

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

In the matter of an application for  
*Restitutio in Integrum* and/or Revision  
in terms of Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA Case No: RII/08/2024**  
**Commercial High Court – Colombo**  
**HC (Civil) 18/2023/IP**

1. CITIHEALTH IMPORTS (PRIVATE)  
LIMITED,  
No. 29/3, Kirimandala Mawatha,  
Nawala,  
Rajagiriya,  
Sri Lanka.
2. DROOLS LANKA (CITIHEALTH)  
(PRIVATE) LIMITED,  
No. 29/3, Kirimandala Mawatha,  
Nawala,  
Rajagiriya,  
Sri Lanka.

**Plaintiffs**

**Vs.**

1. DROOLS PET FOOD PRIVATE LTD  
No. 436/2, 1B Corporate House,  
Village Indamara,  
Post Pendri, Rajnandgaon,  
Chhattisgarh 491441,  
India.
2. ABIS EXPORTS (INDIA) PRIVATE  
LIMITED,  
Baldeobagh, Rajnandgaon,  
Chhattisgarh 491441,  
India.

And/or

No. 436/2, 1B Corporate House,  
Village Indamara,  
Post Pendri, Rajnandgaon,  
Chhattisgarh 491441,  
India.

**Defendants**

**AND NOW BETWEEN**

1. CITIHEALTH IMPORTS (PRIVATE) LIMITED,  
No. 29/3, Kirimandala Mawatha,  
Nawala,  
Rajagiriya,  
Sri Lanka.
2. DROOLS LANKA(CITIHEALTH) (PRIVATE) LIMITED,  
No. 29/3, Kirimandala Mawatha,  
Nawala,  
Rajagiriya,  
Sri Lanka.

**Plaintiff- Petitioners**

**Vs.**

1. DROOLS PET FOOD PRIVATE LTD  
No. 436/2, 1B Corporate House,  
Village Indamara,  
Post Pendri, Rajnandgaon,  
Chhattisgarh 491441,  
India.
2. ABIS EXPORTS (INDIA) PRIVATE LIMITED,  
Baldeobagh, Rajnandgaon,  
Chhaattisgarh 491441,  
India.

And/or

No. 436/2, 1B Corporate House,  
Village Indamara,

Post Pendri, Rajnandgaon, Chhaattisgarh  
491441,  
India.

**Defendant- Respondents**

3. Director General,  
Department of Animal Production and  
Health,  
P.O. Box 13, Gatambe,  
Peradeniya.

**Respondent**

**Before:** **R. Gurusinghe J.**  
**&**  
**M.C.B.S. Morais J.**

**Counsel:** Nishan Premathiratne with Shenali Dias instructed by  
Chanuka Ekanayake for the Petitioners.

Harsha Amarasekara, PC with Shehan Gunawardena and D.  
Gamage instructed by B. Siddhartha for the 1<sup>st</sup> and 2<sup>nd</sup>  
Defendant- Respondents.

**Written Submissions:** By the 1<sup>st</sup> and 2<sup>nd</sup> Defendant- Respondents – on 28.01.2025  
By the Plaintiff- Petitioners- on 06.02.2025

**Argued on:** 18.12.2024

**Decided On:** 27.03.2025

**Judgment**

**M.C.B.S. Morais J.**

This is an application by *restitutio in integrum* under article 138 of the Democratic Socialist  
Republic of Sri Lanka.

The Citihealth Imports (Private) Limited (hereinafter sometimes will be referred as the 1<sup>st</sup>  
Petitioner) is challenging the decision of the learned High Court Judge dated 19<sup>th</sup> of January

2024 in the case of CHC 18/2023/IP. Accordingly, the Petitioner has prayed for the following.

“

- I. *Issue Notice of this Application on the Respondents;*
- II. *Grant an Order revoking and/or revising and/or setting aside and/or annulling the impugned Interim Injunction Order of the Learned Judge of Commercial High Court marked 'X1' dated 19th January 2024;*
- III. *Grant the Interim Injunction in prayer (h) of the Complaint marked 'X2' dated 16th June 2023 in case No. HC (Civil) 18/23/IP restraining and/or preventing the Defendant-Respondents and/or its servants and/or agents and/or employees either directly or indirectly, in any manner whatsoever from interfering with the Petitioners' use of the 'Drools' trade mark/trade name in Sri Lanka including in any manner interfering with the 1<sup>st</sup> Petitioner's registration with the Department of Animal Production and Health;*
- IV. *Grant the Interim Injunction in prayer (i) of the Complaint marked 'X2' dated 16th June 2023 in case No. HC (Civil) 18/23/IP restraining and/or preventing the Defendant-Respondents and/or its servants and/or agents and/or employees either directly or indirectly, in any manner whatsoever from using the identical name of the 2<sup>nd</sup> Petitioner or any combination of the words constituting the 2<sup>nd</sup> Petitioner's trade name i.e. 'Drools Lanka (Citihealth) (Private) Limited';*
- V. *Grant an Interim Order against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant-Respondents to maintain the status quo which prevailed as at 18th January 2024 as and when the Enjoining Order was operational and invalidate/suspend any decisions that have been already effected to alter such status quo until this matter is supported and/or determined finally;*
- VI. *Grant Costs;*
- VII. *Grant such other and further reliefs as to Your Lordships' Court shall seem meet”*

The 1<sup>st</sup> Petitioner is a company engaging in importation of “Drools” brand pet foods from the Abis Exports (India) Private Limited (Hereinafter sometimes will be referred to as the 2<sup>nd</sup> Respondent) in India. The Drools Lanka (Citihealth)(Private) Limited is a subsidiary of the 1<sup>st</sup> Petitioner. The Drools Pet Food Private Ltd (hereinafter sometimes will be referred to as the 1<sup>st</sup> Respondent ) engages in manufacturing and exporting pet foods. The Respondents are a part of IB Group engaged in Protein Production business.

The 1<sup>st</sup> Petitioner has been importing pet foods under the brand name “Drools” initially from the 2<sup>nd</sup> Respondent and subsequently from the 1<sup>st</sup> Respondent. There was a prominent sticker affixed in the packages of these products which identified the 1<sup>st</sup> Petitioner to be the company who marketed and distributed the said product in Sri Lanka. The sticker used by the Petitioner carries the mark of approved animal feed. The Petitioner has obtained the required license from the Department of Animal Production and Health in terms of Animal Feed Act No.15 of 1986.

The Petitioners states that the Respondent had voluntarily supported the Petitioners in their brand building activities. The 2<sup>nd</sup> Petitioner has been incorporated in order to expand the business activities of the 1<sup>st</sup> Petitioner. There was no written agreement between the 1<sup>st</sup> Petitioner and the Respondents in respect of the intellectual property rights related to the said trademark “Drools”. The Respondents had no direct physical presence in Sri Lanka and all the intellectual property rights in respect of “Drools” trademark have been accrued to the Petitioner by use. Accordingly, on or around 17<sup>th</sup> of May 2023, the 1<sup>st</sup> Respondent has informed the 1<sup>st</sup> Petitioner about its decision to terminate the distributorship with the 1<sup>st</sup> Petitioner.

It is the contention of the Respondents that the trademark “Drools” is owned by the 1<sup>st</sup> Respondent, and it has been registered in the name of the 2<sup>nd</sup> Respondent in India in 2010. Upon the proposal made by the 1<sup>st</sup> Petitioner the Respondents have agreed to allow 1<sup>st</sup> Petitioner to import the “Drools ” product in Sri Lanka and sell the products at a marked-up-price. According to the proposed agreement on 1<sup>st</sup> of January 2020, the 1<sup>st</sup> Respondent has agreed to supply the “Drool” product to the 1<sup>st</sup> Petitioner. Further, the Draft “Exclusive distribution agreement” between the parties clearly mentions the 1<sup>st</sup> Petitioner to be the distributor of the product under the brand name “Drools” within the territory of Sri Lanka. However, there has not been any agreement relating to the intellectual property rights between the Petitioner and the Respondents.

Accordingly, an enjoining order was sought by the Petitioners in the Commercial High Court of Colombo to restrain the Respondents from interfering with the Petitioner’s use of “Drools” trademark/trade name in Sri Lanka and restrain the Respondents from using the identical name of the 2<sup>nd</sup> Petitioner or any combination of words constituting the 2<sup>nd</sup> Petitioner’s trade name. Having considered the arguments of the Petitioners, the learned High Court Judge of

Colombo has granted the enjoining orders sought which were effective from 21<sup>st</sup> of June 2023 to 5<sup>th</sup> of July 2023. However, after the inquiry by written submission, the learned High Court Judge has set aside the enjoining orders issued on 21<sup>st</sup> of June 2023 and the application for the interim injunction has been dismissed with a cost. Being aggrieved by the said order the Petitioner has made an application for *restituio in integrum* and / Revision in terms of Article 138 of the constitution.

The impugned order dated 19<sup>th</sup> of January 2024 by the learned High Court Judge of Colombo is related only to the interim relief sought by the Petitioner and the main matter is still pending in the High Court.

It is the contention of the Petitioner that the learned High Court Judge in his order dated 19<sup>th</sup> of January 2024 has failed to consider the necessary provisions of law under the Intellectual Property Act No 36 of 2003. However, since the application has been made by the Petitioner against the dismissal of the Interim Relief and the enjoining order sought in the plaint, I will be focusing on this aspect.

The initial application in the High Court was instituted by the Petitioners to protect the trademark and / trade name “Drools” to be not interrupted by the Respondents. Accordingly, the Petitioner has sought the following reliefs,

*“(j)An enjoining order restraining and/ or preventing the Defendants and/or its servants and/or agents and/or employees either directly or indirectly in any manner whatsoever from interfering with the Plaintiffs use of the "Drools" trademark/ tradename in Sri Lanka in any manner interfering with the 1st Plaintiff's registration with the Department of Animal Products and Health;*

*(k) An enjoining order restraining and/ or preventing the Defendants and/or its servants and/or agents and/or employees either directly or indirectly in any manner whatsoever from using the identical name of the 2nd Plaintiff or any combination of the words constituting the 2nd Plaintiff's tradename ie. "Drools Lanka (Citihealth) (Private) Ltd."*

The following injunctive reliefs were also granted by the Commercial High Court of Colombo on 21<sup>st</sup> of June 2023 which was subsequently set aside by the order dated 19<sup>th</sup> of

January 2024. It is the view of the learned High Court Judge that the declarative reliefs sought by the Petitioner, if granted, will not have any positive right to the Petitioner.

Further, the learned High Court Judge has also considered that the Petitioners have failed to adduce any instance where the Petitioner had used the “Drools” trademark without the consent of the Respondent while the distribution agreement is in existence. Moreover, the draft agreement between the parties contains an indemnification clause where the Respondent has agreed to indemnify the 1<sup>st</sup> Petitioner for any loss or damage suffered due to any claim by a third party based on intellectual Property. Therefore, this clause does not suggest that the 1<sup>st</sup> Petitioner has carried out business activities independently. The 1<sup>st</sup> Petitioner has taken steps to incorporate the 2<sup>nd</sup> Petitioner to obtain enjoining order only after the Respondent has terminated their distributor agreement. Therefore, by considering the circumstances, the learned High Court judge has set aside the enjoining orders and dismissed the interim relief.

The test to be applied in an application for an interim injunction is set out in the landmark judgment of *Felix Dias Bandaranayake Vs. the State Film Corporation (1981) 2 SLR 287* Soza J. held,

*“In deciding whether or not to grant an interim injunction the following sequential tests should be applied*

*1. Has the plaintiff made out a strong prima facie case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a serious question to be tried in relation to his legal rights and that the probabilities are that he will win.*

*2. In whose favour is the balance of convenience— the main factor being the uncompensatable disadvantage or irreparable damage to either party*

*3. As the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction. The material on which the Court should act as the affidavits supplied by plaintiff and defendant. Oral evidence can be led only of consent or upon acquiescence.”*

The first step requires the Petitioner to have a strong prima facie case of infringement or an imminent infringement of a legal right to which he has title. Accordingly, in the present matter the learned High Court Judge has come to the view that the legal rights of the Petitioner is not violated by the Respondent on the basis that the trademark “Drools” is owned by the 1<sup>st</sup> Respondent which has been duly registered in the name of 2<sup>nd</sup> Respondent in India and an application has been already made to the Intellectual Property office in Sri Lanka to get the trademark registered in Sri Lanka which is still pending. It is the contention of the Respondents that the product manufactured in the name of “Drools” is sold to the Petitioner on a principal-to-principal basis which is resold by the Petitioner in Sri Lanka. Further, it is the Respondents who have introduced the 1<sup>st</sup> Petitioner to their Customers as importers and distributors and have authorized to distribute the said product within Sri Lanka. Moreover, the promotional activities done by the 1<sup>st</sup> Petitioner with the approval of the Respondents who have provided the artwork and the intellectual property to be displayed in those promotions. Moreover, Respondent has reimbursed the 1<sup>st</sup> Petitioner for all the promotional activities taken place in Sri Lanka, other than those where the parties have agreed to share the cost. Therefore, the learned High Court Judge has decided that the Petitioners have failed to establish a strong prima facie case of infringement or any imminent threat to their legal rights.

The second limb requires the court to assess which party would suffer greater uncompensatable disadvantage or irreparable damage if the injunction is granted or denied. Accordingly, the petitioners have failed to demonstrate any irreparable harm or uncompensatable disadvantage that would result from denying the injunction. Further, the learned High Court Judge has also considered the fact that the Respondents had already terminated the distributorship agreement, and there was no evidence that granting an injunction would restore any substantive rights to the Petitioners. Further, none of the relief sought were in favor of the 1<sup>st</sup> Petitioner.

As an equitable relief, an injunction requires that the conduct and dealings of the parties justify its grant. Therefore, the third limb requires the court to consider the conduct of the parties in granting relief. Accordingly, the learned High Court Judge has noted that the 1<sup>st</sup> Petitioner has incorporated a second entity (2<sup>nd</sup> Petitioner) and sought enjoining orders only after their distributorship agreement was terminated. Further, the indemnification clause in



the Draft “Exclusive distribution agreement” indicates that the Petitioners were not acting independently but rather as authorized distributors.

Considering the circumstances of the case, the learned High Court Judge had concluded that none of the declaratory reliefs, injunctive reliefs sought by the Petitioners would confer any positive rights upon them. Additionally, there was no evidence adduced by the Petitioner that their legal rights had been violated or were at imminent risk of violation by the Respondent. Moreover, as established in the case of ***Gamage V. the Minister of Agriculture and Lands*** 76 NLR 25; if the probability is that no right of the Petitioner will be violated or that he will suffer no wrongs such as the law recognizes then the injunction will not be granted. Therefore, the learned High Court Judge has set aside the enjoining orders and dismissed the interim injunction.

In the case of ***Merchant Bank of Sri Lanka Limited Vs. Wijewardena and others*** S.C. Appeal 81/2010, Suresh Chandra, J. held;

*“By the enactment of Act No 10 of 1996 it is clear that in any civil matter dealt within the High Court, the right of appeal lies only to the Supreme Court. This seems to be the clear intention of the legislature with regard to the matters dealt in the High Court. When the above special provisions are being considered in the High Court, if revisionary jurisdiction of the Court of Appeal is given then it would give the party applying for revision in a situation as in the present case a favorable position by granting an additional opportunity to review as against a party who comes within the purview of the civil jurisdiction of the High Court regarding other matters as they will be entitled only to the right of appeal to the Supreme Court. This would be due to the fact that if the revisionary jurisdiction of the Court of Appeal is allowed then, if need be, the party would have the option go further to the Supreme Court by way of canvassing the judgment of the Court of Appeal in such instances. This would give the party in such circumstances two opportunities of review of the preliminary judgment when the clear intention of the legislature is that there should be only an appeal Page 9 of 9 to the Supreme Court from any judgment or order of the High Court in the exercise of its civil jurisdiction in terms of sections 5(1) and 5(2).”*

According to the law, when an individual is aggrieved by the decision of the High Court, the right to appeal the decision is to the Supreme Court by way of a leave to appeal. However,

the Petitioner has failed to exhaust the ordinary remedy available and has made an application under Article 138 of the constitution of Sri Lanka in terms of *restitutio in integrum* and/or revision. An application under *restitutio* requires the court to look into the exceptional circumstances of the case or of that which shall shock the conscience of the court. However, in the present matter, the Petitioner has failed to establish any such exceptional circumstances to invoke this court's Jurisdiction.

Therefore, I find no basis interfering with the order dated 19<sup>th</sup> of January 2024 by the learned High Court Judge of Colombo.

Therefore, this application is dismissed with a cost of Rs.100,000.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**