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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5391 OF 2021
IN
FIRST APPEAL NO.851/2021

YASHWANTRAO MOHITE KRUSHNA SAHAKARI
SAKHAR KARKHANA THROUGH ITS
AUTHORIZED SIGNATORY – Appellant
(Original Defendant)

VS

BRIHAN KARAN SUGAR SYNDICATE PVT LTD.
THROUGH ITS DIRECTOR, NASHIK. – Respondent
(Orig.Plaintiff)

Mr.SN Pahune-Patil and Mr.MD Karade, Adv. For
Applicant-Appellant;
Mr.RN Dhorde, Sr.Counsel i/by Mr.MS Kulkarni, Adv.
For Respondent

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 23rd June, 2021.

PER COURT :-

1. Present application has been filed for stay of impugned judgment and decree passed in Regular Civil Suit No.1/2017 by learned District Judge-1, Osmanabad on 24.5.2021. The said suit, filed for permanent injunction, damages and rendition of accounts and other consequential reliefs in action for infringement of copy right under the Copy Rights Act and for passing off under the Trade Marks Act, came to be decreed. Present appellant-applicant (original defendant) or anybody

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claiming through it, has been permanently restrained. So also, the defendant has been directed to pay sum of Rs.1,00,000/- by way of damages.

2. The learned Advocate Mr. Karade, appearing for the appellant-applicant/defendant, vehemently submitted that the original plaintiff-respondent had filed an application for temporary injunction under Order 39 Rule 1 and 2 of CPC at Exhibit-5 in the said suit. That application came to be rejected by the Trial Court on 12.4.2019. Thereafter, the original plaintiff approached this Court by filing an Appeal from Order No.41/2014 with Civil Application. This Court rejected the said appeal on January 7, 2020 and thereafter the original plaintiff had approached the Hon'ble Apex court by filing a petition for Special Leave to Appeal (C) No. 9470/2020. The Hon'ble Supreme Court observed that no interference is warranted in the order passed by this Court as it is an interlocutory in nature. However, the Trial Court was directed to expedite the suit and thereafter the suit has been decided. There was no injunction

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running against the defendant since 2017, i.e. filing of the suit. There are vital points, which the appellant wants to raise in the First Appeal. The learned Trial Judge has not appreciated the evidence properly and has not considered the evidence as it is required to be considered in a suit involving copy rights. Merely because the labels used by the plaintiff are registered that does not mean that there is any infringement by the present defendant when the defendant had printed and used its labels. In fact, the defendant had also, after they had prepared the impugned labels, registered it or got its sanction from the Commissioner of State Excise. The respondent-plaintiff had raised objections by its communication dated 21.3.2016 for approval of the subject label. However, thereafter on 25.4.2016, the plaintiff gave a communication to the same authority and had unconditionally withdrawn the objections. This impliedly suggested that the plaintiff had no objection for the approval of the impugned label and its use by the defendant. Under such circumstance, now the plaintiff cannot object to its use. The evidence has not been properly

appreciated. But, the learned Judge mostly relied on his own observations which have no proper appreciation of evidence and, therefore, till the appeal is decided, there should be stay to the impugned order.

3. Learned Sr.Counsel Mr. RN Dhorde, instructed by learned Advocate MS Kulkarni, vehemently submitted and taken this Court through almost all the important pages in the impugned judgment and the observations made by the Trial Judge. He submitted that it is not in dispute that the plaintiff-company got its label registered and a Certificate to that effect has been produced and proved on record. Exhibit-63 is the original bottle, containing country liquor of the plaintiff bearing label '*Deshi Daru Tango Panch*'; whereas Exhibit-62 is the original in-tact glass bottle, containing country liquor of defendant bearing label '*Deshi Daru Two Punch Premium*'. The modified labels have also been produced and proved since there was some change in the name of the plaintiff-company. Apart from the oral evidence, the learned Trial Judge had carefully and minutely examined all

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the labels and found out the similarities which are deceptive and when the label of the plaintiff is registered with the competent authority, then it has presumption that anything which is identical or striking resemblance to the same by any other person is definitely prohibited. All those similarities have been considered by the learned Trial Judge. When after the full-fledged trial, when the Competent authority has come to the conclusion that the plaintiff has proved its case then definitely the plaintiff would be entitled to the relief and there is no necessity to interfere with the same. The registration of the copy right is since 2008 and, therefore, since then when the plaintiff is using it and spent so much of amount on its registration, then any derogatory act is required to be compensated by the person infringing the copy right. He has relied on the following citations/decisions, -

Sr.No	Citations
1)	Nav Sahitya Prakash Vs. Anand Kumar AIR 1981 Allahabad 200
2)	Hindustan Level Ltd. Vs. Nirma Pvt Ltd. AIR 1992 Bombay 195
3)	Asian ants (I) Ltd. Vs. Jaikishan Paints 2002 (6) Bom.C.R. 1
4)	Daily Calendar Supplying Vs. United Concern AIR 1967 Madras 381

5)	Pidilite Industries Ltd. Vs. SM Associates 2004 (28) PTC 193
6)	Laxmikant V.Patel Vs. Chetan Bhai Shah 2001 AIR (SCW) 4989
7)	Satyam Infoway Ltd. Vs Sifynet Solutions 2004 (28) PTC 566
8)	Deccan Bottling Vs. Brihan Maha Sugar Syndicate – 2009 (2) Mh.L.J. 302
9)	M/s 7 Star Distilleries Vs. B.M.S.S.Ltd A.O. No.38/2007 (HC, Aurangabad Bench)
10)	Hiralal Prabhudas Vs. Ganesh Trading AIR 1984 Bom. 218
11)	Tilaknagar Industries Ltd. Vs. Somarasa Distilleries – Notice of Motion No. 1665/2007 in Suit No.1266/2007 (Bombay High Court)
12)	Poddar Tyres Vd. Bedrock Sales Corporation AIR 1993 Bombay 237
13)	Shri Nath Heritage Liquor Vs. Bedrock Sales Corporation – 2015(63) PTC 551
14)	Midas Hygiene Industries Vs. Sudhir Bhatia (2004) 3 SCC 90
15)	Harish Motichand Sariya Vs.Ajanta India Ltd 2003 (4) Mh.L.J. 291
16)	B.Y.Chavan Vs. Association of Tenants 2011 (5) All MR 815
17)	Circular dated 17.7.2014 – Commissioner of State Excise, Mumbai.
18)	Cadila Health Care Ltd Vs. Cadila Pharmaceuticals – AIR 2001 SC 1952
19)	Sanjay Soya Pvt. Ltd. Vs. Narayani Trading Company – Commercial IP Suit No. 2 of 2021
20)	Parle Products Ltd. JP and Co. Mysore AIR 1972 SC 11359
21)	M/s Universal Twin Labs Vs. Ranbaxy Laboratories Ltd an Ors. – Appeal No. 163 of 2008- Bombay High Court
22)	Prakash Roadline Vs. Prakash Parcel Service 1992 (2) ARBLR 274 SC 11359

4. It was also submitted by the learned Sr.Counsel that it is not at all necessary that the actual resemblance should be proved by examining a person. But, it could be noticed when the evidence is produced to that extent. He, therefore, prayed for rejection of the application.

5. At the outset, it is to be noted that since the First Appeal has been filed and it has to be admitted as of right, we are required to consider as to what was the position prior to the decree in respect of the subject matter and how the said position can be maintained till disposal of the First Appeal. As aforesaid, the suit was filed in the year 2017, however, Exhibit-5, i.e. temporary injunction application came to be rejected on 12.4.2019. Since the date of the suit till rejection of the application at Exh.5, there was no order much less ad interim, passed in favour of the plaintiff. Thereafter, the Appeal from Order preferred by the original plaintiff came to be rejected by this Court and it has been maintained by the Hon'ble Apex Court. That means even after institution of the suit, none of the authorities had estopped the defendant from using the impugned labels. Further, the reference will have to be considered, which was even earlier considered by this Court at the time of decision in the Appeal from Order No.41/2019 that when the defendant society had made application for the

approval of the impugned label to the Commissioner of State Excise, the present plaintiff had raised objection for the same on 21.3.2016. But, thereafter, by giving another communication on 25.4.2016, had withdrawn that objection unconditionally. This factual aspect is definitely on record in the oral evidence also before the Court at the stage of final hearing. It indicates, therefore, that when the plaintiff had no objection for the approval of the defendant's label, then question is, whether under the Copy Rights Act, the plaintiff can seek the injunction as claimed. Now, it has been tried to be contended that only the Civil Court will have jurisdiction to decide whether there is infringement of the copy right or not. The said Commissioner of State Excise cannot be said to be the appropriate authority. Factually this fact may be corrected. But, when it comes to the right for the use of a particular label, then its use in any form, can be objected and such attempt was made by the plaintiff. The plaintiff's own action to withdraw that objection has not been interpreted by the learned Trial Judge. Further, even at this stage, prima facie impression can be

recorded that when it came to appreciation of oral evidence, the learned Trial Judge was very much short enough and appears to have brushed aside the statements in the cross-examination of the witnesses for the plaintiff. But, then he has mostly relied on his own observations regarding labels and other material that was produced before him. The question, further, that is required to be gone into, as to whether a customer's testimony was necessary or not because he would be the person, who could be said to be misled by such resemblance. Without examination of such customer, whether the Court can supplement its own findings and come to the conclusion that for a person, such resemblance would create confusion, is also a matter of fact, which is required to be gone into. The ratio laid down in aforesaid rulings/authorities can be considered at the time of final hearing of the Appeal. But, as regards the present stage is concerned, when the defendant was never restrained in the past by a competent Court, and when the First Appeal has been admitted, involving the points which are required to be gone into, it would be put to irreparable loss if the impugned decree

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is not stayed till hearing and final disposal of the First Appeal.

6. Hence, there shall be stay in terms of prayer clause (a) till hearing and final disposal of the First Appeal. The Civil Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV