

Sapat International Private Limited	...	Applicant/Orig. Plaintiff
vs.		
Kesari Manufactures and Anr.	...	Defendants

Mr. Akshay H. Bankapur for defendants.
Ms. Rekha Rane, 2nd Assistant to Court Receiver.

CORAM : MANISH PITALE, J
DATE : 18th OCTOBER, 2022

P.C. :

. By order dated 5th October, 2021, ex-parte ad-interim relief was granted in favour of the applicant/plaintiff. Court Receiver executed the order. The offending material was seized and sealed at the premises of the defendant and it is lying at the premises of the defendant, even as on today.

2. Ad-interim order was continued from time to time. On 6th June, 2022, this Court recorded that the parties were interested in settling the dispute. But, it appears that the parties have not been able to finally settle their dispute in order to file the consent terms in this Court.

3. In this situation, the learned counsel for the parties were heard on the prayers made in the present application. Having considered the contentions raised by the rival parties and material on record, this Court is convinced that the applicant/plaintiff has been able to satisfy all the three parameters for grant of ad-interim relief i.e. prima facie case, balance of convenience and irreparable loss. The plaintiff will indeed suffer grave and irreparable loss, if the ad-interim relief is not confirmed. A perusal of the comparison of the marks of plaintiff and defendant shows that the offending marks being

used by the defendants are indeed identical and deceptively similar to the registered trademark of the plaintiff.

4. It is admitted position that even as on today, the defendants have not filed reply to the application as also written statement in the suit. In these circumstances, this Court is convinced that the present application deserves to be allowed and ad-interim relief granted in favour of the plaintiff deserves to be confirmed.

5. Accordingly, the ad-interim reliefs granted in favour of the plaintiff by order dated 5th October, 2021 are confirmed.

6. At this stage, the learned counsel for the defendant submitted that since the offending material is lying in sealed packets in the premises of the defendant, this Court may permit that the contents of such sealed packets be retained by the defendant and the offending packets be handed over to the plaintiff for destruction.

7. On instructions, the plaintiff is agreeable to the aforesaid procedure being adopted.

8. Accordingly, it is directed that in the presence of Court Receiver, the sealed offending packets lying in the premises of defendant would be opened and the contents thereof shall be retained by defendant, while the offending packets shall be handed over to the plaintiff for destruction.

9. Thereupon, the Court Receiver shall stand discharged without passing up of the accounts. Accordingly, the Court Receiver's Report No.435 of 2021 also stands disposed of.

10. It is pointed out that by order dated 10th December, 2021, Leave Petition filed by the plaintiff under Clause XIV of Letters Patent was allowed,

as a consequence of which, the plaintiff was permitted to combine the cause of action for passing off with that of infringement.

11. In view of the Leave Petition being granted as above, learned counsel for plaintiff is pressing for grant of ad-interim relief in terms of prayer clause (c), which relates to the action for passing off.

12. This Court has perused the pleadings in the plaint and it is found that the plaintiff has indeed made out a prima facie case for grant of ad-interim relief pertaining to the action of passing off. Accordingly, ad-interim relief is granted additionally in terms of prayer clause (c) also, which reads as follows:

“(c) that the Defendants by themselves, their proprietor/partners, servants, dealers, stockists, agents and all persons claiming through them be restrained by a temporary order and injunction of this Hon’ble Court from manufacturing, packing, selling, exhibiting for sale, advertising or dealing in tea under the impugned trade mark ‘sah PARIVAR’ and/or “PARIVAR” and/or any other trade mark containing the word PARIVAR and/or any other word deceptively similar thereto and/or any other trade mark deceptively similar to the Plaintiff’s well-known trade mark PARIVAR, so as to pass off the Defendants’ tea as and for the Plaintiff’s tea or in any manner whatsoever;”

13. In view of the above, the application stands disposed of.

14. During the pendency of the suit, the parties would be at liberty to further explore the possibility of settlement.

(MANISH PITALE, J)

Priya Kambli