

Supreme Court of India

Godfrey Phillips India Ltd. vs Girnar Food & Beverages Pvt. Ltd. on 5 December, 1997

Equivalent citations: JT 1998 (8) SC 408, (1999) 122 PLR 135, (1998) 9 SCC 531

Bench: J Verma, B Kirpal

ORDER

1. Leave granted.

2. The trial court granted an interlocutory injunction in favour of the appellants in a suit filed by it for perpetual injunction to restrain the respondent-defendant from using the expression "Super Cup" for marketing the tea sold by it. In appeal, the Division Bench has admitted the respondent's appeal and stayed the operation of the interlocutory injunction granted by the trial court. Hence, this appeal by special leave.

3. Ordinarily, special leave would not have been granted to appeal against an interlocutory order but the nature of the order in the present case is such that it has great significance and, therefore, we considered it appropriate to grant special leave in the matter.

4. Having heard the learned counsel for the parties, we find that the reason given by the Division Bench for its conclusion, even if correct, is against the settled principles in a matter of this kind. Shri Jaitley, learned counsel for the respondent, made no attempt to support the basis of the order made by the Division Bench but he added that the conclusion reached by the Division Bench is correct and can be supported on the basis of ample material on the record. In our opinion, it would be appropriate that the Division Bench, in the first instance, should consider this aspect instead of the same being considered by us in this appeal.

5. The order made by the Division Bench is based on its view indicated as under:

"In view of the mark which is now registered, the word 'Super Cup' having been disclaimed, the only effective part of the registered mark of the plaintiff is TEA CITY'. The plaintiff/respondent therefore prima facie, cannot claim exclusive right to use the words Super Cup by virtue of any alleged user."

6. The proposition in the above extract is clearly in conflict with the decision of this Court in Registrar of Trade Marks v. Ashok Chandra Rakhit Ltd, . There is no dispute before us that even on disclaimer, a passing-off action lies and that is the reason why Shri Jaitley did not support the above reason given by the Division Bench in its order.

7. In the facts and circumstances of the case, we set aside the order of the Division Bench of the High Court and remit the matter back to the Division Bench for a fresh decision. In our opinion, the arguments required to be heard for making an interim order in the pending appeal before the Division Bench may itself be sufficient to dispose of the appeal and, therefore, it would be appropriate that the Division Bench disposes of the appeal as early as possible preferably within three months, after hearing both sides. Meanwhile, status quo would be maintained with respect to the use of the mark "Super Cup".

8. The appeal is disposed of. No costs.