

Anhueser Busch Llc vs Rishav Sharma & Ors on 30 July, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 288/2020, IAs 6320/2020, 6321/2020, 6322/2020 & 6323/2020

ANHUESER BUSCH LLC

.....Plaintiff

Through: Mr. Praveen Anand, Adv. with
Mr. Aasish Somasi & Mr.
Shantanu Sahay, Adv.

versus

RISHAV SHARMA & ORS

..... Respondents

Through: Ms. Mamta R. Jha, Adv. with
Ms. Shruttima Ehersa &
Ms. Sakshi Jhalani, Adv. for
D-4/Google LLC

Mr. Deepak Gogia, Adv. for
D-5

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% 30.07.2020 This matter is being heard through video-conferencing.

Exemption allowed subject to all just exceptions. Application is disposed of.

IA 6323/2020 (by plaintiff seeking exemption from filing court fees) Subject to the applicant / plaintiff filing the necessary Court fee within 72 hrs from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court, exemption from filing the requisite court fees is granted. Application is disposed of.

IA 6321/2020 (by plaintiff under Order 11 Rule 1 (4) (amended by the Commercial Courts, Commercial Division and Commercial Appellate Divisions of High Courts act, 2015) read with Section 151 of CPC seeking leave to file additional documents) For the reasons stated in the application, the same is allowed and plaintiff is granted 30 days time from the resumption of the

regular functioning of the Court to file additional documents. Application is disposed of.

CS(COMM) 288/2020 Issue summons on the suit to the defendants. Ms. Mamta R. Jha accepts summons for defendant No. 4 and Mr. Deepak Gogia accepts summons for defendant No.5 respectively. Defendants 4 and 5 shall file written statement within 30 days along with affidavit of admission and denial of documents filed by the plaintiff.

Replication shall be filed within 30 days of the receipt of the written statements / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendants 4 and 5. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

Let summons be issued to defendant Nos. 1 to 3 and 6, returnable before Joint Registrar on 16th October, 2020.

Summons shall state that the written statement shall be filed by the defendants within 30 days from the date of receipt of summons along with affidavit of admission and denial of documents filed by the plaintiff.

Replication shall be filed within 30 days of the receipt of the written statements / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendant Nos. 1 to 3 and 6. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines. IA6320/2020 (by plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 CPC)

1. This is an application filed by the plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 CPC with the following prayers:-

"1. It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue:

a. An ad interim injunction restraining the Defendant no. 1, 2 and 3, their partners, agents, assigns, officers, servants, affiliated entities, as the case may be, and all others acting for and on their behalf from reproducing, broadcasting, communicating to the public, screening, publishing and distributing the impugned video or any other video on any media or platform and promoting the impugned video on various social media amounting to infringement Plaintiff's registered mark 'Budweiser's described in the suit at paragraph 26;

b. An ad interim injunction restraining the Defendant no. 1, 2 and 3, their partners, agents, assigns, officers, servants, affiliated entities, as the case may be, and all others acting for and on their behalf from reproducing, broadcasting, communicating to the public, screening, publishing and distributing the impugned video and posts on any media or platform amounting to unfair competition and commercial disparagement

of the Plaintiff's products including but not limited the video/post published on i. https://twitter.com/the_fauxy/status/1280778856832487424, ii. <http://twitter.com/TheFauxyHindi/statuses/1280797888172285953>, iii. <https://www.instagram.com/p/CCYLlHGAmTu/> iv. <https://www.youtube.com/watch?v=gUOGDm2Yr8s&feature=youtu.be> c. An ad interim injunction restraining the Defendant no. 1, 2 and 3, their partners, agents, assigns, officers, servants, affiliated entities, as the case may be, and all others acting for and on their behalf from reproducing, broadcasting, communicating to the public, screening, publishing and distributing the impugned video on any media or platform and promoting the impugned video on various social media amounting to dilution and tarnishment of the goodwill and reputation the Plaintiff's brand 'Budweiser';

d. An ad interim injunction the Defendant No. 4, 5 and 6 to suspend the content from their platforms at the respective links provided below until ordered otherwise by the Court: i. https://twitter.com/the_fauxy/status/1280778856832487424, ii. <http://twitter.com/TheFauxyHindi/statuses/1280797888172285953>, iii. <https://www.instagram.com/p/CCYLlHGAmTu/> iv. <https://www.youtube.com/watch?v=gUOGDm2Yr8s&feature=youtu.be> e. An ad interim order directing Defendants No. 4, 5 and 6 to suspend the links listed in Annexure A and filed herewith the suit, which are promoting the fictitious news of Plaintiff's employees urinating in Budweiser beer and causing irreparable injury to the Plaintiff.

Any further order or orders as this Hon'ble Court may deem fit and proper under facts and circumstances of this case."

2. It is the submission of Mr. Praveen Anand, learned counsel for the plaintiff that this suit has been instituted against defendant No. 1 Mr. Rishav Sharma, defendant No. 2 Ms. Apala Bisht and defendant No. 3 unknown proprietors of the website www.thefauxy.com to protect the intellectual property rights and the reputation of plaintiff. According to Mr. Anand, the trademark rights of the plaintiff have been infringed and its reputation tarnished by the defendants posts on social media including Twitter and YouTube which perpetrate fake news stating that the employees of the plaintiff have been urinating in the beer sold to its customers. According to Mr. Anand, the impugned posts published on the website www.thefauxy.com, Twitter page for The_Fauxy and the YouTube page depict a short video in the form of a news report by defendant no. 2 Apala Bisht and defendant No. 3's reporter Mr. Rishav Sharma, who is defendant No.1 also. According to Mr. Anand, the impugned links are available on the following links:-

Post Link	Account	Channel
https://twitter.com/the_fauxy/status/1280778856832487424	@the_fauxy	Twitter
http://twitter.com/TheFauxyHindi/statuses/1280797888172285953	@TheFauxyHindi	Twitter
https://www.instagram.com/p/CCYLlHGAmTu/	The_fauxy	Instagram
https://www.youtube.com/watch?v=gUOGDm2Yr8s&feature=youtu.be	Fauxy	YouTube

3. The video, which is dramatized in the manner of a news report, shows defendant No. 2 reporting that the reporter of the channel "The Fauxy" has been investigating if the claims that the employees of the plaintiff had been urinating in the beer sold to its customers are true or not. The video then cuts to defendant No. 1, Mr. Rishav Sharma presenting the viewers a bottle of plaintiff's Budweiser Beer and a sample of urine. The defendant No. 1 thereafter proceeds to taste the urine sample and the plaintiff's Budweiser Beer. On tasting the two, the defendant No. 1 concludes and reports that the news that the employees of the plaintiff have been urinating in the beer sold to its customers, has to be fake since the plaintiff's beer tastes worse than the urine.

4. Mr. Anand states that the plaintiff's reputation associated with its 'Budweiser' beer has been the key driver for its business across the world. He also states that the impugned video on YouTube has garnered around over 5900 views as on the date of filing of the suit and the resulting viral nature of fake and sensational news has caused the publication of several hundred defamatory posts and videos across social media. In fact, he has highlighted the fact that the defamatory news caused "#Budweiser" to trend as the no. 1 hashtag on twitter in India as on July 02, 2020. According to Mr. Anand, there being no disclaimer that the same is a "fake news"/fictitious report on the YouTube page of the defendant nos. 1, 2 and 3 caused even legitimate news publications such as The Hans India to report the fictitious news as being a legitimate fact. Mr. Anand states that the defendants Nos. 1, 2 and 3 have knowingly and with malice published the defamatory posts and video to propagate the fictitious report / fake news of plaintiff's employees urinating in the Budweiser beer sold to its customers.

5. During the course of his submissions, Mr. Anand has drawn my attention to page 322 of the documents, which contains a link to the impugned video. That apart, he has drawn my attention to page 348, which is a document depicting the Twitter handle of NDTV, which refers to a news item "Budweiser admits several employees have been pissing into their beer tanks for years". According to him, there are Twitter handles of other news channels depicting similar information. He presses for the interim prayers as made in the application.

6. Ms. Mamta R. Jha, learned counsel appearing for the defendant No.4 YouTube would submit that the defendant No.4 YouTube is only an intermediary and the video has not been uploaded by the said defendant, the actual uploaders are defendant Nos. 1, 2 and 3. That apart, what has been depicted in the impugned video is only a satire and cannot be termed as defamatory or disparagement. Ms. Jha also states that in the entire plaint reference is made only to one URL link pertaining to YouTube. In this regard, she has drawn my attention to para 6(d) at page 21. Ms. Jha also states that the primary grievance of the plaintiff is directed against defendant Nos.1, 2 and 3 and if they are called upon to remove the video from YouTube, the entire grievance of the plaintiff can be answered.

7. Mr. Deepak Gogia, learned counsel appearing for defendant No.5 makes a similar submission that the said defendant is only an intermediary and any information on the Twitter handle is not the

creation of the defendant No.5. He also states that in the entire plaint reference has been made to Twitter handle of defendant Nos. 1, 2 and 3. He also states that if the Twitter handle is accessed through the URL, there is no reference to 'Budweiser' or 'Urine'. According to him, it is not a case of defamation or disparagement.

8. On the submission made by Ms. Jha, Mr. Anand submits that satire is no defence in the context of Indian law. That apart, he states that the harm, that is being caused to the plaintiff, surely the defendant Nos. 4 and 5, as intermediaries, cannot disown their obligation to remove the impugned video from their platform.

9. Issue notice on the application to the defendants. Ms. Mamta R. Jha accepts notice for defendant No. 4 and Mr. Deepak Gogia accepts notice for defendant No.5 respectively. Let notice be issued to defendant Nos. 1 to 3 and 6, returnable before Court on 1st September, 2020.

10. Having heard the learned counsel for the parties and noting the prayer, as made by the plaintiff in the present application and also having watched the video, it is clear that the plaintiff has made out a prima-facie case and the balance of convenience is also in favour of the plaintiff and accordingly, it is directed that the defendant Nos. 1, 2 and 3, their partners, agents, assigns, officers, servants, affiliated entities, as the case may be, and all others acting for and on their behalf are restrained from reproducing, broadcasting, communicating to the public, screening, publishing and distributing the impugned video or any other video on any media or platform and promoting the impugned video on various social media amounting to infringement of plaintiff's registered mark 'Budweiser' and also amounting to commercial disparagement of the plaintiff's products including but not limited to the video / post published on the following four URLs till the next date of hearing.

i. https://twitter.com/the_fauxy/status/1280778856832487424, ii. <http://twitter.com/TheFauxyHindi/statuses/1280797888172285953>, iii. <https://www.instagram.com/p/CCYLlHGAm tu / i v .> <https://www.youtube.com/watch?v=gUOGDm2Yr8s&feature=youtu.be>

11. Provision of Order XXXIX Rule 3 CPC be complied within two days.

V. KAMESWAR RAO, J JULY 30, 2020/ak