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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 1658/2023**

KANPUR FLOWERCYCLING PRIVATE LIMITED Petitioner

Through: Ms. Abhilasha Nautiyal, Mr. Mukul,
Advocates. (Mob. 9873941450)

versus

BHARAT BANSAL & ORS.

..... Respondents

Through: Mr. Rajan Narula, Ms. Shashi Pojha
and Ms. Shivangi Kohli, Advocates.
Mob. 9891584230

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

15.01.2024

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1. The present petition has been filed with prayer for seeking initiation of contempt proceedings against the respondents for violation of the order dated 27th September, 2023 passed by this Court in *CS(COMM) No. 215/2023* and the Settlement Agreement dated 12th September, 2023 entered between the parties before the Delhi High Court Mediation and Conciliation Centre ("Mediation Centre").

2. The petitioner had filed a suit, *CS(COMM) No. 215/2023*, for permanent injunction against the respondents for restraining them from infringement of trademarks, copyright, passing off, dilution, damages, etc. The said suit was referred for mediation in the Mediation Centre. Subsequently, Settlement Agreement dated 12th September, 2023 was



executed by the parties. Thus, the suit of the petitioner was decreed by this Court in terms of the Settlement Agreement, vide order dated 27th September, 2023.

3. It is submitted by learned counsel for the petitioner that by way of the aforesaid Settlement Agreement, the respondents were to cease use of the tagline ‘Made from temple flowers’ from 24th August, 2023 onwards, cease use of the packaging material similar as that of the petitioner and cease all use of the infringing packaging by 31st October, 2023.

4. It is submitted that the respondent is guilty of non-compliance of the Settlement Agreement dated 12th September, 2023. Learned counsel for the petitioner submits that the actual sale of the goods has taken place beyond the deadline. Further, marketing of the goods in the infringing packaging has also been done beyond the deadline as set in the Settlement Agreement between the parties.

5. Learned counsel for the petitioner has drawn the attention of this Court to the screenshots from various websites which show that as on 07th November, 2023, the respondents were using the tagline “Made From Temple Flowers”. Further, learned counsel for the petitioner has also drawn the attention of this Court to the screenshot from the website of ‘Blinkit’ dated 07th November, 2023, which points out to the fact that the respondents marketed the infringing products beyond the deadline as set in the Settlement Agreement. Further, learned counsel appearing for the petitioner has also drawn the attention of this Court to the screenshot from the website of the respondent, ‘Nirmalaya’, which shows the impugned packaging with the impugned tagline on 08th November, 2023.

6. Thus, it is submitted that the petitioner has been flouting the terms



and conditions of the settlement agreement.

7. Per contra, learned counsel appearing for the respondents submits that respondents have always been willing to stop any usage which infringes upon the design or the trade mark of the petitioner. He submits that in compliance with Clause 3 of the Settlement Agreement, the respondents have totally stopped the use of the tagline 'Made From Temple Flowers', as well as the packaging and the logos of the petitioner.

8. He further submits that the respondents have changed the tagline of their business to 'Made From Recycled Temple Flowers'.

9. Learned counsel further submits that at the time of signing the settlement agreement, the respondents were in possession of 600 boxes/Packaging of the impugned dry fruit packaging. He submits that the respondents have been able to sell 570 of the 600 boxes and that 30 boxes have already been discarded by them. However, learned counsel appearing for the petitioner disputes the aforesaid fact, in view of infringing evidence that has been placed on record.

10. Learned counsel for the respondents further undertakes that the Settlement Agreement dated 12th September, 2023 shall be complied with by the respondents in its letter and spirit and that the respondents shall not use either the packaging or the tagline of the petitioner.

11. Learned counsel appearing for the respondents also tenders an unconditional apology on behalf of the respondents and submits that whatever infringement had happened, the same was neither intentional nor deliberate. He further submits as of today there is no infringement on the part of the respondents.

12. Learned counsel appearing for the petitioner submits that in terms of



Clause 13 of the Settlement Agreement dated 12th September, 2023, the petitioner is entitled to damages @ Rs. 50,000/- per day. She further submits that in this regard the petitioner has already filed an execution petition being *EX.P. 90/2023*.

13. This Court has heard the parties and perused the record. This Court notes that there is incriminating material against the respondents on record, wherein the respondents have been shown to use the logo and the tagline as well as the packaging design of the petitioner even after the deadline as given in the Settlement Agreement dated 12th September, 2023 expired. However, this Court also notes the statement and undertaking of the respondents that the Settlement Agreement between the parties has now been fully complied with. This Court also records the unconditional apology given on behalf of the respondents, wherein an unconditional apology has been tendered to this Court for any non-compliance that has taken place at their end.

14. Recording the aforesaid undertaking and unconditional apology, this Court is not inclined to proceed with the contempt proceedings any further. Further, this Court also notes that the petitioner has already filed execution proceedings for the purposes of recovering damages from the respondents in terms of Clause 13 of the Settlement Agreement.

15. Learned counsel appearing for the petitioner has relied upon the Judgment passed by this Court in the case titled as *Nishu Bansal Versus Ajay Bansal*, *MANU/DE/8915/2007*. She relies upon Para 26 of the aforesaid judgment, which reads as under:

“xxx xxx xxx

26. It is well settled that the execution proceedings and contempt proceedings are independent of each other and they operate in two



different fields or spheres. As far as execution proceedings are concerned, it is filed by a party against his adversary to the litigation for enforcement of the rights and liabilities created under the decree or the order whereas, the contempt proceedings are initiated to uphold the prestige and the dignity of the court and majesty of law. As such, the pendency of an execution case is no bar to initiation of contempt proceedings so long as such proceedings are initiated to vindicate public confidence in the efficacy of the judicial system.

xxx xxx xxx”

16. There is no quarrel with the aforesaid proposition that as far as the execution proceedings are concerned, the same can be instituted independent of the contempt proceedings. However, in the present case since the petitioner is claiming damages @ Rs. 50,000/- per day on the basis of Para 13 of the Settlement Agreement, this Court is of the view that in order to assess the specified damages payable to the petitioner, the petitioner shall have to lead evidence, which can be done only in the execution proceedings. Therefore, the issue with respect to damages payable to the petitioner cannot be passed by this Court in the absence of any evidence in the present proceedings.

17. In view of the aforesaid, the present contempt proceedings are disposed of and the contempt notices issued to the respondents are discharged.

MINI PUSHKARNA, J

JANUARY 15, 2024

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