



2025:DHC:2873



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

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Date of decision: 15th April, 2025+ **CS(COMM) 895/2022****M/S HARI CHAND SHRI GOPAL**

.....Plaintiff

Through: Ms. Prachi Agarwal, Mr. Manan Mondal and Ms. Elisha Sinha, Advocates.

versus

CHAURASIA TOBACCO PRODUCTS

.....Defendant

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. Since 14th April, 2025 was declared a Court holiday, the matters listed on 14th April, 2025 are being taken up today i.e. 15th April, 2025.
2. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark and copyright of the plaintiff, passing off their goods as that of the plaintiff, along with other ancillary reliefs.

CASE SET UP BY THE PLAINTIFF

3. The plaintiff, M/s Hari Chand Shri Gopal, is the producer and seller of flavoured chewing tobacco and other tobacco products that are sold under the trademark 'GOPAL' and are also manufactured by Gopal Aromatic Pvt.



2025:DHC:2873



Ltd (licensee of few of the trademarks of the plaintiff).

4. The trademark 'GOPAL' was coined after the name of the current Chairman of the Group, Mr. Sri Gopal Gupta. The plaintiff has continuously and extensively been using the 'GOPAL' trademark as a part of its trade name 'Hari Chand Shri Gopal' and also as a trademark for its products, including with numerals and/or the 'Lord Krishna' device since 1950. The table showing various registrations of the mark 'GOPAL' and its variations thereof, including but not limited to 'GOPAL 60', 'GOPAL ZARDA 60', 'DELUXE GOPAL ZARDA 60' under Class 34 along with copies of Registration Certificates as issued by the Registrar of Trade Marks have been exhibited as **EXHIBIT PW -1/9** and **EXHIBIT PW -1/10 (Colly)**.

5. The tobacco products of the plaintiff under the trademark 'GOPAL' and the 'Lord Krishna' device, are sold in distinctive pouches and containers with a unique colour combination, lay out and get up, which constitute original artistic works under the Copyright Act, 1957. The plaintiff has also obtained copyright registrations regarding the lay out, get up and colour combination on the packaging of a few of their products including the 'Lord Krishna' Device. The table showing various copyright registrations secured by the plaintiff and the copies of Copyright Registration Certificates as issued by the Registrar of Copyrights have been exhibited as **EXHIBIT PW -1/12** and **EXHIBIT PW -1/13 (Colly)**.

6. The plaintiff's products bearing the mark 'GOPAL' had annual sales of Rs. 376.96 crores (approx.) in the financial year 2018-2019 in India. The sales figures for the period between 1995-2019 in respect of plaintiff's products bearing the mark 'GOPAL' in India have been supported by a CA Certificate and exhibited as **EXHIBIT PW -1/7**. The plaintiff's marketing



2025:DHC:2873



expenses during the period 1995-2019 for the aforesaid products in India have been supported by a CA Certificate and exhibited as **EXHIBIT PW - 1/8**.

7. By virtue of extensive sales and promotion pertaining to the products under the plaintiff's 'GOPAL' marks, the same have acquired tremendous goodwill and reputation and have thus become a source identifier for the plaintiff across the country.

8. In the last week of November 2022, the defendant was found to be manufacturing and selling flavoured chewing tobacco under the impugned mark 'GOPAL 65' claiming user since 2022, along with the numeral 65 and a 'Lord Shiva' device. A sample of the same was procured by Mr. Rajesh Kumar, an employee of Gopal Aromatic Private Limited, on 28th November, 2022 from Rajesh Kirana and General Store, Main Bazat Yusufpur, Mohamadabad, Ghazipur.

9. Accordingly, the plaintiff filed the present suit on 21st December, 2022 seeking to restrain the defendant from carrying on their infringing activities.

CASE SET UP BY THE DEFENDANT

10. Defendant is a proprietorship firm and Mr. Rajesh Kumar Chaurasiya is the sole proprietor of the said firm. The defendant is engaged in the business of marketing and selling of tobacco products included in Class 34.

11. The defences taken by the defendant in the written statement are as follows:

11.1. The plaintiff has no exclusive right in the word 'GOPAL' as the word is highly generic in nature. The word 'GOPAL' is one of the names of Lord Krishna and any person who has faith in Hindu religion can use the said



2025:DHC:2873



word for any purpose. Therefore, it is submitted that the use of the word 'GOPAL' as trademark by the defendant cannot be said that the defendant has copied the trademark of the plaintiff and as such the defendant is not infringing or passing off the plaintiff's trademark/artistic work.

11.2. That the defendant *bonafidely* adopted the trademark/label 'RAJESH GOPAL 65' and started using the said trademark/label/device since September, 2022. It is stated that the defendant has been using the said trademark continuously, extensively and openly in relation to its said goods/products since then and such user was well within the knowledge of the plaintiff since the beginning.

PROCEEDINGS IN THE SUIT

12. On 22nd December, 2022, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff restraining the defendant from manufacturing, selling and advertising the tobacco related products bearing the trademark 'GOPAL 65' with 'Lord Shiva' device mark logo or any other mark identical with or deceptively similar to plaintiff's registered marks. This Court also appointed a Local Commissioner to visit the defendant's premises.

13. The Local Commissioner conducted the commission on 27th December, 2022 at the defendant's premises. The Local Commissioner seized at least 592 cartons of the infringing products using the mark 'GOPAL 65' and 'Lord Shiva' device from the shop as well as from the house of the defendant.

14. Counsel for the defendant entered appearance on 13th March, 2023. *Vide* order dated 4th May, 2023, the written statement filed on behalf the defendant was taken on record subject to payment of Rs. 2000/- as cost to



2025:DHC:2873



the plaintiff.

15. *Vide* order dated 14th July, 2023, the parties were referred to the Delhi High Court Mediation and Conciliation Centre. However, the mediation failed.

16. Thereafter, the defendant was proceeded against *ex-parte vide* order dated 22nd January, 2024 due to repeated non-appearance on behalf of the defendant since 14th July, 2023. In the same order, the Court directed the plaintiff to file evidence by way of affidavit within four (4) weeks.

17. The plaintiff filed the evidence of Mr. Manoj Gupta (PW-1) affirming the facts of the plaint. *Vide* order dated 19th July, 2024, the examination in chief of PW-1 was concluded and the plaintiff's evidence was closed.

18. Neither any cross examination of the plaintiff's witness was carried out by defendant nor any evidence was led on behalf of the defendant.

19. *Vide* order dated 13th September, 2024, the plaintiff was granted four weeks' time to file written synopsis. Subsequently, the plaintiff filed the written note of arguments on 16th January, 2025.

ANALYSIS AND FINDINGS

20. I have heard the submissions of Ms. Prachi Agarwal, learned counsel for the plaintiff and also perused the material on record.

21. From the evidence on record, the plaintiff has been able to prove that it is the registered proprietor of the trademark 'GOPAL 60' and other formative marks as well as the registered proprietor of copyright in 'Lord Krishna' device. Due to its long and continuous use and extensive sales and promotion pertaining to the products under the plaintiff's 'GOPAL 60' mark and other formative marks, the same have acquired tremendous goodwill and reputation.



2025:DHC:2873

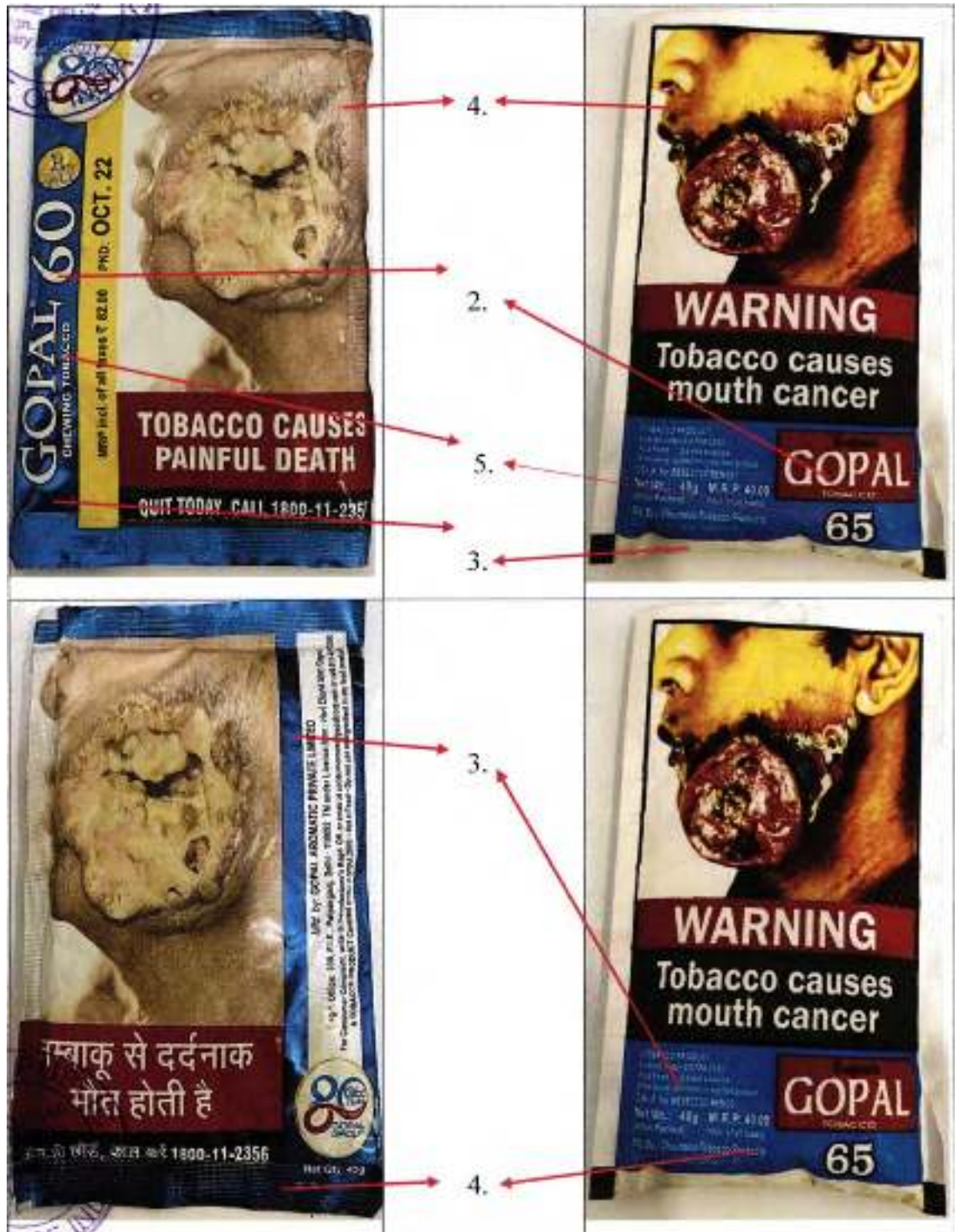


22. The plaintiff has placed on record images of the defendant's impugned trademarks/packaging to show that the defendant is indulging in infringement and passing off of the plaintiff's registered mark 'GOPAL 60'. The similarities between the plaintiff's marks/packaging and the defendant's impugned marks/packaging as per the plaint are set out below:





2025:DHC:2873





2025:DHC:2873



S. No.	ELEMENTS OF DECEPTIVE SIMILARITY BETWEEN GOPAL 60 v. GOPAL 65
1.	Identical usage of the device of a Hindu deity in a circle adjacent to the 'GOPAL' mark
2.	Identical usage of the mark 'GOPAL' with a numeral
3.	Identical usage of blue and white colour combination
4.	Identical usage of a pouch for the tobacco product
5.	Identical placement of the word 'tobacco' in white font right below 'GOPAL'

23. The comparison above categorically shows that the word marks and packaging used by the defendant are nearly identical in terms of colour combination, arrangement of letters and figures. The similarities are highlighted below:

- The defendant merely removed the numeral '60' from the plaintiff's word mark 'GOPAL 60' and replaced it with numeral '65' to arrive at the word mark 'GOPAL 65'. Hence, the defendant's mark bears phonetic, structural and visual similarities to that of the plaintiff.
- The defendant has also copied the blue and white colour combination on its packaging.
- The placement of the word 'tobacco' in white font right below the mark 'GOPAL' is also copied by the defendant.

24. Hence, the defendant has replicated the contents, colour scheme, and the word marks/ device marks of the plaintiff's packaging as well as the trademark.

25. Based on the discussion above, a clear case of infringement of



trademark and copyright is made out. The defendant has taken unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and has also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered mark without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

26. In view of the discussion above, the plaintiff would be entitled to a decree of permanent injunction against the defendant.

27. Counsel for the plaintiff presses for the reliefs of damages and costs.

28. Reference in this regard may be made to the judgment in **Aero Club v. M/s Sahara Belts**, 2023 SCC OnLine Del 7466. The relevant observations are set out below:

“20. In view of Order 26 Rule 10(2) CPC, 1908 and the judgment discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. In the present case, the photographs of the counterfeit products which are placed on record and the inventory which has been prepared, is also not denied by the Defendant either in the pleadings or in its reply. Accordingly, the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence to assess the damages, as the same stands unchallenged.”.

29. The aforesaid observations are applicable in the present case. Insofar as the reliefs of damages and costs sought in prayer clauses 52(vi) and 52(viii) of the plaint are concerned, it is relevant to note that during the execution of the commission, large quantities of products bearing the ‘GOPAL 65’ mark were found at the shop as well as the house of the defendant.

30. In light of the foregoing analysis, this Court concludes that the conduct of the defendant not only warrants but also necessitates the



2025:DHC:2873



imposition of both damages and costs. To be noted, the plaintiff has spent Rs. 2,00,000/- towards court fees and Rs. 1,25,000/- towards the fees of Local Commissioner. Thus, in addition to a decree of permanent injunction passed in terms of prayer clauses 52(i) to 52(iv) of the plaint and taking into account the entire facts and circumstances of this case, this Court also awards damages and costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendant.

31. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

32. Let the decree sheet be drawn up accordingly.

33. All pending applications stand disposed of.

AMIT BANSAL, J

APRIL 15, 2025

Vivek/-