

Tata Sons Private Limited & Anr. vs Malla Rajiv on 29 March, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 129/2024 & I.A. 3278/2024, I.A. 44712/2024

TATA SONS PRIVATE LIMITED & ANR.

Through: Mr. Achutan Sreekumar
Bansal, Mr. Swastik B
Sudep Vijayan,
(M:9079965359)

versus

MALLA RAJIV

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

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07.03.2025

MINI PUSHKARNA, J (ORAL)

I.A. 44712/2024 (For Summary Judgment)

1. The present application has been filed on behalf of the plaintiffs under Order XIII-A of the Code of Civil Procedure, 1908 ("CPC"), read with Order VIII Rule 10, and Section 151 of CPC, seeking summary judgment.

2. The present suit has been filed for permanent injunction seeking restraint on defendant from infringing copyrights to the packaging/trade dress, registered trademarks of plaintiffs, passing off, dilution, damages, rendition of account etc.

3. The dispute between the parties, essentially pertains to defendant's unauthorized use of product "JK COPPER+ WATER" ("impugned brand name"), which is identical and similar to the plaintiffs trademark and product i.e., packaged mineral water product which was originally sold by plaintiffs under "TATA WATER PLUS" bearing trademark registration nos. 1842812 and 1842813 in Class 16 and Class 32 of the Trade Marks Act, 1999 ("Trade Marks Act"), respectively, and is now sold under "TATA COPPER+ WATER" bearing trademark registration no. 4747370 dated 17th November, 2020 in Class 32 and trademark registration no. 3699764 dated 11th December, 2017 in Class 99 of the Trade Marks Act.

4. The case of the plaintiffs, as canvassed in the plaint, is discussed as under:

4.1. Plaintiff no. 1 is the promoter and principal investment holding company of the "HOUSE OF TATA", which is India's oldest (i.e., around 150 years), largest and

best-known business conglomerate having total revenue of all the Tata companies taken together of Rs. 12 trillion in 2022 - 2023.

4.2. The trade name/ mark "TATA" derives from the surname of the plaintiff no. 1 s founder Shri Jamsetji Nusserwanji Tata, and it has been using the said trade name/mark continuously and consistently, since its inception in the year 1917, whereas, plaintiff no. 1 s predecessor in business had used the said trade name/mark since the year 1868. 4.3. Plaintiff no. 1 is also the registered proprietor of the logo/ device mark bearing trademark registration no. 5756647 dated 09th January, 2023 in Class 32.

4.4. Further, plaintiff no. 2, included in Nifty 50, is an associate company of the plaintiff no. 1, engaged in business of branded natural beverages such as tea, coffee, water and other fast moving consumer goods (FMCG) products. Plaintiff no. 2 is the owner of some of the most recognized brands such as, TATA WATER PLUS, TATA COPPER+ WATER, HIMALAYAN, TATA TEA etc., to name a few. Further, the plaintiff no. 2 also has online presence vide the website www.tataconsumer.com. 4.5. Plaintiff no. 1, vide a Trademark License Agreement dated 26th August 2011, has permitted plaintiff no. 2 to use the mark "TATA", including, any other permutations/combinations, thereof.

4.6. In the financial year ("FY") 2023-24, plaintiff no. 2 has generated revenue to the tune of Rs. 15,206 Crores from its operations. 4.7. The defendant in the present case is one Malla Rajiv, the proprietor of M/s. JK Enterprises, which is engaged in the business of marketing, selling, offering for sale, distributing and advertising of packaged drinking water under the impugned brand name i.e., "JK COPPER+ WATER"/ .

4.8. The plaintiffs first became aware that the defendant was dealing in a product under the impugned brand name, „JK COPPER+ WATER , in January 2024. Subsequently, a physical investigation was conducted at the defendant s factory premises, which spans an area of 900 square meters and has approximately 8 to 10 workers. The investigation revealed that the factory had been operational for about a year prior to the inquiry. During the investigation, an employee of the defendant confirmed that the defendant is the sole proprietor of M/s. JK Enterprises and that the infringing products, bearing the impugned brand name and trade dress, were being manufactured at the defendant s premises.

4.9. After getting in touch with the defendant and receiving the defendant s product with the impugned brand name i.e., "JK COPPER+ WATER", and after a comparison of the plaintiffs products i.e., "TATA WATER PLUS" and "TATA COPPER+ WATER" with the defendant s infringing product i.e., "JK COPPER+ WATER", it was apparent that defendant has copied all the essential features of the artistic work forming part of the label and trade dress of the plaintiffs. The action of defendant not

only amounts to infringement of the plaintiffs' registered and well-known trademarks i.e., TATA, TATA WATER PLUS, TATA COPPER WATER and TATA COPPER+ WATER, but also infringes plaintiffs' copyright subsisting in the artistic work.

4.10. Further, the plaintiffs after conducting a quick search on the website of the Trade Marks Registry became aware that the defendant does not have any registration(s) for their infringing packaging. 4.11. The defendant is counterfeiting and clearly passing off his goods as that of the plaintiffs by creating a false impression amongst consumers and members of the trade that their product emanates from or has nexus with the plaintiffs' company.

4.12. Moreover, the product of the defendant i.e., packaged drinking water is highly unlikely to match the quality standards of the product of the plaintiffs, as they are of inferior quality and are made under extreme unhygienic conditions, and the plaintiffs will be blamed in case of any health hazards to consumers, since the plaintiffs have no control over the quality of the defendant's products. This is further substantiated by the fact that the product pertains to consumable i.e., packaged drinking water, which requires highest standards of safety.

4.13. Such infringing practices and actions undertaken by the defendant are not only bound to cause incalculable harm/injury to the plaintiffs' business, but also deteriorating the goodwill and reputation associated with the plaintiffs' unique, distinctive trade dress and well-known trademarks.

Further, such detrimental activities of the defendant would result in unjust enrichment of the defendant and further loss to plaintiffs. 4.14. Thus, being aggrieved by the defendant's unauthorized use of similar and identical mark as that of plaintiffs' trademark/brand name/trade dress, the present suit has been filed.

5. I have heard the counsel for the plaintiffs and have perused the documents and evidence, placed on record.

6. This Court, in I.A. No. 3278/2024, vide order dated 12th February, 2024, granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendant, thereby, restraining the defendant from manufacturing, selling, offering for sale, distributing, advertising, and/or in any manner dealing with the infringing product, i.e., "JK COPPER+ WATER" bearing the trade dress or any other similar trade dress/mark of the plaintiffs.

7. Further, this Court vide the aforesaid order had also issued notice to defendant, and directed the defendant to file a reply within four weeks. However, despite various efforts of service undertaken by the plaintiffs, the defendant neither appeared before this Court nor filed any written statement, till date. Consequently, this Court, vide order dated 06th March, 2024, closed the defendant's right to file written statement after the lapse of statutory period of 120 days for filing the same.

8. Thereafter, this Court vide order dated 12th November, 2024, made the ex parte ad interim injunction order, in favour of the plaintiffs, as absolute.

9. It is to be noted that vide order dated 12th February, 2024, this Court allowed the application, being I.A. No. 3279/2024, and appointed a Local Commissioner to visit the premises of the defendant and seize all goods, packaging materials, promotional materials or any other material bearing the trade dress or any other trade dress similar to the plaintiffs' trade dress.

10. Pursuant thereto, the Local Commissioner inspected the defendant's factory premises and identified huge quantity of infringing bottles using the plaintiffs' trade dress in possession of the defendant. The same is evident from the Report filed by the Local Commissioner, which states that 10,104 bottles, identified as infringing, were duly seized. The table in regard thereto, as given in the Local Commissioner Report, is extracted herein below:

11. It is noted that, even after the Report of the Local Commissioner was taken on record, none has appeared for the defendant, and since the statutory period for filing the written statement had also expired, the present application, being I.A. No. 44712/2024, seeking a summary judgment, has been filed.

12. At the outset, this Court notes the case put forward on behalf of the plaintiffs that the plaintiff no.1, with respect to its business and its associates, has continuously and consistently been using the mark/trade name "TATA" since its inception in the year 1917. Due to various pioneering activities, advertising, promotion, long and extensive use, the plaintiffs along with other subsidiaries, have acquired an unprecedented reputation and goodwill among the consumers and public at large.

13. The plaintiffs are the registered proprietors of the trademark "TATA WATER PLUS" (word mark) in Class 16 and Class 32, registered vide application dated 22nd July, 2009, and "TATA COPPER+ WATER" (word mark) in Class 32 and 99, having registrations dated 17th November, 2020 and 11th December, 2017, respectively. Further, plaintiffs are also the registered proprietor of the logo/device mark bearing trademark no. 5756647 dated 09th January, 2023, in Class 32.

14. This Court notes the submission of the plaintiffs that its product under the brand name "TATA WATER PLUS" and now, "TATA COPPER+ WATER", launched in year 2012, is India's first nutrient packaged drinking water, which has been developed in collaboration with international scientists and nutrition experts. The plaintiffs have tried to come up with an innovative concept in health and nutrition, and in furtherance of the same, have included nutrients, such as copper and zinc in their products. It is due to these reasons, the product of the plaintiffs includes copper brown coloured label in packaged drinking water.

15. This Court further notes the submissions of the plaintiffs that they have spent huge amount of money in designing, conceptualizing, advertising and protecting their products bearing the trademark i.e., "TATA WATER PLUS"/. This has resulted in plaintiffs having huge sales and market share and subsequently gaining secondary significance with respect to its products. In furtherance, the financial highlights of plaintiff no. 2 for the Financial Year 2023-24, demonstrate the presence

and market strength of the plaintiffs' mark, as reflected in the table below:

16. Further, in January 2023, the plaintiffs launched "TATA COPPER+ WATER"/ , since then the said product has fetched a total turnover of Rs. 344.68 Crores, till date.

17. This Court notes that plaintiffs not only are proprietors of the trademarks "TATA", "TATA WATER PLUS", "TATA COPPER WATER"

and "TATA COPPER+ WATER", but also are the owners of the subsisting copyrights in the unique artistic work forming part of the packaging and trade dress of their products i.e., and .

18. Apart from the abovementioned, this Court takes note of various injunction orders passed by the Courts in India in favour of the plaintiffs granting protection of the plaintiffs intellectual property rights qua the said products. Some of the said orders are mentioned below:

I. Order dated 31st January, 2024 passed by this Court in CS (COMM) 91/2024.

II. Order dated 29th August, 2024 passed by Addl. District Judge, Hyderabad in COS No. 34/2023.

III. Order dated 23rd June, 2023 passed by the Division Bench of the Telangana High Court in CRP 1710/2023 & 1713/2023. IV. Judgment dated 28th March, 2023 passed by this Court in CS (COMM) No. 483/2020.

V. Order dated 13th April, 2022 passed by this court in CS (COMM) No. 242/2022.

19. Hence, with respect to the trademarks "TATA WATER PLUS" and "TATA COPPER+ WATER", the plaintiffs have established that these marks are extremely well-known among members of the trade and the public at large. The prolonged and continuous use of the said marks by the plaintiffs, widespread public recognition, extensive advertisements and promotions, substantial sales made under these marks in India, and numerous trademark registrations obtained by the plaintiffs clearly establish that their marks and trade names, have acquired immense goodwill and reputation in India.

20. This Court further notes that, in early January 2024, the plaintiffs, through various sources, became aware that the defendant was dealing in packaged drinking water bearing the mark "JK COPPER+ WATER". Upon gaining such knowledge, the plaintiffs immediately engaged an investigator to ascertain the precise nature, magnitude, and extent of the defendant's infringing and unlawful activities.

21. The inquiry conducted by the personal investigator of the plaintiffs, has revealed that the defendant has a plan to expand the business beyond the local territory of Andhra Pradesh, where they are situated. In fact, the defendant had also delivered the infringing product to the investigator,

present in New Delhi, upon ordering the infringing product from New Delhi.

22. Further, this Court notes that defendant has copied all the essential features and artistic work forming part of the plaintiffs' unique, peculiar and distinctive trade dress i.e., "TATA WATER PLUS" and "TATA COPPER+ WATER". In addition, the defendant's product incorporated the elements of the plaintiffs' mark such as the brown-coloured cap, the copper-brown label, the use of the term "COPPER+", the grooves and patterns on the bottle, the annular ring in the background, and the human figure with a swirl depicted next to the mark. These similarities indicate a clear attempt to imitate the plaintiffs' product, thereby, causing a likelihood of confusion among consumers and traders. Such imitation prima facie suggests intent to misappropriate the goodwill and reputation associated with the plaintiffs' mark. The aforesaid is evident from the comparison chart, reproduced as under:

23. Moreover, in the present case, considering the substantial similarities between the products, minor deviations or distinguishing features are not relevant for determining infringement. It is pertinent to note that this Court, in *Treasure Studio Inc. and Another Versus Mohit Khungar and Another*, 2024 SCC OnLine Del 6558, while dealing with two similar trademarks, has clearly opined that minor variations in marks are immaterial, if the overall resemblance between them is substantial. Thus, it has been held as follows:

"xxx xxx xxx

21. It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the petitioner. It would be sufficient if the petitioner is able to show that the trademark adopted by the respondent resembles its trademark in a substantial degree, on account of extensive use of the main features found in his trademark. Minor variations or distinguishing features of the infringing mark would not be material, in case, resemblance in the two trademarks is found to be substantial to the extent that the impugned trademark is found to be similar to the registered trademark of the petitioner. (See: *Greaves Cotton Limited versus Mr. Mohammad Rafi & Ors.*, 2011 SCC OnLine Del 2596) xxx xxx xxx"

(Emphasis Supplied)

24. In view of the overall similarity between the two marks, the defendant's infringing activities are bound to cause confusion in the minds of the consumers, who will assume the defendant's products and services to have originated from the business or house of the plaintiffs i.e. "HOUSE OF TATA".

25. Further, this Court notes that there is no registration in favour of the defendant's product and impugned brand name i.e., "JK COPPER+ WATER" under the Trade Marks Act. There is no justification or any plausible reason for copying and using similar mark/name/label by the defendant. The defendant neither has any connection or relation with the plaintiffs, nor the plaintiffs have authorized the defendant to use the said marks, label, art works, etc.

26. It is apparent that such fraudulent and illegal activities are carried out by the defendant to free ride on the goodwill and reputation of the plaintiffs. Furthermore, such activities of the defendant would also cause incalculable loss in terms of money, reputation and goodwill to the plaintiffs.

27. It is also pertinent to note that, if the products of both the parties before this Court are stacked together in a shop, it is possible for any consumer to presume that the defendant's product also emanates from the plaintiffs' business. The same has been reiterated by this Court, in *Allied Blenders alias Distillers Private Limited Versus Hermes Distillery Private Limited*, 2024 SCC OnLine Del 217, wherein it was observed that:

"xxx xxx xxx

42. Even the said label is not similar to that of the Plaintiff. The above two labels are distinguishable from the impugned labels, which have a combination of various features of the Plaintiff's whisky label. If the Plaintiff's products and the Defendant's products are stacked together, it is possible for any consumer to presume that the Defendant's product also emanates from the Plaintiff's bouquet of products.

43. Confusion need not be between products but could also be one of affiliations, sponsorship or connection as well. A consumer might presume that the Defendant's product is a differently priced product, emanating from the Plaintiff. Moreover, the Court has to put itself in a realistic position to see the manner in which bottles are stacked in bar counters. These venues are typically not brightly lit and are usually dimly lit. In such a setting, if a consumer orders the Plaintiff's product and the bartender serves the Defendant's product, owing to the broad similarity of the labels, the consumer may not even be able to tell that the product served is that of the Defendant's and not of the Plaintiff's. This likelihood of confusion is further heightened by the distance at which customers typically view bottles in a bar. This is not to say that a connoisseur of such products may not be able to discern the difference after tasting them! But the test is not of the standard of a connoisseur but that of an ordinary consumer or lay-person. Even the purchase at liquor outlets would include by consumers who could be from varying strata of society and may not be able to discern fully the distinguishing features. Confusion as to affiliation or sponsorship is a clear possibility.

xxx xxx xxx"

(Emphasis Supplied)

28. Moreover, as per the Report submitted by the Local Commissioner, it is evident that 10,104 bottles of the infringing products were recovered from the defendant's factory premises, from where the defendant was manufacturing and selling the said infringing products. The photographs taken by the Local Commissioner, during the course of inspection, make it manifestly clear that the defendant was involved in the activities of manufacturing, selling, offering for sale, distributing of

the infringing products having the similar trade dress to that of the plaintiffs. The said photographs, showcasing the infringing activities carried out by the defendant, as per the Report of the Local Commissioner, are reproduced herein below:

29. Additionally, in view of the fact that the defendant has neither entered appearance, nor filed any written statement, no purpose would be served by directing the plaintiffs to lead ex parte evidence. This Court, in Sandisk LLC and Another Versus Memory World, 2018 SCC OnLine Del 11243, while dealing with a suit for permanent injunction relating to infringement of trademark, has observed the authority of Commercial Courts to pass a summary judgment, as under:

"xxx xxx xxx

12. Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendants have no real prospect of defending the claim and there is no other compelling reason why claim should not be disposed of.

13. In the opinion of this Court, the defendant has no real prospect of defending the claim and no other compelling reason appears to this Court why claim of the plaintiffs should not be disposed of. This is so because the defendant has not filed its written statement despite entering appearance on 27th April, 2018, as stated above, nor denied the documents of the plaintiffs. Moreover, as the defendant is selling counterfeit products bearing the plaintiffs' SanDisk trademark and product packaging, it is a clear case of infringement of the plaintiffs' registered trademark.

xxx xxx xxx (Emphasis Supplied)

30. Similarly, in the case of Sandisk LLC and Another versus Laxmi Mobiles and Others, 2023 SCC OnLine Del 432, it has been held that when no written statement has been filed on behalf of the defendants, despite service of summons, no ex-parte evidence is required to be led in the light of the report of the Local Commissioner and the evidence collected by the Local Commissioner. Thus, it has been held as follows:

"xxx xxx xxx

17. Since there is no written statement on behalf of Defendants, despite service of summons, this Court is empowered to pass a judgment in terms of Order VIII Rule 10 of Civil Procedure Code, 1908. The report of the Local Commissioner can be read in evidence in terms of Order XXVI Rule 10(2) of CPC. [See: ML Brother LLP v. Maheshkumar Bhuralal Tanna]. Therefore, in light of the Reports of Local Commissioners, and evidence collected by them, as well as non-filing of written statements, this Court is of the opinion that no ex parte evidence is required to be led. This view is supported by decisions of this Court in Disney Enterprises Inc. v. Balraj

Muttneja, and Cross Fit LLC v. RTB Gym and Fitness Centre...

xxx xxx xxx"

(Emphasis Supplied)

31. It has been emphasized, in a plethora of judgments, that if the defendant lacks real prospect of successfully defending the claims, a Commercial Court is entitled to pass a summary judgment, in accordance with the summary procedure laid down in the Commercial Courts Act, 2015. Thus, this Court, in the case of Su-Kam Power Systems Ltd. Versus Kunwer Sachdev and Another, 2019 SCC OnLine Del 10764, has held as follows:

"xxx xxx xxx

90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Courts Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgment against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression "real" directs the Court to examine whether there is a "realistic" as opposed to "fanciful" prospects of success. This Court is of the view that the expression "no genuine issue requiring a trial" in Ontario Rules of Civil Procedure and "no other compelling reason for trial" in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.

xxx xxx xxx" (Emphasis Supplied)

32. In addition to the aforesaid, it is also imperative to consider that the defendant's failure to contest the present proceedings, despite being served, makes it abundantly clear that the defendant has chosen not to challenge the claims of the plaintiffs and therefore, in the absence of any defense, the plaintiffs' contentions remain un-rebutted and stand established, on the basis of the documents placed on record.

Therefore, this Court is of the opinion that suit can be decreed in favour of the plaintiffs and against the defendant.

33. It is no longer *res integra* that a party, who intentionally has not participated in Court proceedings, should not be permitted to enjoy the fruits of the deliberate evasion of the Court proceedings. Therefore, if the defendant is not saddled with damages, it would only be encouraging his dishonest acts. Reliance is placed on the case of *Jockey International Inc. & Anr. Versus R. Chandra Mohan & Ors.*, 2014 SCC OnLine Del 3019, where this Court has observed as under:

"xxx xxx xxx

43. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where a defendant who appears in Court and submits its account books would be liable for damages, while another defendant who, chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in *Time Incorporated's* case (*supra*) that punitive damages are founded on the philosophy of corrective justice.

xxx xxx xxx" (Emphasis Supplied)

34. In light of the aforementioned discussion, it is manifest that infringing products of the defendant, i.e., packaged water bottles have the effect of inducing the consumers and members of the trade to falsely believe that the defendant has a direct nexus or affiliation with the plaintiffs. Further, considering that the products are consumable, i.e., packaged drinking water, if the said infringing products are of inferior quality, the same may also affect the health and safety of the consumers. Moreover, the said activities have the effect of causing harm and injury to the business and may also dilute the goodwill and reputation associated with the plaintiffs' mark/trade name/trade dress.

35. Further, this Court notes the submission on behalf of the plaintiffs that the plaintiffs have been compelled to incur substantial legal expenses due to the defendant's infringing activities and their subsequent conduct in these proceedings.

36. Accordingly, in the facts and circumstances of the present case and also considering the scale of infringing products recovered from the defendant, this Court is of the opinion that the interests of justice shall be served in awarding damages, along with the actual costs, in favour of the plaintiffs.

37. Considering the aforesaid detailed discussion, the following directions are issued:

I. The suit is decreed in favour of the plaintiffs and against the defendant, in terms of prayers in Para 74(i) to (iv) of the Plaint. II. The plaintiffs are entitled to damages to the tune of 10,00,000/- (Rupees Ten Lacs), to be paid by the defendant.

III. Plaintiffs are entitled to actual costs, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018, read with Delhi High Court Intellectual Property Division Rules, 2022. Accordingly, the plaintiffs shall file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018, within a period of two months. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

38. Decree sheet be drawn up.

39. The present suit, along with pending applications, stands disposed of, in the aforesaid terms.

MINI PUSHKARNA, J MARCH 7, 2025/Au Corrected & Released on:

29th March, 2025