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

\+ CS(COMM) 503/2024

ARCHIAN FOODS PRIVATE LIMITED .....Plaintiff

Through: Mr. Sagar Chandra and Mr. Nikhil Sonkar, Advs.

versus

M/S BALAJI FOODS AND BEVERAGES & ANR. .....Defendants

Through: None

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **08.08.2025**

CS(COMM) 503/2024
I.A. 16482/2022 (Under Order VIII Rule 10 CPC)

1. The plaintiffs have filed the present suit seeking permanent injunction restraining infringement of trademark, copyright, passing off of trademark/trade-dress, piracy of registered design, unfair trade practices, rendition of accounts, along with other ancillary reliefs, under Sections 27(2), 29 and 135 of the Trade Marks Act, 1999 ('Trademarks Act'), Sections 51 and 55 of the Copyright Act, 1957 ('Copyright Act') and Section 22 of the Designs Act, 2002 (Designs Act).

Factual Matrix

2. The relevant facts, as stated in the pleadings are as under: -

2.1 The plaintiff, Archian Foods Private Limited, is a company engaged in the manufacture and marketing of traditional Indian flavored non-alcoholic beverages. Since its establishment in 2013, under the auspices of its predecessor, M/s Archian Foods, the plaintiff has built a notable reputation and brand identity with its wide array of products marketed under the 'LAHORI' formative trademarks. These formatives include well-known variants such as 'LAHORI ZEERA', 'LAHORI NIMBOO', and 'LAHORI KACHA AAM', among others.

2.2 The rights in the aforenoted trademarks and trade-dress are derived by the plaintiff from M/s Archian Foods, under the Deed of Assignment dated 30.11.2021, whereunder Archian Foods transferred all their intellectual property to the plaintiff. Archian Foods adopted the trademark 'LAHORI' in the year 2013 in respect of 'kulfi' sold by them. Soon thereafter, in 2015, the plaintiff diversified its business operations under the trademark 'LAHORI' and launched a non-alcoholic flavoured beverage called 'LAHORI ZEERA'.

2.3 Over the years, the plaintiff came up with several other products, including 'LAHORI NIMBOO', 'LAIIORI KACIHA AAM', 'LAHORI SHIKANJI', 'LAHORI IMLI BANTA', 'LAHORI ROOH SHARBAT', 'LAHORI TADKA LITCHI', 'LAHORI TEEKHA GUAVA' and 'LAHORI ZEERA GOLGAPPA'. The trade-dress/ packaging/ label of plaintiff's LAHORI products bear several unique features such as arrangement of content, get up, colour combination etc.

2.4 Through strategic branding and high-quality offerings, plaintiff has successfully positioned itself as a prominent player in the non-alcoholic beverage sector, achieving sales figures of approximately Rs. 432 crores[1]

[1] As mentioned at paragraph 10.3 of the plaint.

as of March 2023.

2.5 It is averred in the plaint that, in the course of its business operations, the plaintiff has ensured that its products are not only of top quality but also adhere to global standards, being accredited by various regulatory bodies including FSSAI and ISO. The plaintiff has continuously innovated its product offerings, garnering significant consumer trust and goodwill. The distinctiveness of its branding, encapsulated primarily through its carefully crafted trade dresses and innovative bottle designs, solidifies its market presence. Plaintiff has taken proactive steps to protect its intellectual property, registering multiple trademarks and designs that are vital to its business equity.

2.6 The plaintiff has obtained registrations in respect of several of its LAHORI formative trademarks/trade-dress in Class 30 and 32, details of which are given at paragraph 10.4 of the plaint. Besides these registrations, the Plaintiff has also filed about 19 trademark applications for registration of stylized variants of LAHORI marks in class 32, inter alia in respect of non-alcoholic drinks and other beverages, which are currently pending. The details of said applications have been set out in paragraph 10.5 of the plaint.

2.7 It is averred that plaintiff's trademark ‘LAHORI ZEERA’, which is amongst the most popular plaintiff's brands/products. As noted above, this mark was adopted by the plaintiff in 2015. In 2022, plaintiff devised the logo ‘ ’, and the trade-dress

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’ for its goods.

2.8 The plaintiff has also obtained a copyright registration bearing No. A-146655/2023 for the ‘LAHORI ZEERA’ label- 

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2.9 The plaintiff also got the bottle of the ‘LAHORI ZEERA’ product ‘’ registered under the Designs Act, 2000 bearing Design No. 352339-001. For reference the photograph set out at paragraph 4 of this application is reproduced 

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2.10 The cause of action arises from the defendants' unlawful use of trademarks, including a deceptively similar mark, ‘LAHOR ZEERA’ and an imitative trade dress ‘

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’ that closely resembles

that of the plaintiff's trademark/trade-dress '

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Submissions on behalf of the plaintiff

3. Learned counsel for the plaintiff submits that the sale of goods under the trademark/trade-dress 'LAHORI ZEERA' for the year 2022-23 has been Rs. 203 crores. He submits that on account of long and continuous use, extensive promotional campaign and marketing, enormous sale and quality control, the plaintiff's trademark/trade-dress 'LAHORI ZEERA' have acquired enviable goodwill and reputation amongst the members of trade and public at large.

3.1 He states that defendants (i.e., defendant nos. 1 & 2) were producing, marketing, and distributing non-alcoholic beverages including sodas, using a logo and branding that closely resembles the plaintiff's trademark/trade-dress 'LAHORI ZEERA'.

3.2 He states that the plaintiff filed the present suit on 29.05.2024, alleging trademark infringement and unfair competition due to the defendants' use of a mark/trade-dress 'LAHOR ZEERA', which is similar to the plaintiff's established trademark/trade-dress 'LAHORI ZEERA'.

3.3 He states that on 31.05.2024, the plaintiff was granted an ex-parte ad-interim injunction, whereby the defendants were restrained from using, manufacturing, advertising, or selling any products under the impugned mark/trade-dress ‘LAHOR ZEERA’, thereby preventing confusion among consumers.

3.4 He states that following this, a local commission was carried out on 10.06.2024, at the defendants' premises, where evidence of the infringing products bearing the impugned mark ‘LAHOR ZEERA’ were found. He states that the local commissioner interacted with a guard at the location, who identified the owner and informed that the factory is operational only when they get orders. A copy of the order dated 31.05.2024 along with the complete suit paper-book was served to the guard; additionally, the copy of the order dated 31.05.2024 was also served through WhatsApp messenger by the Local Commissioner to one Mr. Nishant Kumar who was identified as the proprietor of defendant no. 1.

3.5 He states that the summons in the captioned suit were also issued to the said defendants vide order dated 31.05.2024 and in compliance of the same, the plaintiff duly filed the process fee on 11.06.2024 vide diary no. 1792195/2024 for issuance of summons. He states that subsequently, the summons were issued by the Registry of this Court on 19.06.2024.

3.6 He states that attempts to serve summons to the defendants were initially unsuccessful due to address issues, prompting the plaintiff to seek Court’s permission on 24.10.2024, to serve them via email and WhatsApp, which was ultimately successful. He states that on 10.03.2025, the Court recorded that summons had been served but the defendants failed to respond, and the defendants right to file the written statement was closed.

3.7 He states that vide order dated 08.04.2025, the Court ordered the defendants be proceeded ex-parte and the interim injunction granted vide order dated 31.05.2024 was confirmed till the final adjudication of the present suit.

3.8 He submits that therefore, a reasonable cause has been made out by the plaintiff to pass a judgment against the defendants who never entered appearance nor filed their written statements despite several services.

3.9 He prays that in view of the aforesaid facts and circumstances; an ex-parte decree may be passed in favor of the plaintiff herein in terms of the prayer clauses mentioned at paragraph 46 of the plaint.

3.10 Learned counsel has handed over the list of dates and events.

Findings and Analysis

4. The Court has heard the learned counsel for the plaintiff and perused the record of the case.

5. The predecessor bench of this Court vide Order dated 31.05.2024 issued summons in the present suit and also granted an ex-parte ad-interim injunction in favour of the plaintiff, restraining the defendants or anybody acting on their behalf, from using, manufacturing, selling, offering for sale, importing, exporting or advertising in any manner, including on the internet and e-commerce platforms, or directly or indirectly dealing with flavored/non-flavored non-alcoholic beverages/ drinks and soft drinks, including soda and other carbonated drinks, or any other cognate and allied goods under the impugned mark/logo, packaging/label ‘

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', 'LAHOR ZEERA' or any other mark/logo/trade-dress/ packaging/ getup that may be identical or deceptively similar to the plaintiff's mark 'LAHORI ZEERA' '

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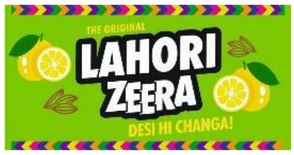
' or any other mark/logo/ trade-dress/ packaging/ getup that may be identical or deceptively similar to the plaintiff's marks 'LAHORI ZEERA' ' LAHORI ZEERA / 

' that would amount to infringement of the plaintiff's registered trademark nos. 3501393, 3260534, 4673809, 4673811, 4673808, 4673810 and 5582577, passing off of the impugned products as that of the plaintiff's, and/or infringement of plaintiff's registered copyright bearing No. A-146655/2023.

6. The learned Joint Registrar (J), vide order dated 24.10.2024, recorded that defendants could not be served with summons either through the ordinary mode or through speed post, but were served through email on 07.08.2024 and also permitted the plaintiff to serve Mr. Nishant Kumar, proprietor of defendant no.1 through WhatsApp messenger.

7. It is pertinent to note that on 17.12.2024, the learned Joint Registrar

(J) recorded that the defendants were served with summons on 29.10.2024, however no appearance was marked on behalf of the defendants.

8. Subsequently, on 10.03.2025, the defendants' right to file written statements were closed by the learned Joint Registrar (J) and vide order dated 08.04.2025, the predecessor bench of this Court ordered the defendants to be proceeded ex-parte in the present suit along with confirming the interim order dated 31.05.2024 till the final disposal of this suit.

9. At this stage, it would be apposite to refer to Order VIII Rule 10 of Code of Civil Procedure, 1908. The said rule reads as under: -

> "**10. Procedure when party fails to present written statement called for by Court.—** Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

10. It would be relevant to refer to the dicta of **Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.**[2], wherein the Co-ordinate Bench of this Court held that in matters where Defendant is proceeded ex-parte, the Court upon its satisfaction can pass a decree for permanent injunction on the basis of the pleadings filed on affidavit. The relevant part of the order reads as under: -

> "**3.** The plaintiffs have given the address of the defendant of Bangalore, Karnataka. The affidavit of service dated 26.11.2012 has been filed by the Court Clerk of the Advocate for the plaintiffs to the effect that notice was sent to the defendant by Blue Dart Courier on 15.11.2012 and was delivered on

[2] 2013 SCC OnLine Del 508

16.11.2012. There is no reason for this Court to disbelieve the said affidavit emanating from the chamber of the Advocate for the plaintiffs and it has to be presumed that the shipment which has been reported to be delivered to the defendant contained the summons of the suit and notice of the application together with copies of the plaint, application and other documents etc. If it is discovered otherwise, of course the Advocate for the plaintiffs would be accountable. The defendant is thus proceeded against ex-parte.

4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiff's states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

(Emphasis Supplied)

11. The averments made in the plaint and the evidence on record suggest that the defendants are engaging in unfair competition by manufacturing and marketing their products using packaging, labels, and a bottle design that infringes upon the plaintiff's copyright, trademarks, and design registrations. The defendants, knowingly or unknowingly, aim to mislead consumers into believing their products are associated with the plaintiff, thus violating the trademark rights that the plaintiff has cultivated over

years of business and marketing endeavors.

12. Since the said defendants have failed to take any requisite steps to contest the present suit, despite having suffered an ad-interim injunction order, it is evident that they have no defence to put forth on merits.

13. Given the extent of the defendants' actions, which fundamentally compromise the integrity of the plaintiff's recognizable trademarks and trade dresses, plaintiff has suffered irreparable harm causing serious revenue losses to the plaintiff. The misuse of plaintiff's trademarks not only harms its business but also misleads consumers, compromising their trust in the quality and origin of the products they purchase.

14. Given the fact that the plaint has been duly verified and is supported by the affidavit of the plaintiff and in view of the aforesaid, this Court is of the view that this suit does not merit trial, and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

15. In view of the aforesaid, this Court is of the view that the plaintiff is entitled to relief of permanent injunction as claimed in the plaint. Accordingly, a decree of permanent injunction is passed in favour of the plaintiff and against defendants in terms of prayer clauses 46(a to f) of the plaint. The interim order dated 31.05.2024 shall merge into the final decree of permanent injunction.

16. With respect to prayer clause 46(h) of the plaint for delivery up, in view of the report of the Local Commissioner dated 21.06.2024, recording that only 8 labels of the infringing mark and some bottles were found in the garbage, it appears from the record that there is no further infringing material available with the Defendants. The Plaintiff has also not brought on record any further use of the infringing materials by Defendants, after

31.05.2024. Therefore, no decree of delivery up is being passed.

17. For the purpose of awarding damages in exercise of jurisdiction under Order VIII Rule 10 read with Order XIII-A CPC, in a case where the Defendant is proceeded ex-parte, this Court has perused the judgment dated 08.02.2024 passed in **Geneva Laboratories Ltd. v. Mr. Jay Khodiyar**[3], wherein the co-ordinate bench has awarded nominal damages to the plaintiffs on a notional basis.

18. The Plaintiff has also prayed for rendition of account and damages in the suit at prayer clauses 46(i and j) of the plaint. The Plaintiff has not led any evidence for the said relief. As per the Local Commissioner's report dated 21.06.2024, only 8 labels of the infringing mark and some bottles were found in the garbage. Having perused the averments in the plaint, and the Local Commissioner's report, this Court is satisfied that Defendants' actions of adopting the impugned mark are not innocent and invites award of nominal damages so as to deter the Defendants from indulging in from any further illegal activities. In this view of the matter, nominal damages of Rs. 50,000/- are awarded in favour of the Plaintiff and against the Defendants.

19. Plaintiff is also entitled to actual costs, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022 from the Defendant. The Plaintiff shall file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 31.03.2024. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

20. Let the decree sheet be drawn up accordingly.

21. With the aforesaid directions, this suit along with pending applications (if any) stands disposed of.

22. All future dates stand cancelled.

MANMEET PRITAM SINGH ARORA, J

AUGUST 8, 2025/mt/AM

[3] 2024:DHC:1230, at para 16, 17 and 19.