

# Victoria Foods Private Limited vs Rajdhani Masala Co. & Anr. on 28 April, 2022

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th April, 2022

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CS (COMM) 108/2021 & CRL.M.A. 7863/2022, I.As. 13031/2021,  
16059/2021 & 4587/2022

VICTORIA FOODS PRIVATE LIMITED ..... Plaintiff

Through: Mr. Rohit Gandhi, Mr. Adhish  
Srivasthva, Mr. Manish Singhal, Mr.  
Shery Sharma, Advocates  
(M:9818360851)

versus

RAJDHANI MASALA CO. & ANR. .... Defendants

Through: Mr. Chander M. Lall, Sr. Adv. with  
Mr. Ankur Singhal, Mr. Sajad Sultani,  
Advocates (M:9811126091) along  
with Mr. Ravi Kohli, Mr. Pawan  
Kohli, Mr. Tushar Kohli, Mr.  
Divyansh Kohli. (M: 9818055361;  
9818055360)  
Mr. Anurag Ahluwalia, Standing  
Counsel for UOI (M:9811418995)  
Mr. Anuj Aggarwal, Advocate for  
GNCTD.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present suit has been filed by the Plaintiff - Victoria Foods Private Limited against Defendant No.1 - Rajdhani Masala Co., which is the proprietary concern of Mrs. Asha Rani Kohli through Mr. Pawan Kohli, and Defendant No.2- M/s New Rajdhani Masala Co. through its proprietor Mr. Ravi Kohli. The Plaintiff has various trademark registrations for the mark 'RAJDHANI' in Classes 29, 20, 31, 32, adopted in 1966, as also various international registrations for the said mark. The Plaintiff

seeks protection of the mark 'RAJDHANI' and the logo thereof, which is being used by the Defendants for the manufacture of spices and other products.

3. The Plaintiff had moved an interim injunction application in this matter being I.A. 3527/2021. Vide a detailed judgment dated 1st September, 2021, the application was disposed of granting interim relief to the Plaintiff.

4. The following are the findings of the Court:

a) The mark 'RAJDHANI' has been used since 1966 and the Plaintiff-company was founded in 1983.

b) The Memorandum of Family Settlement dated 31st March, 2009, was discussed. The Plaintiff is held to be the prior user of the mark.

c) There is no evidence on record to show that the Defendant has ever used any of its products under the mark 'RAJDHANI', though the Defendant has been in business since the 1960s.

d) The only solitary document relied upon by the Defendants, is the legal notice and reply dated 18th July, 2008 and 9th August, 2008, stated to have been exchanged between the sister concern of the Plaintiff and the Defendant, where a claim is made that the trademark has been used since 1965.

5. After negating the plea of prior user and current user of the Defendant, the Court on the strength of registrations of the Plaintiff granted an interim injunction in the following terms:

"36. It is also a matter of fact that the plaintiff is the registered owner of the said trademarks details of which are as follows:-

Prima facie the plaintiff is the first in the market with the trademark 'Rajdhani'. The plaintiff is the registered owner of the said trademark.

37. I may compare the two trademarks being used by the plaintiff and the defendant.

Clearly, the defendant is using the trademark 'Rajdhani' for allied and cognate goods which is identical as that of the trademark of the plaintiff and prima facie infringing the rights of the plaintiff.

38. The plaintiff has made out a prima facie case. In view of the above, an interim injunction is passed in favour of the plaintiff and against the defendants restraining the defendants its directors, proprietors, etc. from using in any manner the trademark 'Rajdhani' or any other trademark which is deceptively similar to the trademark of the plaintiff."

6. The Defendant is stated to have filed an appeal challenging the said judgment dated 1st September, 2021, which is still pending before the Id. Division Bench. In the meantime, I.A.4587/2022 under Order XXXIX Rule 2A CPC has been filed by the Plaintiff alleging that the Defendants are continuing to violate the injunction order. The said application has been filed against Defendant No.2 through Mrs. Asha Kohli and Mr. Ravi Kohli. In the said application, the following facts are alleged:

i) That even as of September, 2021, October, 2021 and November, 2021, the Defendant is continuing to manufacture the impugned infringing products. Invoices and purchases from various retail stores in Delhi have been made of Rajdhani branded Red Chilli Powder, Coriander Powder, Dry Mango Powder, Dry Ginger Powder, Cumin Powder and Turmeric Powder.

ii) The Defendants have also advertised and offered their products on Indiamart.com, where there are listings of the impugned products, even as of today.

7. Accordingly, the following prayers are sought in the contempt application:

"a. Allow the present application and initiate contempt proceedings against the Defendants/Contemnors;

b. Direct the Defendants/Contemnors to file affidavit of their assets and attach the same including property bearing No.B-34, Lawrence Road Industrial Area, New Delhi -110035, which Defendant No.1 has disclosed to be owned by her in her written statement to the suit;

c. Direct for detention of the Defendants/Contemnors in the civil prison for the period as may be determined by this Hon'ble Court; d. Direct for sale of the properties attached in case the disobedience and breach continues and award compensation to the Plaintiff out of the said sale proceeds;"

8. In the application under Order XXXIX Rule 2A CPC, notice was issued, vide order dated 24th March, 2022. On the said date, various products were handed over to the Court which were bearing manufacturing dates of the period post the judgment dated 1st September, 2021 granting an injunction. Considering the nature of the allegations, a Local Commissioner was appointed to visit the Defendants' premises on the same very day.

9. The Local Commissioner has since filed its report dated 22nd April, 2022, which reveals a shocking state of affairs. The Local Commission was executed for almost 18 hours on 24th March, 2022, 25th March, 2022, and 26th March, 2022. The total inventory prepared by the Local Commissioner is as under:

DATE	TIME SPENT	INVENTORY
24.03.2022	12:40 pm to 8:40 pm (8 hours)	Packing rolls 15,368.68 kgs

25.03.2022	3 pm to 7:30 pm (4 hours 30 minutes)	Loose bags 883.20 kgs Loose pouches 187 bags Packets 1,844.46 kgs Packing material 123.09 kgs Packing rolls 174 Packed pouches 15,163.18 kgs
26.03.200	1 pm to 6:30pm (5 hours 30 minutes)	Packing rolls 7,200.91 kgs Empty boxes 785.11 kgs Packing rolls 284 Assorted spices packed 3,268.56 kgs in 161 bags.
TOTAL	18 HOURS IN 3 DAYS WEIGHT	43,630.90 KGS.

(Complete inventory is elaborated in the spreadsheet)

10. The Local Commissioner took several photographs which are a part of the report dated 22nd April, 2022. A perusal of the said report and the photographs placed on record, shows that:

☐The packaging of 'RAJDHANI' branded products is taking place in large volumes.

☐The process of packaging was on-going, through the packaging machines on which rolls of RAJDHANI MASALA were mounted. ☐The manufacturing dates on the infringing products are of 15th September, 2021 and 10th October, 2021; ☐Invoices have been seized by the Local Commissioner which are of 15th September, 2021 and 24th September, 2021 which show continuous sale after the judgment dated 1st September, 2021; ☐Photographs, invoices and inventory, annexed along with the report, show that the Defendants were in possession of hundreds of kilograms of packaging material and spices of various variants. The total inventory is more than 43 tons, which include manufactured masala and pouches thereof.

☐Eway bills of the months of October, 2021, November, 2021 and December 2021 showing sales of the Defendants in respect of 'RAJDHANI' branded products.

11. The Local Commissioner also found several bags which were packed in 'RAJDHANI' branded packaging. The same were, accordingly, inventoried by the Local Commissioner, and were handed over on superdari to the Plaintiff's representatives. The photographs, which were annexed to the report of the Local Commissioner, also show the rolls of packaging with the manufacturing dates stamped on them. The same leaves no manner of doubt in the mind of the Court that the Defendants were brazenly violating the orders of the Court.

12. In view of the findings of the Local Commissioner, the Plaintiff has now filed an application being Crl. M.A.7863/2022 under Section 340 Cr.P.C. It is not disputed that the Local Commissioner's photographs were uploaded on Google Drive and the access thereof was given to both the parties. These photographs are now annexed with the application under Section 340 Cr.P.C reveal further disturbing facts which could have very grave consequences.

13. The said photographs show that various products of other manufacturers such as Tata, Catch, Badshah masala, etc. were also found in the premises of the Defendants, including Catch Red Chilli Powder, Tata Pav Bhaji Masala, Tata Sampann Chicken Masala, bearing manufacturing dates of three to four years ago. Large cartons of Tata products and products manufactured by other third-party manufacturers were also found at the premises of the Defendants. A perusal of these photographs prima facie shows that expired products of other manufacturers are being sourced by the Defendants, and are being re-packed as 'RAJDHANI' branded products. The photographs are extremely disturbing revealing. Considering that the products in question are spices being used in food products which are for human consumption, this Court is of the opinion that the Defendants are not merely indulging in violation of intellectual property rights of the Plaintiff, but are clearly committing various other offences, under the Food Safety and Standards Act and Regulations, and other statutes related to adulteration of food.

14. In view of the seriousness of the allegations in the present case, this Court had directed the Defendants to be present in Court. Accordingly, the Defendants were present yesterday and the hearing has continued today.

15. The Defendant No.1- M/s. Rajdhani Masala Co., though being a sole proprietary concern of Mrs. Asha Rani Kohli, is being run by her two sons - Mr. Ravi Kohli and Mr. Pawan Kohli, whose children - Mr. Tushar Kohli, Mr. Divyansh Kohli are also present in Court today. It is claimed that the two sons are not involved in the business and that the business is being run by Mr. Ravi Kohli and Mr. Pawan Kohli.

16. After perusing the Local Commissioner's report dated 22nd April, 2022 and the photographs filed with the application under Section 340 Cr.P.C, which are also not in dispute, the Court has queried all the four individuals who are present as to whether the cartons of the other manufacturers and the packaging material which are seen to be strewn on the floor are still available in the factory of the Defendants. In response to the said query, Mr. Ravi Kohli has stated that the masalas (spices) in all these cartons have been removed and have been put in plain bags after the Local Commission was executed, as they were not informed that these products were to be retained in the same condition.

17. At this juncture, this Court is constrained to direct an inspection by the concerned authorities including Food Inspectors and officials of the Food Safety and Standards Authority of India ("FSSAI") by visiting the premises of the Defendants at B-34, Lawrence Road, Industrial Area, Delhi- 110035, as also, any other godowns or other premises where the Defendants' products may be kept or any other premises of the Defendants available on the records of the FSSAI. The officials shall inspect the Defendants' premises tomorrow, i.e., on 29th April, 2022 and make inquiries about

the Defendants' 'RAJDHANI' branded products or any other products if lying in plain packaging or plain bags. Let the inspectors submit a detailed status report on the following aspects:

1. Status of the bulk masalas which may be now lying in plain packaging or bags, as to whether they are current or expired products. Officials are permitted to lift samples.
2. Assessment as to the daily production and sale in the factory of the Defendants.
3. Whether the Defendants are engaged in re-packaging of expired goods of other manufacturers. If yes, what is the manner in which the Defendants are sourcing the said expired products.
4. What is the manner in which the Defendants' products are being sold in the market.

18. During the said inspection, Id. Counsel for the Plaintiff as also the Local Commissioner is permitted to be present, so as to ensure that the Defendants do not mislead the said Inspectors in any manner. After conducting the joint inspection, the report in respect thereof shall be placed on record by 20th May, 2022.

19. Mr. Anurag Ahluwalia, Id. CGSC is requested to communicate the present order to the FSSAI and any other concerned authority, in order to ensure compliance. Mr. Anuj Aggarwal, Id. Standing Counsel for GNCTD has also been requested to communicate the present order to the Commissioner - Food Safety, GNCTD.

20. Mr. Ahluwalia shall also obtain the report from the GST authorities as to the quantum of sales of the Defendants over the last five years, during which period the Defendants have been claiming to be using the mark 'RAJDHANI' for masalas of its manufacture and sale. The Defendants shall also place on record their Income Tax returns, within two weeks.

21. In the meanwhile, the factory of the Defendants at B-34, Lawrence Road, Industrial Area, Delhi-110035, shall remain sealed and no manufacturing shall be permitted in the said factory. The officials shall conduct the inspection tomorrow and seal the factory.

22. The Defendants have stated that they do not have any other factory or premises, apart from the factory situated at B-34, Lawrence Road, Industrial Area, Delhi-110035. The residential properties of Mr. Ravi Kohli & Mr. Pawan Kohli are stated to be as under:

1. C-538, Saraswati Vihar, Pitampura, Delhi - 110034
2. 408, Kohat Enclave, Pitampura, Delhi - 110034

23. However, the Defendants submit that they do have two other properties in Lawrence Road, Delhi where no work is being done. The said properties are stated to be empty and the same are as

under:

1. B-55, Lawrence Road, Delhi - 110035.

2. A-14, Lawrence Road, Delhi - 110035.

24. List on 26th May, 2022.

25. This is a part-heard matter.

PRATHIBA M. SINGH JUDGE APRIL 28, 2022/aman/Rahul/MS/AD