



2024:DHC:5864



\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 29th July, 2024**+ **FAO-IPD 8/2022, CM APPL. 21932/2017 & CM APPL. 21933/2017**
M/S SAI TRADING COMPANYAppellantThrough: **Ms. Sunanda Tulsyan & Mr. Akhil Sachar, Advs.**
M: 9891105069
Email: sachar.akhil@gmail.com

versus

M/S KRBL LIMITEDRespondentThrough: **Mr. Ajay Amitabh Suman, Mr. Shravan Kumar Bansal and Mr. Pankaj Kumar, Advs.**
M: 9990389539**CORAM:**
HON'BLE MS. JUSTICE MINI PUSHKARNA
MINI PUSHKARNA, J (ORAL)

1. The present appeal has been filed challenging the order dated 16th May, 2017 passed by the learned Additional District Judge-03, Patiala House Court in *T.M. No. 32/2017*, wherein, the appellant was restrained from using, selling, soliciting, exporting, advertising, or by any other mode or manner, or using the impugned trademark GOLDEN GATE, along with the device of GATE, in relation to rice and other cognate goods.
2. Perusal of the order sheets show that when the matter was listed for hearing on 02nd July, 2024, learned counsel appearing for the appellant had submitted that the mediation between the parties had failed again. He submitted that he had no instructions from the appellant, and, thus, sought



discharge from appearance on behalf of the appellant.

3. Accordingly, Court Notice was issued to the appellant on the last date of hearing.

4. The matter was again listed for hearing on 24th July, 2024, wherein, learned counsel appearing for the appellant reiterated the same request for seeking discharge from appearance for the appellant. Since the service report with respect to the Court Notice issued to the appellant was still awaited, the matter has been listed today.

5. Today, learned counsel appearing for the appellant has again made a prayer for his discharge from appearance in the matter. He has further handed over copy of the envelope showing the letter sent by him to the appellant by speed post, which has returned un-served.

6. Perusal of the office note also shows that the Court Notice issued to the appellant has been unserved, on the ground that no such firm exists at the given address.

7. In view thereof, it is manifest that the appellant is not interested in pursuing the present appeal. No instructions have been given by the appellant to his counsel, on account of which the learned counsel appearing for the appellant has been seeking discharge. Further, the appellant has not taken any steps to appear, either through himself or through some counsel, before this Court.

8. Accordingly, considering the submissions made before this Court, Mr. Akhil Sachar, Advocate, is discharged from appearing for the appellant in the present case.

9. Since no one appears on behalf of the appellant, the present appeal has to be dismissed on account of non-prosecution.



10. At this stage, learned appearing for the respondent submits that the present matter has been pending since the year 2017 and that 36 hearings in the present case have already taken place.

11. He further submits that the respondent has incurred various costs for defending the present appeal, and that Senior Advocate was also engaged for appearing on behalf of the respondent, on various occasions. Thus, he presses that at the time of dismissing the present appeal, cost may be granted in favour of the respondent.

12. Perusal of the various order sheets passed in the present case show that when the matter was listed for hearing on 14th December, 2017, the matter was referred to Delhi High Court Mediation and Conciliation Centre to explore the possibility of amicable settlement, with the consent of the parties.

13. The matter was thereafter listed on 10th May, 2018, when it was noted that the appellant has not supplied the respondent herein with the modified trade dress/package, design, which would be basis for any negotiation between the parties. The order dated 10th May, 2018 passed in the present proceedings, reads as under:

“Mediation process is stated to be underway. The respondents have not been supplied by the appellant with a modified “trade dress/package design” which would be the basis for any negotiations despite a lapse of more than four months.

The learned counsel for the appellants seeks a week’s time to do the needful. Let the same be supplied to the learned counsel for the respondent by 16.05.2018.

Re-notify on 24.05.2018.”

(Emphasis Supplied)



14. Subsequently, when the matter was listed for hearing on 13th December, 2018, it was recorded that the mediation was a non-starter.

15. This Court takes note of the submission made by learned counsel appearing for the respondent that no one appeared on behalf of the appellant in the mediation proceedings, on account of which the mediation proceedings were non-starter. Subsequently, various adjournments were taken on behalf of the appellant on 24th September, 2019, 14th February, 2020, 09th January, 2023 and 25th September, 2023.

16. Subsequently, when the matter was listed for hearing on 30th October, 2023, an adjournment was again sought on behalf of the appellant herein, on the ground that there is a possibility of amicable resolution of the dispute. The order dated 30th October, 2023, reads as under:

“1. An adjournment is sought by Mr. Akhil Sachar on the ground that there is a possibility of an amicable resolution of the dispute. He prays that the matter may be referred to mediation. Learned Counsel for the respondent has no objection.”

2. Accordingly, this appeal is referred to the Delhi High Court Mediation and Conciliation Centre which may attempt to reconcile matters.

3. Re-notify on 1 February 2024, not to be listed for final hearing.”

(Emphasis Supplied)

17. Thereafter, when the matter was listed for hearing on 01st February, 2024, it was again recorded that the appellant had issued fresh instructions and that the parties are open to attempting settlement afresh through mediation. The order dated 01st February, 2024 passed in the present proceedings, reads as under:

“1. Counsels for the parties state that the matter had been referred to mediation but the same was unsuccessful. However, pursuant to fresh instructions received by the appellant’s counsel, the parties are open to



attempting a settlement afresh, through mediation.

2. Accordingly, parties may appear before the Mediator, Delhi High Court Mediation & Conciliation Centre on 08th February, 2024 at 4:00 pm.

3. Copy of the order be provided to the Organizing Secretary, DHCM&CC for information and compliance.

4. In the meantime, if the parties arrive at a settlement prior to the next date of hearing, they are at liberty to file an appropriate application before this Court.

xxx xxx xxx”

(Emphasis Supplied)

18. Thereafter, the matter was listed before this Court on 02nd July, 2024, wherein, this Court recorded the statement of learned counsel appearing for the appellant that the mediation proceedings had failed, and that he could not appear before the learned Mediator for want of instructions from his client. Thus, learned counsel appearing for the appellant sought discharge from appearance on behalf of the appellant. The order dated 02nd July, 2024, passed in the present proceedings, reads as under:

“1. Mr. Sangram Singh, learned counsel appearing for the appellant submits that the mediation between the parties has failed, yet again.

2. He further submits that he could not appear during the mediation proceedings, for want of instructions from his clients. Thus, he submits that he may be discharged from appearing on behalf of the appellant in the present matter, as no instructions are coming forth from the client.

3. Accordingly, let a formal application be filed by the counsel for the appellant in this regard.

4. Issue Court Notice to the appellant, for appearance before Court on the next date of hearing.

5. At request, re-notify on 24th July, 2024.”

(Emphasis Supplied)



19. It is in this background that the matter was then listed on 24th July, 2024, and now today.

20. Perusal of the various order sheets show that the present appeal has taken up substantial judicial time of this Court. Besides, this Court notes that not only the appellant has been negligent in following up the present appeal, but the respondent was forced to incur costs on various dates. This Court notes that Senior Advocate has appeared on behalf of the respondent, on various occasions.

21. This Court notes that in order dated 08th February, 2018 in *CS(COMM) No. 772/2016 and other connected matters*, learned Single Judge of this Court, with respect to cost in commercial matters, has held as follows:

“xxx xxx xxx

30. Now the issue remains as to whether costs should be awarded in favour of the defendants. **The subject suits are commercial suits and are governed by Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. With respect to commercial suits, the provision of costs under Section 35 CPC stands amended, and the provision of costs with respect to commercial cases is now to be dealt with by the commercial courts as per Section 35 of the CPC amended and as applicable to commercial courts as under:-**

“Section 35. Costs. (1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

(a) whether costs are payable by one party to another;

(b) the quantum of those costs; and

(c) when they are to be paid.

Explanation.—For the purpose of clause (a), the expression —costs— shall mean reasonable costs relating to—

(i) the fees and expenses of the witnesses incurred;

(ii) legal fees and expenses incurred;

(iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the



costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration: The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

(a) the conduct of the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;

(d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date. (underlining added)

31. A reading of Section 35 CPC as applicable to commercial courts shows that costs can be imposed at different stages of the suits including at the time of disposal of the interim applications. Costs awarded are under different heads as provided under Sub-Section (4) of Section 35 CPC. **In making an order of payment of costs Courts have to take note of the conduct of the parties and the fact that whether any reasonable offer is made by one party to settle the disputes and which is refused by the other party.** At this stage it is required to be noted that after some arguments in the injunction applications, on behalf of the defendants a suggestion was put to the plaintiff that judgment need not be invited from this Court and plaintiff should simply agree to vacate the interim injunctions granted in its favour and not press the injunction applications, and in which circumstances no further relief could be asked for by the defendants, but on behalf of the plaintiff after taking



instructions, its counsel stated that a judgment is invited from this Court.

32. In view of the aforesaid discussion, while dismissing the injunction applications filed by the plaintiff in the suits, in favour of the defendants in the suit each of the defendants costs are awarded being costs incurred by them towards fees paid and payable till date by these defendants to their counsels. In this regard, affidavits of fees and charges paid and to be paid till date by the defendants to their counsels be filed by filing affidavits within two weeks from today and which affidavits will be supported by the details of the payments made by the defendants to their counsels. Such costs shall be the costs in favour of the defendants and against the plaintiff with respect to and till the stage of disposal of the interim injunction applications. Costs shall be paid by the plaintiff to the defendants within a period of four weeks of the affidavits of costs being filed by the defendants.

33. In addition to the awarding costs to be paid to the defendants towards the legal costs as stated above, defendants in my opinion are also entitled for the present to costs incurred by them which would be towards time and man hours spent by these defendants for conducting their defences in the present suits, and subject to final decision as to costs. On behalf of the defendants it has been argued that they have also suffered losses of profits running into lacs and lacs, and even crores of rupees, on account of interim injunctions having been obtained by the plaintiff, and obdurately and illegally continued by the plaintiff. Therefore, in addition to the actual legal costs being granted to the defendants, each of the defendant is granted for the present a sum of Rs. 2 lacs each subject to final decision towards costs incurred for these proceedings except the head of legal costs. These costs will be paid by the plaintiff to each of the defendants within a period of eight weeks from today.

xxx xxx xxx”

(Emphasis Supplied)

22. This Court further notes that vide judgment dated 20th September, 2023, passed in CS(COMM) 565/2016, **M/s Rana Steels Versus M/s Ran India Steels Pvt. Ltd., 2023 SCC OnLine Del 5859**, learned Single Judge of this Court, held as follows:

“xxx xxx xxx

8. It is noticed that the last hearing before this Court in the present suit was in 2015, and for the last eight years, the matter has not been listed



before the Court at all but has been listed only before the Joint Registrar.

9. *For one reason or the other, the matter has remained pending before the Joint Registrar, and the Plaintiff has not pursued its suit for damages or any other relief. The suit itself is more than 15 years old, and the substantive issues of the suit have already been settled between the parties. Thus, **there was no reason for the Plaintiff to have wasted substantial judicial time** in keeping the matter pending after the Id. Division Bench order dated 17th May, 2012.*

10. **Today, Id. Counsel for the Plaintiff is seeking discharge. There is no other counsel appearing for the Plaintiff.** The authorised signatory of the Plaintiff in the present case is Mr. Sandeep Goel, (M. No.9837776671). The authorized signatory is also not present before the Court. The application seeking discharge states that notice has been issued to the Plaintiff, which has also been served upon the Plaintiff. Under these circumstances, Id. Counsel is discharged.

11. **In this background, the Court does not deem it necessary to keep the suit pending. The Plaintiff does not appear to have any interest in pursuing the present suit as it has not given instructions to the Id. Counsel. However, considering that this is a commercial trademark matter and substantial time, man power and costs have been incurred by the Defendant,** and substantial judicial time has also been expended in this matter, for the last 15 years and over ten years have elapsed since the passing of the Division Bench's order, **costs ought to be paid.** Accordingly costs of Rs.10,00,000/- is imposed upon the Plaintiff, out of which, a sum of Rs.5,00,000/- shall be paid to the Defendant and Rs.5,00,000/- shall be deposited by the Plaintiff to the Delhi High Court Legal Service Committee.

xxx xxx xxx”

(Emphasis Supplied)

23. In view of the aforesaid discussion, this Court is inclined to impose costs upon the appellant, in view of its conduct, which demonstrates apathy towards the judicial process.

24. Accordingly, the present appeal is dismissed in default and for non-prosecution, with cost of ₹10 lacs payable to the respondent by the appellant, within a period of eight weeks from today.



2024:DHC:5864



25. Consequently, the present appeal is disposed of in terms of the aforesaid directions, along with the pending applications.

MINI PUSHKARNA, J

JULY 29, 2024/kr