

In The Commercial Court (District Judge Level), Indore (M.P.)
(Before :- Amit Singh Sisodia)

Registration No.3/2024

Filing No.-10640-2023

CNR No. MP0901-053311-2023

Filing Date- 01/12/2023

Mount Everest Breweries Limited,

(CIN: U15549MP1999PLC049379)

(Through its Authorized Signatory Shri Ranjan

Tibrewal S/o Shri Vimal Kumar Tibrewal)

A Company incorporated under the Companies Act, 1956

Having its registered office at 4th Floor, BPK Star Tower,

Above Shoppers Stop, AB Road, Indore-452008 (M.P.)

----- **Plaintiff**

Versus

Som Distilleries and Breweries Limited,

(CIN:L74899DL1993PLC052787)

A Company incorporated under the Companies Act, 1956

Having Its Registered Office at 1A, Zee Plaza,

Arjun Nagar, Safdarjung Enclave,

Kamal Cinema Road, New Delhi-110029

----- **Defendant**

Presence :

Shri Amit Dubey, Advocate for the Plaintiff.

Shri Yash Tiwari, Advocate for the Defendant.

(ORDER)

(Passed on- 05/12/2025)

01. Vide this order, the twin applications filed by the

SD/-

(Amit Singh Sisodia)

Judge

Commercial Court

(District Judge Level), Indore (M.P.)

defendant u/s. 151 of the Code of Civil Procedure, 1908 dt. 13.11.2025, marked as I.A. No. 1/2025 & I.A. No. 2/2025 are hereby decided.

02. I.A. No. 1/2025 is filed u/s. 151 of CPC, 1908 by the defendant submitting that the written statement of the defendant was struck off by this Court vide order dt. 04.07.2025 and the documents submitted along-with the written statement are required to be considered as part of the reply of the defendant with regard to temporary injunction application filed by plaintiff in the instant matter related to a commercial dispute, infringement of trademark etc. He relied on case of **Shanti Kumar Panda v. Shakuntala Devi**, AIR 2004 SC 115, wherein it has been laid down that Court should consider the prima-facie case, balance of convenience and irreparable injury at the stage of grant of ad interim injunction. He further relied on case of **Rajendra Prasad Gupta v. Prakashchandra Mishra & Ors.** (CA no. 984/2006) without submitting the judgment and therefore it was not taken into consideration.

03. The plaintiff replied I.A. No. 1/2025 and submitted that the defendant has tried to delay the proceedings from the beginning of the suit, during mediation and in filing of the written statement. The Court has struck off the written statement of the defendant on ground of delay, as 120 days was the maximum prescribed limitation. Therefore, defendant can not take advantage of his own wrong. He relied on the case of **Ramprakash Agarwal v. Gopi Krishan**, MANU/SC/0365/2013, wherein it has been laid down that inherent powers enshrined u/s. 151 of CPC, 1908 can be exercised only where no remedy has been provided for in any other provision of CPC.

04. From perusal of record, it appears that the Court has struck off the written statement of the defendant vide order

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Judge

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dt. 04.07.2025, with a clear direction that the written statement filed by the defendant will not be taken on record and will not be considered, without any mention regarding any documents submitted by the defendant along-with the written statement. Therefore, legally there is no bar as to consider the documents of the defendant, even if his defence is struck out in the case. Defendant has all right and opportunity to oppose the injunction application filed by the plaintiff, on the basic premise of prima-facie case, balance of convenience and irreparable injury. Therefore, the documents submitted by the defendant are already on record and there is no question as to applicability of inherent powers for grant of any permission in this regard. The documents submitted by defendant will be considered as per law. Therefore, the application filed by the defendant u/s. 151 of the Code of Civil Procedure, 1908 dt. 13.11.2025, marked as I.A. No. 1/2025 is hereby **allowed**, without any order as to cost, without any specific direction, as the documents of defendant are already on record and may be considered legally.

05. I.A. No. 2/2025 is filed u/s. 151 of CPC, 1908 by the defendant submitting that the suit regarding permanent injunction restraining infringement of Plaintiff's registered trademark STOK and the copyright in the caricature of the STOK PANDAS, and infringement and piracy of the Plaintiff's registered design and unauthorized use of the Plaintiff's embossed bottles by the Defendant. However, plaintiff failed to adduce any evidence as to infringement. Therefore, sought permission to stay the suit in absence of evidence or if required, for issuance of direction to the plaintiff to produce the bottle alleged to have been used by the defendant.

06. I.A. No. 2/2025 is replied by the plaintiff submitting that the application is a mere after thought, filed to delay the

SD/-

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proceedings and frivolous, as the Hon'ble High Court has already taken the cognizance of the matter and passed the order dated 12.11.2024 in Writ Appeal no. 683 of 2024, wherein the said bottles in question have been duly depicted on page 12-13 of the order. The Hon'ble Division Bench restrained the defendant from using glass bottles which carry an embossment of other manufacturers on them, for the purposes of refilling and sale of liquor. Copy of order dated 12.11.2024 is attached and annexed as Annexure-1.

07. In the light of the facts and circumstances mentioned hereinabove, it appears that the said bottle was produced at the pre-litigation mediation. It is also settled that the burden of proving case in a civil suit, mainly lies on the plaintiff, in the instant matter, at the stage of evidence. At present, the temporary injunction application is to be considered. Hence, this Court does not find it proper, to issue direction regarding production of evidence at this stage, as the consequence lies on the party. Therefore, applicataion filed by the defendant u/s. 151 of the Code of Civil Procedure, 1908 dt. 13.11.2025, I.A. No. 2/2025 is hereby **dis-allowed and dismissed**, without any order as to cost.

08. Case is listed for argument on the temporary injunction application filed by plaintiff u/o. 39 rule 1 & 2 of CPC, 1908.

Typed on my dictation

SD/-

(Amit Singh Sisodia)

Judge

Commercial Court

(District Judge Level), Indore (M.P.)

Indore,

Date - 05-12-2025

SD/-

(Amit Singh Sisodia)

Judge

Commercial Court

(District Judge Level), Indore (M.P.)