

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O.No.1202 of 2020(O&M)
Date of Order:25.02.2020

M/s D.K.Agencies and others

..Appellants

Versus

M/s Subham Agency

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Kumar, Advocate, for
Mr. Khalid, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

Defendant has filed the present appeal against order passed by learned Additional District Judge, Narnaul, allowing application under Order 39 Rule 1 and 2 CPC, restraining petitioners from using Trade Mark 'SANSAR' for packaging and selling tea in the above said specified area.

As per the case of the plaintiff-respondent, M/s Sandeep Trading Company, a sole proprietorship firm of Sandeep Bansal had been using Trade Mark 'SANSAR' for selling tea in the States of Punjab, Haryana, Uttar Pradesh, Himachal Pradesh and National Capital Region of Delhi, since 1996. He enjoyed a good reputation and earned goodwill on account of quality of goods. He also put great labour in advertising and marketing of his products with this brand name. Sandeep Bansal sole proprietor of firm M/s Sandeep Trading Company got 'SANSAR' Trade Mark for selling tea in the aforesaid areas registered with the Registrar under the then Trade and Merchandise Marks Rules 1959 and later on amended by the Trade Marks Act, 1999. The Trade Mark was published in

journal No.1286-0 dated 01.01.2003 and it was registered under Certificate No.267161 dated 15.7.2003. The aforesaid Trade Mark was being renewed from time to time and stands renewed upto 14.03.2024. Previously the aforesaid firm appointed M/s Gopal Agency Narnaul through Parmod Kumar as its authorized distributor for selling tea with brand name "SANSAR" in the area of district Mohindergarh including Narnaul in the year 1996. The aforesaid M/s Gopal Agency, Narnaul, used to sell tea by the brand name of 'SANSAR' upto the year 2000. Thereafter Sandeep Bansal has been selling his goods under this brand name through different persons in or around district Mohindergarh.

The plaintiff firm M/s Subham Agency, a sole proprietorship concern of Girdhar Gopal is running its business from Narnaul since the year 1999. This firm also deals in selling tea and other consumer goods like match boxes etc. The plaintiff firm purchased the aforesaid Trade Mark 'SANSAR' from its registered owner Sandeep Bansal under trade mark assignment agreement dated 06.09.2016 and got the exclusive and absolute rights to use the aforesaid 'SANSAR' trade mark for selling tea in the States of Punjab, Haryana, Uttar Pradesh, Himachal Pradesh and National Capital Region of Delhi. The plaintiff applied for transfer of aforesaid registered trade mark in its name on 22.11.2016 and has completed all the legal requirements and formalities. The matter is under process. The plaintiff firm came to know that the defendants no.3 and 4 have started selling their own product (tea) under the brand name of 'New Sansar Gold' tea for the last couple of days. The packaging of the product is similar and the art work, design is also deceptively similar. In other words, the trade dress used by the defendant is deceptively similar and it can easily pass off as the

goods produced by the plaintiff.

Defendants contested the suit and filed written statement claiming that without impleading M/s Sandeep Trading Agency, the suit is not maintainable. Defendants also claim that they have been using trade mark 'New Sansar Gold' tea. They applied for registration of the Trade Mark on 09.09.2016 in Class 30 of the Schedule which was accepted and published in journal on 16.10.2017. They, hence, submitted that purchase of the Trade Mark 'SANSAR' from its original owner by the plaintiff is dated 06.09.2016 but application for transfer of the aforesaid Trade Mark has been submitted on 22.11.2016. Defendants have no knowledge about the brand name 'SANSAR'. The defendants further claim that the 'SANSAR' is a descriptive term and has nothing to do with the product. They further submitted that the registered trademark of the defendants "New Sansar Gold" is entirely different.

On consideration of the matter and on careful examination of the packaging, copy whereof has been annexed as Annexure P-2, learned Additional District Judge formed an opinion that since the plaintiff as well as defendants are in the business of packaging and trading tea in the same area and the art work, packaging, design are deceptively similar, therefore, considered it appropriate to pass an order restraining the defendants from using the Trade Mark 'SANSAR' in the abovesaid specified area.

This court has heard learned counsel for the appellants at length and with his able assistance gone through the documents filed in the paper book.

From a careful perusal of Annexure P-2, it is apparent that the art work, the basic design, placement of words and packaging are

deceptively similar. The font used as also the design on the upper half of the package is also deceptively similar. Still the design of leaf along with display of dry tea leaves is also similarly placed. Still further, on both packagings it has been written 'free gift in every pack'. Placement of green tea leaf at two places on the package are also identically placed. Thus, the product as packaged by the defendants-appellants is deceptively similar to that of the plaintiff.

Keeping in view the aforesaid facts, this court does not find any good ground to interfere with the interim order passed by the learned trial Court. However, in the facts of the case, learned Additional District Judge, Narnaul, is requested to expeditiously dispose of the suit not later than within a period of one year.

Dismissed.

25th February, 2020
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No