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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 666/2021**

**KAIRA DISTRICT COOPERATIVE MILK PRODUCERS
UNION LTD. & ANR** Plaintiffs

Through: Mr. Afzal B. Khan, Mr. Vishal
Nagpal, Ms. Suhrita Majumdar and Mr.
Balkrishan Singh, Adv.

versus

AMUL BRUSH ENTERPRISES & ANR. Defendants
Through: Ms. Kangan Roda, Adv.

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

JUDGMENT(ORAL)
21.12.2022

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CS(COMM) 666/2021

1. The plaintiff, by this suit, alleged infringement, by the defendant, of plaintiff's well-known trademark AMUL/KBI AMUL. It was alleged that the defendant was manufacturing, selling and dealing in paint brushes, rollers, putty knives and other allied products under the mark AMUL and KBI AMUL.

2. The Defendant 2 also possesses a registration for the mark "KBI AMUL".

3. The plaintiff, however, claims priority of registration as well as priority of user.

4. By order dated 20th December 2021, the defendants were restrained from using the impugned marks AMUL/KBI AMUL, in any

manner whatsoever. A local Commissioner was also appointed to visit the premises of the defendants and to seize goods which contain mark which infringe the plaintiff's registered mark. Consequent on the visit, the learned Local Commissioner seized as many as 36,000 to 37,000 paint brushes with the impugned "KBI AMUL" mark.

5. On 21st July, 2022, learned Counsel for the defendants submitted to the Court that the defendants were willing to suffer a decree and had already stopped use of the mark "AMUL" with or without any suffix or prefix.

6. Nonetheless, this Court, by order dated 21st July 2022, opined that, given the number of offending goods seized from the defendant's premises, the defendant was required to be mulcted with costs.

7. The defendant has thereafter filed an affidavit, undertaking not to use the marks/logo/trade name AMUL/KBI AMUL for any goods or services of theirs. All the material that was being used to manufacture the said goods are also stated to have become unusable.

8. The defendant has placed on record its GST returns in order to substantiate its stand that it is financially not in a position to pay costs.

9. The GST returns, if seen, show that, during a large part of the period in question, the returns are nil returns. The returns are also not certified or adjusted by any chartered accountant.

10. Mr. Afzal has drawn my attention to order dated 27th April 2022 passed by a Coordinate Bench of this Court in CS (COMM) 492/2021 (*Satnam Brush Industry v. Kori Brush Industries*), in which, in a

similar trademark infringement action, the Coordinate Bench imposed costs, on Defendant 2 of ₹ 4,00,000/-.

11. Ms. Kangan Roda learned Counsel for the defendants candidly acknowledges that the said order was never challenged and has, in fact, been complied with.

12. As such, it cannot be said that the defendant is financially not in a position to pay costs.

13. The manner in which the defendant infringed the plaintiff's well-known registered mark, and the fact that, at the time of execution of the commission, as many as 36,000 to 37,000 paint brushes containing the offending mark were found in the defendant's premises, this Court is of the view that the plaintiff would be entitled to actual costs.

14. There shall be a decree in favour of the plaintiff in terms of Prayers A and B in the suit.

15. The plaintiff is also held to be entitled to actual costs in the suit for which purpose the plaintiff would present the bill of costs before the concerned Taxation Officer.

16. The suit stands decreed accordingly. The registry is directed to draw up a decree sheet in the aforesaid terms.

17. List before the concerned Taxation Officer to workout costs on 11th January 2023.

18. Mr. Afzal B. Khan learned Counsel for the plaintiff is agreeable to the defendant disposing of the seized brushes in any manner after removal, or effacement, from the body of the brushes, of the offending logo KBI AMUL. He is permitted to do so within a period of 8 weeks and to file an affidavit to that effect in these proceedings.

C.HARI SHANKAR, J

DECEMBER 21, 2022/AR

