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

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Date of Decision: 31st January, 2019

+ CS(COMM) 819/2018 & I.As. 5616/2018, 14586/2018

M/S ALLIED BLENDERS AND
DISTILLERS PVT. LTD.

..... Plaintiff

Through: Mr.Rajiv Nayar, Senior Advocate
with Mr.Sanjay Chhabra,
Mr.Pundreek Dwivedi and Ms.Vijay
Laxmi Mewara, Advocates

versus

GOVIND YADAV & ANR

..... Defendants

Through:

J U D G E M E N T

1. The plaintiff is the proprietor of the trademark “***Officer’s Choice***”. The plaintiff adopted the aforesaid trademark in the year 1988 and is using the same in respect of its alcoholic products. The particulars of the registration of the plaintiff’s trademark are given in paragraph 10 of the plaint. The plaintiff claims the aforesaid trademark to be a well known trademark. The plaintiff has registered its label under the Copyright Act. The particulars of the copyright registration of the plaintiff’s label are given in paragraph 12 of the plaint.

2. The defendants are using the mark “***Fauji***” in respect of their alcoholic products. The plaintiff claims that the defendants’ mark “***Fauji***” is conceptually and deceptively similar to the plaintiff’s trademark “***Officer’s Choice***” and is having the same meaning. The plaintiff claims the defendants’ label to be similar to the plaintiff’s label.

3. The defendants entered appearance through counsel on 07th May, 2018. However, no written statement was filed by the defendants and the defendants were proceeded *ex-parte* on 01st October, 2018.

4. The plaintiff has filed I.A. 14586/2018 under Order XIII-A Rules 3 and 6 (1)(a) read with Order VIII Rule 10 of the Code of Civil Procedure for a decree against the defendants.

5. Learned senior counsel for the plaintiff urged at the time of the hearing that the plaintiff's trademark "**Officer's Choice**" and the defendants' trademark "**Fauji**" are conceptually and deceptively similar; the idea behind plaintiff's trademark and the defendants' trademark is similar; "**Fauji**" is a commonly used Hindi language phrase which means a 'Military Officer'; the plaintiff and defendants are in the same trade/business and are using their respective mark with respect to goods of identical description i.e. whisky; the likelihood of the confusion amongst the consumer is very high; the plaintiff's and defendants' labels are conceptually and deceptively similar; "**Fauji**" is written in red color slanting upward in a stylized font and has a similar color combination as that of the plaintiff's product. Reliance is placed on *Shree Nath Heritage Liquor Pvt. Ltd. v. M/s Allied Blender and Distillers Pvt. Ltd.* (Order dated 06th July, 2015 in FAO(OS) 368/2014), *M/s Allied Blenders and Distillers Pvt. Ltd. v. Shree Nath Heritage Liquor Pvt. Ltd.* (Order dated 01st July, 2014 in CS(OS) 2589/2014), *Hindustan Lever Ltd. v. Pioneer Soap Factory*, 24 (1983) DLT 237, *M/s Surya Roshini Ltd. v. M/s Electronic Sound Components Co.*, 1994 PTC 244 and *M/s Bhatia Plastics v. M/s Peacock Industries Ltd. and Anr*, 1995 PTC 150.

6. The labels of the plaintiff and the defendants are reproduced hereunder:-



7. This Court is of the view that there is no resemblance or similarity between plaintiff's trademark "**Officer's Choice**" and the defendants' mark "**Fauji**". Two marks are phonetically different. The meaning of the two words is also different. The word "**Officer**" refers to "*a person in power*" whereas the word "**Fauji**" means a soldier who is not a military officer. The plaintiff's submission that "**Fauji**" means a Military Officer is not correct and is rejected. Reference is made to the meaning of 'Soldier' given in Advanced Law Lexicon by P. Ramantha Aiyar's which refers to the meaning of the '*solider*' as defined in Section 2(z) of the Cantonments Act, 2006 i.e. "*soldier*" means any person who is a soldier or sailor or an airman subject to the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, and who is not a military officer". The plaintiff's submission that the identical font has been used by the defendants

is not correct and is rejected. The defendants have used a different font. The defendants' epaulette is also different in as much as the defendants have shown "Three Stars" of a soldier whereas the plaintiff has shown the epaulette of an officer.

8. This Court is of the view that there is no similarity between the marks and labels of both the parties and there is no likelihood of deception or confusion of a consumer getting confused to buy the defendants' product thinking to be that of the plaintiff's. The judgments referred to by the plaintiff are in the facts of those cases and do not help the plaintiff in any manner. In *M/s Allied Blender and Distillers Pvt. Ltd. v. Shree Nath Heritage Liquor Pvt. Ltd.* (*supra*) and *Shree Nath Heritage Liquor Pvt. Ltd. v. M/s Allied Blender and Distillers Pvt. Ltd.* (*supra*), the defendant therein was using mark 'Collectors Choice' which was held to be deceptively similar to "**Officer's Choice**" on the ground that both represent the person in power and the consumer is likely to be get confused. However, there is no such similarity/likelihood in the present case. In *M/s Surya Roshini Ltd. v. M/s Electronic Sound Components Co.* (*supra*) the two marks were 'Surya' and 'Bhaskar' and the Court found deceptive similarity on the ground that both are the different names of Sun and likely to create confusion. In *Hindustan Lever Ltd. v. Pioneer Soap Factory* (*supra*) the Court was dealing with marks 'Sun' and 'Suraj' which were held to be deceptively similar on the ground that that 'Suraj' being the translation of the word 'Sun' and was likely to create confusion. The aforesaid judgments do not help the plaintiff in any manner. In *M/s Bhatia Plastics v. M/s Peacock Industries Ltd.* (*supra*) the Court was dealing with marks 'Peacock' and 'Mayur' which were held to be deceptively similar being the

translation of the name of bird and likely to create confusion. The aforesaid judgments do not help the plaintiff in any manner. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

9. In ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533 the Supreme Court held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Supreme Court held as under:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

10. In ***Bharat Petroleum Corporation Ltd v. N.R. Vairamani***, (2004) 8 SCC 579, the Supreme Court held that a decision cannot be relied on

without considering the factual situation. The Supreme Court observed as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge...”

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said,

“Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”.

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed:

“One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.”

And, in Herrington v. British Railways Board [(1972) 2 WLR

537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

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Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.””

(Emphasis supplied)

11. This Court is of the view that there is no legal and valid cause of action in favour of the plaintiff and against the defendants. The plaintiff has abused the process of law by filing this frivolous suit. This Court, therefore, invokes the power under Order VII Rule 11 of the Code of Civil Procedure to reject the suit.

12. CS(COMM) 819/2018 is rejected under Order VII Rule 11 of the Code of Civil Procedure. I.As. 5616/2018 and 14586/2018 are dismissed.
13. Interim order dated 07th May, 2018 is vacated.
14. Copy of this judgment be sent to the defendants.

J.R. MIDHA, J.

JANUARY 31, 2019

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