



2023:DHC:8477



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(COMM) 540/2021****SOPARIWALA EXPORTS & ORS. Plaintiffs**Through: Mr. Pravin Anand Ms. Jaya
Negi, Advs.

versus

AKHIL KUMAR KACHHARA**TRADING AS ALI IMPEX & ANR. Defendants**

Through: Mr. Pankaj Kumar, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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24.11.2023**CS(COMM) 540/2021 and I.A. 23513/2023 (Section 151 of the CPC) for permission to remove the scrap)**

1. This suit, instituted against the defendants Akhil Kumar Kachhara, by the plaintiffs, alleges infringement and passing off by the defendants. The plaintiff is the proprietor of the trade marks



AFZAL, and , registered under the Trade Marks Act, 1999. The defendants are stated to be infringing the said marks by manufacturing and selling identical products under the mark AL AWWAL using a label/device/packing, which is deceptively similar to that of the plaintiffs.



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2. On 28 October 2021, summons were issued in the suit. In IA 14043/2021, which was preferred by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC along with the suit, notice was issued. The defendants as well as all others acting on their behalf were restrained from directly or indirectly manufacturing, selling, offering for sale, advertising, exporting or directly or indirectly dealing with in any business using the marks AL AWWAL, and/or



labels/device/packaging , and/or the impugned device/packaging or any other mark which was identical or deceptively similar to the plaintiffs registered trademarks AFZAL,



and .

3. The order also appointed two learned Advocates of this Court as Local Commissioners to visit the premises of the defendants and to inventorize and seize the infringing products.

4. There is no dispute about the fact that, after the said date, there has been no manufacture or sale of any product by the defendants using the infringing marks.

5. The learned Counsel for the parties is also *ad idem* that, the defendants have thereafter adopted the mark , which is not infringing in nature.

Signature Not Verified

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By: ROHIT B. ARARIA
Signing Date: 28.11.2023
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6. In view of the nature of the dispute, however, the plaintiffs press for damages.

7. On this aspect, there were discussions between the parties, subsequent to which the defendants are willing to pay an amount of ₹ 20 lakhs as damages, to which the plaintiffs are also agreeable.

8. In that view of the matter, both sides submits that the suit may be decreed in the aforesaid terms. However, the defendants additionally pray that they may be permitted to destroy the remaining packs as the tobacco has been retrieved from all the packs and the packs are merely lying as scrap.

9. Learned Counsel for the plaintiffs has no objection to this suggestion.

10. Accordingly, the suit stands decreed in the following terms:

(i) There shall be a decree of permanent injunction restraining the defendants and all other acting on their behalf from using directly or indirectly manufacturing, selling, offering for sale, advertising, exporting or dealing in any business using the mark AL AWWAL or the packing



and



or any other mark or packing,

which is identical or deceptively similar to the plaintiffs'



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registered

trademarks

AFZAL,



and , in respect of tobacco, tobacco products or any other goods which are allied or cognate therewith.

(ii) The defendants shall pay ₹ 20 lakhs as damages to the plaintiffs within eight weeks from today.

(iii) The defendants are permitted to destroy the remaining packs, which were seized by the Local Commissioners. However, consequent on destruction, an affidavit to that effect specifically setting out the number of packs which were destroyed, and the date of destruction, shall be filed before this Court.

(iv) The defendants shall file an application before the Registrar of Trade Marks for withdrawal of Registration No. 4290730 dated 12 September 2019 wherein the impugned word mark AL AWWAL stands registered in favour of the defendants in Class 34. Let the requisite application be moved within a period of one week and let a decision on the application be taken within two weeks thereafter.

(v) Subject to payment of the decretal amount of ₹ 20 lakhs as aforesaid, the bank guarantee of ₹ 50 lakhs, furnished by the



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defendants, shall be released to the defendants within a week of payment.

11. The suit stands decreed in the aforesaid terms. Let a decree-sheet be drawn up accordingly.

12. The next date of hearing i.e.19 December 2023 already fixed in the matter stands cancelled.

C.HARI SHANKAR, J

NOVEMBER 24, 2023

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Click here to check corrigendum, if any