

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

CS 59 of 2019

Devans Modern Breweries Ltd.

Versus

Mount Everest Breweries Ltd. & Anr.

Mr. Paritosh Sinha
Mr. Prithwiraj Sinha
Mr. K. K. Pandey
Mr. Soumya Sen
Mr. M. Mukherjee
Mrs. M. Dasgupta
Ms. Enakshi Saha

.....For the Plaintiff

Heard on : 29.08.2022

Judgment on : 03.11.2022

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for permanent injunction restraining defendants, their servants, agents assigned distributors, dealers or sellers and each of them from infringing plaintiff's registered design no. 233798 or enabling or causing others to infringe the said design by manufacturing, marketing, selling, distributing, advertising

or bottling or otherwise dealing in beer in identical bottles and passing of or causing to pass of beer under the mark DeVANS or in bottles bearing the trading name DeVANS Modern Breweries Limited bearing plaintiff's design no. 233798 or in any other bottles which is identical or deceptively similar to or obvious or fraudulent imitation of plaintiff's registered design no. 233798 or in bottles any other trade mark or trading name which is identical or deceptively similar to the plaintiff's trade mark or trading name DeVANS Modern Breweries Limited in any manner whatsoever.

It is contended in the plaint that the plaintiff is an old renowned company incorporated under the Companies Act, 1956 engaged in the business of manufacturing and selling, inter alia, international quality beers in India and abroad, both in bottles and cans. The plaintiff was established in the year 1961 by Devans Gian Chand, a pioneer industrialist of Jammu and Kashmir and since then the plaintiff has been openly, uninterruptedly and continuously carrying on its business.

The plaintiff further contended that the plaintiff has a commercial presence that extends through marketing and sells to over 20 Indian States, maintaining market strongholds in the State/Territory of Delhi, Uttar Pradesh, Rajasthan, Himachal Pradesh, Punjab, Haryana and Uttarakhand for the last more than 30 years.

It is further contended that the plaintiff has extended its commercial influence to several countries and regions across the world including the United States, Caribbean, New Zealand, Singapore, Malaysia, Japan, United Arab Emirates.

The plaintiff further contended that the plaintiff came up with a new and novel design for bottle which contained an artistic curve and curvature starting from the mouth of the bottle where it is slightly suppressed then elevated, then again suppressed and then goes smoothly till the shoulder of the bottle i.e. a distinctive outward convex curvature having an outward production at the neck of the bottle, shoulder of the bottle till distinctly curved and body of the bottle is virtually straight and surface pattern cum configuration at the bottom of the bottle.

It is further contended that the aforesaid design developed by the plaintiff was accordingly applied for design registration in the year 2011 and was registered at design no. 233798 in Class 09-01.

It is further pleaded that on account of the quality and popularity of its beer sold under the brand 'GODFATHER' and others more particularly in the bottles having aforesaid design as also in cans, are market leaders in sell of beer in many States leveraged through its sale networks in India and abroad, tremendous sell of its beer in recent years.

It is further contended that since its registration, the plaintiff has been using registered design no. 233798 on its bottle for beer sold under its renowned brands under the umbrella of Devans Modern Breweries Limited sold continuously and extensively accounts globe.

It is further contended that the plaintiff's products are in high demand in the market and have become symbolic of superior quality and has acquired immense reputation and goodwill to in the market in India.

It is further contended that another signature of plaintiff's bottle is element of surface ornamentation, the engraving of the plaintiff's trade mark stylized as "DeVANS" across the curve/ shoulder of the bottle and the Company name 'DeVANS Modern Breweries Limited' engraved at the lower at of the bottle along with the registered design no. 233798.

In July, 2018, the plaintiff came to know through its market sources that certain beers are available in the market which are being sold in bottles which have all the features of the plaintiff's bottle with a distinguishable design. When the plaintiff came to know about the same, the plaintiff had conducted a market investigation and it was found that the defendant no. 2, a dealer as well as retailer of the defendant no. 1, has been selling beer under the brand 'Mount's 6000 Super Strong Beer' from its outlets in Indore and Madhya Pradesh. In the bottles having a design identical to the plaintiff's design cover under the registration no. 233798 violating the plaintiff's legal statutory rights in the design vested upon the plaintiff under the law.

It is further contended that the plaintiff purchased the said beer of defendant no. 1 and it reveal that not only the plaintiff's bottle was copied, the said duplicate bottles even had the surface ornamentation of the plaintiff's trade mark 'DeVANS' engraved upon them across the curve shoulder of the bottle along with the name of the plaintiff 'DeVANS Modern Breweries Limited' and the registered design no. 233798 engraved at the lower end of the bottle.

The plaintiff further submits that when the plaintiff came to know about the same, immediately a legal notice was sent to the defendant no. 1 on 30.07.2018 calling upon the defendants to desist from infringing the plaintiff design. It is further contended that inspite of receipt of the notice, the defendants have not sent any reply. The plaintiff continues to monitor various markets of the defendant's beer and the said product was found to be out of market after the receipt of the legal notice by the defendant no. 1.

The plaintiff further contended that again plaintiff came to know the defendant no. 1 is manufacturer and selling beer under the trade mark/ brands LEMOUNT PREMIUM SUPER STRONG BEER, MOUNT'S 6000 SUPER STRONG BEER and DABANG PREMIUM BEER STRONG in bottle which are fraudulent imitation of the plaintiff's bottle having all features of the plaintiff's design covered under the registration no. 233798 dt. 10.01.2011 and also the engravings DeVANS across the shoulder 'Devans Modern Breweries Private Limited' at the lower end and design no. 233798.

The plaintiff further contended that the defendant no. 1 is doing in clear violation of the intellectual property rights, design rights in particular, of the plaintiff thereby causing piracy of the registered design of the plaintiff.

It is further contended that the defendant no. 1's business is to sell its beer under the various brands in bottle identical to the plaintiff's beer bottle to deceive people in believing that the said products are from the house of the plaintiff or that the defendant no. 1 is closely associated with the plaintiff or that the defendant no. 1 is a sister concern of the plaintiff.

It is further contended that the defendants are engaged in fraudulent misbranding and falsifying of its product as that of the plaintiff.

It is further contended that the customers are in fact buying the defendant's beer bottles thinking the same be the plaintiff's product.

The plaintiff further contended that the defendants are guilty of piracy and fraudulent imitation of the plaintiff's registered design applied to beer bottles and also misappropriation of the plaintiff's trademarks and trading name/ company name 'DeVANS' by embossing the same on the bottles in which beer manufactured by the defendants is marketed and sold.

It is further contended that the defendants have infringed the plaintiff's registered design by applying the same on its bottles used for sale of beer and has also sought to unlawfully appropriate the goodwill and reputation attached to the plaintiffs trading name/ company name and trade mark 'DeVANS' on the said bottles in an attempt to seek an association with the plaintiff.

It is further submitted that the defendants continue to infringe the plaintiff's registered design no. 233798 by manufacturing and selling LEMOUNT PREMIUM SUPER STRONG BEER, MOUNT'S 6000 SUPER STRONG BEER and DABANG PREMIUM BEER STRONG in bottles having the all features of the plaintiffs bottles and identical to the plaintiff's registered design no. 233798 and also containing the plaintiff's mark and company name and design registration number engraved on the same. Hence, the plaintiff has filed the instant suit.

On 18.03.2019, leave under Class 12 of Letters Patent 1865 was granted and the provisions of Section 12-A of the Commercial Courts Act, 2015 was dispensed with in view of the urgent interim relief as prayed for by the plaintiff.

On 20.03.2019, this Court had passed the interim order restraining the defendants from infringing the registered design of the plaintiff in so far as the shape of the bottles is concern and also restrained the defendants from using the name of the plaintiff on the bottle in which the defendants sell their beer.

The instant matter was taken up by this Court on 19.06.2019 and it was found that inspite of service of notice none appears on behalf of the defendants to contest the application filed by the plaintiff and accordingly this Court had confirmed the interim order dt. 20.03.2019.

It reveals from record that the notices of summons were served upon the defendants on 12.07.2019 and 31.08.2019 and inspite of receipt of the writ of summons none appeared on behalf of the defendants.

Heard, the Learned Counsel for the plaintiff and examine the contents of the plaint and the documents relied by the plaintiff. Inspite of service of notice none appeared on behalf of the defendants and accordingly the plaintiff prays for judgment under Order VIII Rule 10 of the Code of Civil Procedure.

The scope of Order VIII Rule 10 in commercial suit particularly, under new Commercial Courts, Commercial Division and Commercial Appellate

Division of the High Court Act, 2015 has been examined by the Delhi High Court in the case of Nirog Pharma Private Limited vs. Umesh Gupta, 235 (2016) DLT 354 and it was held that : -

“11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoked its Provisions to curb dilatory tactics often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judged the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if defendants failed to pursue its case or does so in a lackadaisical manner by not filing its written statement, the Court should invoke the Provisions of Order VIII Rule 10 to decree such cases.”

In the instant case, the plaintiff has made out a specific case i.e. the defendants continued to infringe the plaintiffs registered design no. 233798 by manufacturing and selling LEMOUNT PREMIUM SUPERB STRONG BEER, MOUNT's 6000 SUPER STRONG BEER and DABANG PREMIUM BEER STRONG in bottles having all the features of the plaintiff's bottle and identical to the plaintiff's registered design no. 233798 and also containing the plaintiff's mark and company name and design registration number engrave on the same.

To support the case of the plaintiff, the plaintiff has also annexed the coloured photographs of the beer bottles of the plaintiff as well as the defendants and have also produced the original bottles before this Court at the time of hearing of the case which supports the contents of the plaint.

As per the record, initially when the plaintiff has filed the suit an interim order was passed against the defendants and the same was also duly forwarded to the defendants and even after service of writ of summons, the defendants have chosen not to contest the suit by appearing in the suit and by filing written statement.

In view of the above, this Court is of the view that the contents of the plaint and the documents on record as relied by the plaintiff is an unimpeachable character and thus there is no requirement for any further evidence to prove the contents of the plaint.

Accordingly, keeping in view of the above, this Court passed a decree of perpetual injunction in favour of the plaintiff, against the defendants, its agents, servants, distributors, dealers etc. in terms of prayer (a),(b)(c) and (d) of the plaint.

CS 59 of 2019 is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J)