

Grm Foodkraft Pvt Ltd And Anr vs Ks Agro Impex And Anr on 1 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 637/2024 & I.A. 35064/2024, I.A.
35066/2024, I.A. 35067/2024, I.A. 35068/

GRM FOODKRAFT PVT LTD AND ANR.

Through: Ms. Shwetasree Maju
Utkarsh Joshi, Ms.
Anjali Menon,
(M:9013155901)

versus

KS AGRO IMPEX AND ANR.

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

OR

% 01.08.2024 I.A. 35067/2024 (Exemption from filing clear/certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing translated copies, clearer copies/documents with correct margins.

2. Exemption is granted, subject to all just exceptions.

3. Plaintiffs shall file legible, clear, and original copies of the documents, on which the plaintiff may seek to place reliance, within four weeks from today, or before the next date of hearing.

4. Accordingly, the present application is disposed of. I.A. 35066/2024 (For Additional Documents)

5. The present is an application under Order XI Rule 1(4), read with Section 151 of CPC, seeking leave to file additional documents.

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6. The plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

7. The application is disposed of, with the aforesaid directions. I.A. 35065/2024 (Exemption from Pre-Institution Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, for exemption from undergoing Pre-institution Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

10. Accordingly, the application stands disposed of. I.A. 35068/2024 (Application under Section 63(4)(c) of the BSA)

11. This is an application under Section 151 CPC seeking extension of thirty days for filing Hash Report under Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023 ("BSA").

12. In view of the averments made in the application, the same is allowed, and extension as sought, is granted.

13. Let the needful be done, accordingly.

14. With the aforesaid directions, the application is disposed of. I.A. 35172/2024 (Exemption from advance service to the defendants)

15. The present is an application under Section 151 CPC seeking exemption from advance service to the defendants.

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16. The plaintiffs seek urgent interim relief. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

17. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 637/2024

18. Let the plaint be registered as suit.

19. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from

the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiffs documents, without which, the written statement shall not be taken on record.

20. Liberty is given to the plaintiffs to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiffs, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiffs, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

21. List before the Joint Registrar (Judicial) for marking of exhibits, on 18th September, 2024.

22. List before the Court on 04th October, 2024.

I.A. 35064/2024 (under Order XXXIX Rules 1 and 2, CPC)

23. The plaintiffs have filed the accompanying suit seeking a decree of permanent injunction restraining the Defendants from passing off their This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 03:42:50 trademark, trade dress and from infringing the copyright residing in the product packaging, as well as for rendition of accounts, damages amongst others.

24. Learned counsel for the plaintiffs submits that in the year 2021, the plaintiff launched its product „Golden Sella Basmati Rice under the trademark and sub-brand „Zarda King in various sizes of packaging. It is submitted that there are several unique features which constitute the trade dress of the product, as is apparent from the image of the packaging, which is shown as under:

25. It is submitted that the trade dress of the plaintiffs product clearly shows that the same is with a green and gold colour scheme. There is exclusive and proprietary gold lettering in English, which has been aesthetically designed to resemble the Urdu/ Arabic script. The prominent appearance of the name „Zarda King in the centre, is in a uniquely stylized/ This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 03:42:50 designed golden font in two lines. A design of hanging stars and lanterns at the top of the packaging in golden colour, is also there. The trade dress also includes a crescent-shaped moon with a star placed near its centre, on the top of the pack and a depiction of a plate of pulao, at the bottom of the packaging. Thus, it is submitted that the distinct packaging for the „Zarda King Golden Sella Basmati Rice of Plaintiff No.1, qualifies both as an original trade dress, that is protected under the Trade Marks Act, 1999, and also as an „original artistic work proprietary to Plaintiff No.1, within the Copyright Act, 1957.

26. Learned counsel for the plaintiffs submits that the trademark bearing application No. 5669692 filed on 4th November 2022, stands assigned to Plaintiff No.1 by virtue of an assignment deed dated 13th July, 2023. The trademark bearing application No. 5669694, filed on 4th November 2022, stands assigned to Plaintiff No.1 by virtue of an assignment deed dated 13th July, 2023.

27. Attention of this Court has been drawn to various sales figures of the plaintiffs products, as also the marketing and advertising expenses undertaken by the plaintiff no.1, for popularizing its brand.

28. Attention of this Court has also been drawn to the documents showing This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 03:42:50 application filed by the plaintiffs for trademark with the device, which is reproduced as under:

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29. It is submitted that the said application is still pending.

30. Attention of this Court has also been drawn to the registration in favour of the plaintiffs for the trademark with the device, which is reproduced as under:

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31. It is submitted that in the first week of July, through trade channels, where the plaintiffs usually release their products, the plaintiffs learnt of the availability and sales of the impugned product of defendant No 1, i.e., Basmati Golden Sella Rice. It is submitted that the impugned product was being sold in packaging that closely resembled the packaging of plaintiff No. 1 s product. Thus, it is submitted that it is clear that defendant No. 1 was seeking to replicate the unique colour scheme and style of fonts, as well as the leading word mark, in order to ride on the reputation of plaintiff No.1 s „Zarda King product in the market.

32. It is submitted that on 13th July, 2024, an associate of plaintiff No.1 purchased the product of defendant no.1 with the impugned product packaging/ trade dress from one „Shri Balaji Rice Udyog . The photograph of the defendant No.1 s product, is reproduced as under:

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33. It is submitted that the plaintiffs were surprised to see that the packaging of defendant No. 1 had almost identically replicated the prominent features of their product packaging, i.e., green and gold colour scheme; the exclusive and proprietary gold lettering in English, which was aesthetically designed to resemble the Urdu/ Arabic script; the use of the name „Zarda in golden fonts; the stylisation of the font with diamond shaped dots unevenly distributed between the words "Zarda Special", identical to that used in plaintiff No. 1's product and the design of „hanging stars and lanterns at the top of the packaging in golden colour, and depiction of a plate of pulao at the bottom of the packaging.

34. Learned counsel for the plaintiffs has shown to this court the packaging used by the plaintiffs and defendant no.1, in order to prove the point of similarity in the trade dress used by defendant no.1, to that of the product of the plaintiffs.

35. It is submitted that it is clear that the intention behind using the deceptively similar packaging by defendant no.1 was only to create an undue confusion in the mind of the public to purchase their products in place of plaintiffs' products. Further, the impugned product of defendant No. 1, is also likely to create an association in the minds of consumers with the products of and brand value/goodwill of plaintiff No 1.

36. It is submitted that with a view to assess the effect of the defendants' product packaging on the members of the trade and the public, the plaintiffs commissioned a market survey in the month of July, 2024. The results of the survey revealed that the defendants' product packaging and trade dress, is in fact, being confused for that of the plaintiffs'.

37. Attention of this Court has been drawn to pdf page no. 33 of the This is a digitally signed order.

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38. Thus, it is submitted that the mala fide intent of defendant No. 1 in creating a product packaging, that is deceptively and confusingly similar to that of the plaintiffs, is apparent from the fact that none of the other large competitors, who sell Golden Sella Basmati Rice, use packaging that is similar to that of the plaintiffs.

39. Attention of this Court has been drawn to the packaging of the various sellers, which is distinctively different from that of the plaintiffs.

40. Learned counsel for the plaintiffs submits that it is clear that defendant no.1 has adopted a nearly identical packaging to the plaintiffs. The use of the mark "ZARDA SPECIAL" by defendant No.1 is clearly intended to create an association with the plaintiffs, and to pass off its products as those of the Plaintiffs.

41. The defendant No. 1 is operating within the same industry and was undoubtedly aware of the plaintiffs brand and the use of the mark "ZARDA KING". This deliberate adoption of nearly identical packaging and the mark "ZARDA SPECIAL", shows a clear intent to closely imitate the plaintiffs packaging, and unjustly benefit from this imitation.

42. Thus, it is submitted that the defendant No.1 s unauthorized use of nearly identical packaging and the mark "ZARDA SPECIAL", creates a significant likelihood of consumer confusion.

43. Accordingly, having heard learned counsel for the plaintiffs, this Court is of the view that the plaintiffs have been able to establish a prima This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 03:42:51 facie case in their favour. The balance of convenience is also in favour of the plaintiffs and against the defendants. Irreparable loss shall be caused to the plaintiffs, if interim orders are not passed, in favour of the plaintiffs.

44. Accordingly, till the next date of hearing, an ex-parte ad interim injunction, is issued against the defendants, their employees, partners, servants, agents, representatives and all other persons/entities in active concert or participation with them, thereby, restraining them from selling, offering for sale, advertising their product in trade dress/packaging, which is confusingly or deceptively similar to the packaging and trade dress of the plaintiff, and/or variations thereof, thereby amounting to passing off the trade dress of the plaintiffs product.

45. However, it is made clear that defendant No.1 is free to carry on its business by using different trade dress/packaging, which is distinct and separate, and is not deceptively similar, as that of the plaintiffs.

46. Issue notice to the Defendants by all modes.

47. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

48. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of 10 days from today.

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49. List before the Court on 04th October, 2024.

MINI PUSHKARNA, J AUGUST 1, 2024 au This is a digitally signed order.

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