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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EX.P. 9/2022**

GLAXO GROUP LIMITED AND OTHERS Decree Holders
Through: Ms Shwetashree Majumdar, Ms Tanya
Varma, Ms Shilpi Sinha and Mr
Vardaan Anand, Advs.

versus

RAJIV MUKUL AND ANR. Judgement Debtors
Through: Mr Sidharth Bambha and Ms Sucharu
Garg, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.05.2024

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1. This is a petition seeking execution of the decree dated 01.12.2017 passed by this Court in CS (COMM) 1620/2016. The suit was decreed in accordance with paragraph 56(a) and (b) of the plaint as well as the joint compromise application.

2. The suit was filed by the decree-holders herein seeking injunction in terms of paragraph 43 of the plaint in CS (COMM) 1620/2016 which reads as under:

“43. The acts of the Defendants are mala fide in that:

(a) They have infringed the Plaintiff's registered trademarks as enumerated below:

<i>Plaintiff's Trademarks</i>	<i>Defendants' Trademarks</i>
<i>ZENTEL</i>	<i>SONTEL</i>
<i>OTRIVIN</i>	<i>ETORIWIN</i>
<i>AMBIRIX</i>	<i>ARIBRIX</i>



<i>BOOSTRIX</i>	<i>BOOSTEX</i>
<i>POLIORIX</i>	<i>POLYRIX</i>
<i>GRETORIX</i>	<i>GETOFIX</i>
<i>PRIORIX</i>	<i>PARARIX/PIORIX</i>
<i>ROTARIX</i>	<i>DROTALIX</i>
<i>TOCTINO</i>	<i>OKTINO</i>
<i>ZUCOX</i>	<i>SUCOX</i>

(b) The Defendants have attempted to misappropriate Plaintiff no. 2's exclusive and proprietary suffix 'RIX' in relation to vaccines by adopting the marks ARIBRIX, OPRIX and PARARIX."

3. Paragraphs 56(a) and (b) of the plaint reads as under:

"56. It is therefore prayed that the following reliefs may be granted to the Plaintiffs:

a) An order for permanent injunction restraining the Defendants, its employees, servants, agents and all others in active concert or participation with it from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in goods under any of the trademarks as listed in paragraph 43 of the plaint or any other trademark which amounts to an infringement of the trademarks of the Plaintiffs;

b) An order for permanent injunction restraining the Defendants, its employees, servants, agents and all others in active concert or participation with it from



manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in goods under any of the trademarks as listed in paragraph 43 of the plaint or any other trademarks which amounts to passing off their goods as those of the Plaintiffs”

4. Clause 2. E) and 3 of the compromise application reads as under:

“2. E) The Defendants undertakes that they have no other unfinished products and any other material whatsoever bearing the impugned marks or any packaging bearing the impugned marks and/or any other marks which maybe deceptively and/or confusingly similar to the Plaintiff's trademark and if any such products or packaging is discovered on a subsequent date, the same will be destroyed immediately;

....

3. It is therefore, prayed that the present memorandum of compromise may be recorded and a decree may be passed incorporating the terms of this settlement as part thereof and a decree passed in terms of:

(a) The relief claimed in paragraph 56 (a) and (b) of the plaint in favour of the Plaintiffs and against the Defendants.”

5. In terms of the joint compromise application and in terms of paragraph 56(a) and (b) of the plaint, the suit was decreed.

6. The present execution petition has been filed seeking enforcement of the decree.

7. It is stated that the judgment-debtors are infringing the trade-mark of



the decree-holders by using the mark 'BETNEVIN' and with similar packaging as of the decree-holders' trademark 'BETNESOL'. The comparison of the decree-holders' and the judgment-debtors' products is as under:

Decree-holders' product:





Judgment-debtors' product:



This is a digitally signed order.

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8. Hence, the execution petition.

9. Ms Garg, learned counsel appearing for the judgment-debtors states that the moment an Executing Court has to apply its mind to say whether the product of the judgment-debtor is infringing the trademark of the decree-holders, the Executing Court is going beyond the terms of the decree and applying its mind to the fact of infringement. She states that the Executing Court cannot go behind the decree and this in-fact is within the realm of a fresh suit which the decree-holders should file.

10. In support of her contentions, Ms Garg, learned counsel for the judgment-debtors relies on the judgment of ***Snapdeal (P) Ltd. v. Godaddycom LLC***, (2022) 4 HCC (Del) 335, and more particularly, paragraph 3 sub-paragraphs 95-97, which read as under:

“3. A detailed judgment on 18-4-2022 has been passed by the predecessor Bench on the application being IA No. 5407 of 2021 seeking interim injunction, wherein the court has held that such a wide order, without identifying the specific domain names, cannot be granted and for every domain name specific relief has to be sought by the plaintiff after identifying the domain name. The relevant observations from the judgment dated 18-4-2022 are extracted below:

....

95. A quia timet action cannot, however, be predicated on hypothetical or imaginary infringements. In my considered opinion, it is not permissible for the court to hold, in advance, that every prospective alternative domain name, containing the word/thread/string ‘Snapdeal’ would



necessarily be infringing in nature and, thereby, injunct, in an omnibus and global fashion, DNRs from ever providing any domain name containing 'Snapdeal'. This, in my view, would be completely impermissible. Section 28(1) of the Trade Marks Act provides the proprietor of a registered trade mark the right to obtain relief in respect of infringement of the registered trade mark. 'Infringement of registered trade marks' is, in turn, defined in Section 29. Infringement, in each sub-section of Section 29, is envisaged by use of 'a mark' which infringes the registered trade mark of another, and sets out the various situations in which such infringement could be said to have taken place. The allegedly infringing mark must, however, be clear and identifiable. If it is, by combined operation of Sections 28(1) and 29, the proprietor of the allegedly infringed registered trade mark would be entitled to an injunction against the use of the allegedly infringing mark. The plaintiff has to draw the attention of the court to the marks, of the defendant, which infringe the plaintiff's registered trade mark. In the present case, the plaintiff has necessarily to come to the court — as it has been doing in the past — against every domain name which it perceives to be infringing of its registered 'Snapdeal' marks. The court would then have to examine whether such mark is, in fact, infringing and, if so, injunct the use of such mark/domain names. The cause of action, in any trade mark infringement



suit, has to be with respect to the particular infringing trade mark/trade marks. The court cannot pass an order, to operate in futuro, restricting the defendants from offering, for registration, any domain name, which includes the thread 'Snapdeal', as that would be attributing, to the court, a clairvoyance which it does not possess.

96. I have already expressed this view, earlier, in my decisions in Star India (P) Ltd. v. Yl.Mylivecricket. Biz [Star India (P) Ltd. v. Yl.Mylivecricket. Biz, 2021 SCC OnLine Del 5614] and Star India (P) Ltd. v. Yodesiserial. Su [Star India (P) Ltd. v. Yodesiserial. Su, 2021 SCC OnLine Del 5615].

97. The plaintiff has, therefore, necessarily to petition the court against each domain name that it finds to be infringing. This may be a long and cumbersome exercise. It cannot be helped. There is no shortcut to justice.

11. I have heard learned counsel for the parties.

12. The observations as reproduced above was in an interim order and not in an execution petition. In the present case, the execution petition is predicated on a settlement duly signed by the parties, counter-signed by their respective counsels and then the decree was passed based on that settlement.

13. This Court in ***Essco Sanitations v. Mascot Industries (India)***, 1982 SCC OnLine Del 110 in almost similar circumstances in an execution petition restrained the judgment-debtors from adopting a similar mark. The operative paragraphs are as under:



“9. Mr. N.K. Anand, learned counsel appearing for the decree-holders, agreed that for purposes of deciding this application, the words ‘SCO’ and ‘OSSO’ written in hand in para (iv) of the application for compromise may not be treated as part of that application. This was, however, without prejudice to the plea of the decree-holders that those words existed at the time of recording the compromise and at the time of signing the application for compromise. The decree is based on the compromise which has been marked as C-1. The words ‘SCO’ and ‘OSSO’ have to be excluded from cl. (iv) of the compromise deed for purposes of this judgment.

10. It is not disputed that the parties in the compromise deed prayed that a decree in terms of para 20(i) and (ii) of the plaint be passed in favour of the plaintiffs and against the defendants. Paragraphs 20(i) and (ii) of the plaint read as under:—

“20. The plaintiff prays:

- (i) for an order for permanent injunction restraining the defendants, their servants against representatives, dealers workmen and all those acting for and on their behalf from infringing the registered trade mark number 214447 by adopting and/or using the mark ESSO and/or any other deceptively or confusingly similar mark which is an infringement of the plaintiff's registered trade mark ESSCO in relation to Brass cocks (sanitary and bath room fittings).*
- (ii) for permanent injunction restraining the defendants, their servants, agents, representatives, dealers, workers and all those*



acting for and on their behalf from manufacturing, selling offering for sale and/or otherwise dealing in sanitary and bath-room fittings including Brass cocks under the mark ESSO or any other deceptively similar mark being colourable imitation of the plaintiffs' trade mark ESSCO as is likely to cause confusion and deception and from passing off these goods as those of the plaintiff in any manner whatsoever.”

11. The decree which has been passed in terms of para 20(i) and (ii) prohibits the defendants from infringing the decree-holders' trade mark 'ESSCO' by adopting and/or using the mark 'ESSO' and/or any other deceptively or confusingly similar mark in relation to the Brass cocks (sanitary and bath-room fittings). There is no restraint order from using the mark 'OSSO' as such and, therefore, it has to be seen whether the trade mark 'OSSO' which is admittedly being used by the judgment-debtors is deceptively or confusingly similar to the decree-holders' registered trade mark 'ESSCO'.

....

15. It is admitted in the compromise deed C-1, that the decree-holders were the proprietors of the trade mark 'ESSCO' in respect of sanitary and bathroom fittings including brass cocks. The judgment-debtors are using the trade mark 'OSSO' in respect of the same goods. Thus, the goods in respect of which these two trade marks are being used are identical and of the same description.



16. The brass cocks are articles required by common people, who have water connections in their premises where they live either as owners or tenants or licensees. The goods are likely to be purchased by ordinary common persons including illiterate people. The mode of the purchase of such goods is mostly not by placing orders for the goods but by going to the shop and purchasing the same straight except in cases of large orders. Most of the persons concerned with the purchase of these goods would be people who would pronounce the words in a variety of ways and a variety of distortions and slurs, and all these facts have to be kept in mind while deciding the question of confusing similarity between the two trade marks.

17. Looking at the articles, i.e. the brass cocks of the parties, with the eyes of public who are expected to buy these goods, the trade mark 'OSSO' adopted by the judgment-debtors, in my judgment, is deceptively similar. The offending trade mark 'OSSO' has taken a substantial part of the registered trade mark 'ESSCO' of the decree-holders. The two marks are too close phonetically, visually and in similarity in idea. The first letters of the two trade marks are no doubt different being 'O' and 'E' respectively, but these are vowels which are most likely to be mis-pronounced. The other two letters 'SS' and the last letter 'O' are common in the two marks. There is no manifest difference between the two selecting the letter 'C' from ESSCO and substituting the first letter 'O' in place of 'E' is of not much consequence. The ordinary customers who are likely to purchase these goods are not expected to carry in their heads the minister details of the registered trade mark of the decree-holders. A purchaser will



seldom have the two marks actually before him when he makes the purchase. He cannot retain in his mind every detail of the mark which he has once seen. Very often, he will have only a general recollection of what the nature of the trade mark is.

18. There appears to be no doubt that the adoption of the trade mark 'OSSO' by the judgment-debtors is dishonest. The trade mark 'OSSO' is not descriptive of the goods in question. There is nothing on the record to suggest that the four letters containing this mark represent the names of the partners or proprietors of the defendant-firm. The decree-holders, as mentioned earlier, had earlier objected to the trade mark ESSO which was being used by the judgment-debtors and had claimed a decree restraining the judgment-debtors from using the said trade mark. They obtained the decree restraining the judgment-debtors from using the trade mark 'ESSO' and in spite of this, the judgment-debtors conveniently adopted the trade mark 'OSSO' which is in no way different than the trade mark 'ESSO'. The fact that they started using this trade mark even before the passing of the decree is of no consequence. It, on the other hand, shows their dishonest intentions."

14. The Hon'ble Supreme Court in **Chittoori Subbanna v. Kudappa Subbanna**, 1964 SCC OnLine SC 322 in paragraph 60 has held as under:

"60. I have not thought it necessary to discuss the various decisions cited at the Bar and noted by my learned Brother because the decrees construed in them were found to be vague or incomplete. To my mind it would not be right for a court to characterise a term of a decree



which upon its face appears to be clear and complete, as being vague or incomplete merely because in its view that term is erroneous and then proceed to interpret it. So far as a court whose duty it is to give effect to a decree of a court of competent jurisdiction is concerned it is immaterial whether the term or direction as it stands is contrary to law. So long as it is, on its face, complete and capable of enforcement it has no power to go behind....”

15. The view of the Coordinate Bench of this Court as well as the Hon’ble Supreme Court is that the Court in an execution petition can arrive at a finding that the products of the judgment-debtors are similar and infringing the trademark of the decree-holders, in order to execute the decree of injunction, can pass orders subsequently. The Hon’ble Supreme Court has also held that it is immaterial if the term or directions in a decree is contrary to law. The Executing Court cannot go behind the same, and has to give effect to the decree.

16. For the said reasons, the decree dated 01.12.2017 is required to be executed. I am also of the view that the product and packaging of the judgment-debtors is similar to and infringing the product and packaging of the decree-holders. For the said reasons, the judgment-debtors are restrained from using the mark ‘BETNEVIN’ and the product and packaging similar to ‘BETNESOL’.

17. With these directions, the execution petition is disposed of, granting liberty to the decree-holders to revive in case of any further infringement.

MAY 8, 2024/sr

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)