Service Association, Tis Hazari Court,

Delhi v. State of Gujarat, (1991) 4 SCC 406 has held so. The relevant portion of the said judgment is reproduced hereinbelow: —

“12... A criminal is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is regulated by Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is free to evolve its own procedure consistent with fair play and natural justice. In contempt proceedings, unlike the trial for a criminal offence, no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits...”

...

36. In any event, the Apex Court in Leila David v. State of Maharashtra, (2009) 10 SCC 337 has held, “Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the Court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and willful contumacious incident takes place in front of their eyes and the public at large...”

37. In the opinion of this Court, the present case is a case of contempt in the face of the Court and therefore, Section 14 of the Act, 1971 applies.”

Recently, in *Pratibha v. Kanwar Singh Tanwar and Others* [RFA 695/2016, Decided on April 15, 2019] this Court has observed as under:

“61. Recently, in the case of National Lawyers Campaign for Judicial Transparency and Reforms v. Union of India [W.P. (C) No. 191/2010 decision dated 12th March, 2019], the Supreme Court observed as under:

“13. When contempt is committed in the face of the Court, judges' hands are not tied behind their back”

62. In Suman Chand v. Central Bank of India (2018) 254 DLT 29 (DB), a Division Bench of this Court, considering the various uses of contempt jurisdiction has held that making a false statement, willful disobedience, persistent and continuous disobedience with an intention to violate an undertaking made to the Court, non-adherence of promises and representations made to the Court are in inexcusable and constitutes contempt. The relevant portion of the said judgment is set out herein below:

“52. The decision in Rita Markandey (supra) would be squarely applicable to the facts of the present case, even if we were to assume that the appellants had not given any “undertaking” to the Court. The observations made in the said case are significant and refer to another facet when contempt jurisdiction can be invoked, different and distinct from cases where parties have given undertaking to the court and have thereafter willfully refused to abide and comply with the same. However, we must caution that where a party has given a statement and made a promise and representation to the court with the intent and purpose to comply with the same but due to subsequent events and for bonafide reasons compliance could not be made, it would not be a case of willful disobedience. In such cases, the party aggrieved must ask for execution of the

decree or implementation of the order and the court would not exercise its discretion in the contempt jurisdiction.

53. Facts of the case, as noticed by the learned single Judge, are glaring and disclose the cavalier attitude, scorn and abuse of the process of the Court by the appellants, not on one occasion but several occasions, and demonstrate the intent of the appellants to deceive and procure interim orders by giving undertaking and making promises on solemn assurance to the Court, notwithstanding the true intent and knowledge that the undertaking to the Court would not be complied with.

54. It is stated and observed in several cases that the contempt is between the Court and the contemnor and the aggrieved party cannot insist that the Court should exercise such jurisdiction. The discretion is exercised by the Court for maintenance of Court's dignity and majesty of law. However, it would not be entirely correct to state that punishment under the contempt jurisdiction is granted to uphold the dignity of the Court. Contempt jurisdiction is invoked and punishment is imposed to uphold the authority of the Court to punish the contemnor and to act as a deterrent to others. This deterrent is motivated in the interest of the public in order to prevent future incidents of willful disregard and disobedience of the Court orders by a party. Further, contempt jurisdiction may even invoke belated compliance, which is in public interest and when such compliance is made, the contemnor may seek reduction or discharge of the sentence in view of subsequent conduct to purge the contempt by complying with the order. Contempt jurisdiction is invoked when breaches are of the highest level of culpability in the sense that they are willful.

Further, persistence and continuous damage and disobedience could in a given case reflect no remorse from the person against whom action is taken.”

63. *Considering the settled law, as contained in the above judgments, there is no doubt that Mrs. Pratibha is liable to be punished for contempt of Court ...*

...

65. *In the overall facts and circumstances of the present case, Mrs. Pratibha is held guilty of contempt of Court. Her conduct, clearly, constitutes even civil contempt, which can be punished by this Court under the provisions of the Contempt of Courts Act, 1971. It is contempt on the face of the court. She is held guilty of contempt of Court and is sentenced to simple imprisonment for a period of three months.”*

The SLP (Civil) No. 13538/2019 against the above order was dismissed by the Supreme Court on 10th June, 2019.

13. In the present case too, Defendant No.1 is clearly making false statements before the Court and deliberately misleading the Court. Even the Local Commissioner’s Report shows that Defendant No.1 has deliberately failed to cooperate in the execution of the Local Commission. The conduct of Mr. Yadav constitutes contempt in the face of the court. Thus, Mr. Prakash Yadav is held guilty of contempt.

14. Mr. Prakash Yadav has already made a statement that he has stopped use of the mark TATA. His distributors have already been enjoined by this Court by permanent injunction in accordance with paragraph 46(i) and (ii) of the Plaint. Accordingly, there shall be a decree against Defendant Nos. 1 and 2 in terms of paragraph 46(i) and (ii) of the Plaint.

15. Coming to damages, the present is a case of deliberate violation and infringement of the mark TATA. Defendants 1 and 2 are habitual offenders.

They were put to notice in 2006 and after giving undertakings continued to misuse the mark TATA in various forms including by using the marks TATAZYME and TATAGOLD. To make matters worse, deliberate misstatements and false statements have been made by Mr. Prakash Yadav, who is the proprietor of M/s. Vardhman Chemicals - Defendant No.2, today in court. The statements which are blatantly false and misleading have already been extracted above. Under principles akin to Section 105 of the Trade Marks Act, 1999, which provides for increased punishment for second or subsequent convictions, this Court is of the opinion that even in civil cases, such defendants who indulge in habitual infringement ought to be punished with higher damages. The Plaintiff has incurred legal costs since 2006 to stop violation of the mark TATA. The suit is thus decreed against Mr. Prakash Yadav for a sum of Rs. 20,00,000/-, out of which Rs.10,00,000/- would be payable to the Plaintiff and Rs.10,00,000/- would be payable to the AIIMS Poor Fund Account No. 10874588424 with SBI, Ansari Nagar, New Delhi (IFSC Code: SBIN0001536). The payment shall be made before the next date of hearing.

16. The suit is decreed. Decree sheet be drawn up.

17. None has appeared for Mr. D.S. Bhagel, Dy. Superintendent of Police, Rajpur, District Badhwani, Madhya Pradesh. List on 26th August, 2019 for further orders on the contempt application.

PRATHIBA M. SINGH
JUDGE

JULY 15, 2019
MR