

**ORDER BELOW APPLICATION EXHIBIT - 6 IN Regular
(Trade Mark) Suit No.1/2015**

(M/s.Akshay Seed Tech. Co. Vs. Mr. Tank (Mali) Bharatkumar Dipaji etc. 3)

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APEARANCES :

Mr.A.I. Surti L.A. for the Plaintiff.

Mr.D.C.Bhindora L.A. for the defendants.

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1. The plaintiff has filed this suit for injunction and accounts of profit and prayed for order and decree of permanent injunction restraining the defendants, their partners or proprietors, their officers, servants, agents and all persons, firms, corporation and associations in active concert or participation with the defendants from manufacturing, offering/stocking for sale, selling, marketing, advertising, distributing, printing, supplying and otherwise dealing, directly or indirectly in any any manner with seeds or any other goods, under the plaintiff's registered label and trademarks "AKSHAY" or any other deceptive variant including but not limited to "AKSHAY" in any fashion, which amount to infringement of the plaintiff's trade mark and which amounts to passing off their goods as those of the plaintiff's or in any manner which suggests a connection or association with the plaintiff and which amount to infringement of the plaintiff's copyright and further prayed for order of rendition of accounts of profits, directly or indirectly earned by the defendants

named and unnamed, their partners, agents, dealers, stockist, retailers from their infringing activities and wrongful conduct and a decree for the amount so found due to be passed in favour of the plaintiff along with further interest at 18% from the date of the suit till realization and further prayed for an order for delivery up by the defendants of all finished and unfinished goods, materials, advertising material, blocks, dies etc. bearing the marks/label, trade dress which is in likenesses of the plaintiff's trademarks/ label/ trade dress or any other mark identical with or deceptively similar to that of the plaintiffs or any other material infringing the Trademarks of the plaintiff's lying in the possession of the defendants and / or their principal officers, directors, agents, franchisees, servants etc. and further prayed for the costs of the suit.

2. The plaintiff has filed an application at Exhibit 6 for interim relief under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and prayed to issue an order of injunction restraining the defendants, named and unnamed, their partners or proprietors, their officers, servants, agents and all persons, firms, corporation and associations in active concert or participation with the defendants from, manufacturing, offering / stocking for sale,

selling, marketing, advertising, distributing, printing, supplying and otherwise dealing, directly or indirectly in any manner with seeds or any other goods, under the plaintiff's registered label and trademarks "AKSHAY" or any other deceptive variant including but not limited to "AKSHAY" in any fashion, which amount to infringement of the plaintiff's trade marks and which amount to passing off their goods as those of the plaintiffs or in any manner which suggests a connection or association with the plaintiff or infringement of the plaintiff's copyright and prayed for any other order which the Court deems fit.

3. The Court had registered the suit and issued urgent show cause notice to the defendants. On service of the process, the defendants have appeared through their Learned Advocate and filed their written objections at Exhibit 36 wherein they denied almost all the allegations made by the plaintiff in toto and further contended that they are having different logo than that of the plaintiff's firm; that they are dealing with seeds for groundnut; that they are purchasing the seeds from Akshay Sales Industries, Ahmedabad and are selling the seeds; that the logo of Akshay Seeds, Junagadh is different wherein the logo shows the plant of groundnut different from the plaintiff's firm;

that the defendant have got the license No.5768 dated 01/09/2014 and as per the license they are doing the business with head office at Junagadh, Deesa and Banaskantha; that they have got registered their name vide Certification of Registration No.140120191015 with I.A.F.T.N.V. Certification Pvt. Ltd. which is produced in the record. It is further contended that they have got the logo "bAKSHAY" through the procedure dated 16/09/2014 paying the Fee of Rs.4,000/- and it is different from the logo of the plaintiff having better title and said procedure is carried with the Registrar of Trademark Office. It is further contended that the plaintiff have not got their case prima facie and if the injunction is granted then they will have to suffer a loss which cannot be compensated in terms of money and therefore prayed to dismiss the application for interim relief.

4. Following points have arisen for the determination of this application:

1. Whether there is a prima facie in favour of plaintiff?
2. Whether plaintiff would suffer irreparable loss if the injunction sought for is denied?
3. In whose favour the balance of convenience is?
4. What order?

5. My findings to the above points is as under:

1. In Affirmative.
2. In Affirmative.
3. In favour of plaintiff.
4. As per final order.

-:: R E A S O N S ::-

Point No.1 to 4:

6. As these points are inter-related and inter-connected with each other and reasoning for one point is dependent on the other, all these points are decided and discussed together.

7. Before proceeding further, it becomes pertinent to note that the present plaintiff has filed the suit under the provision of Trade Marks Act, 1999 and therefore it becomes necessary to whether the trademark of the plaintiff is registered or not.

8. It is averred by the plaintiff that they are carrying on the business in the name and style of "AKSHAY SEED TECH. CO." and "AKSHAY SEED" is registered with logo.

9. The certificate issued by the Trade Mark Registry is produced at Mark 5/2 which reveals that "AKSHAY SEED" is registered trade mark having Trade Mark No.1696256 dated 06/06/2008 and is registered for seeds for agriculture use being the goods included in class-31 and the same is also being revealed from the extract of Register

of Copyrights at Mark 5/3. Thus, prima facie it reveals that the plaintiff has got his trademark registered with the Trade Mark Registry.

10. The documents produced by the plaintiff reveal that they are carrying the business in the name and style of Akshay Seeds Tech. Co. and carrying sales promotion from the year 2004-05 to 2013-14 and had expensed much for the same and having much transaction in the said name and the same is supported by the difference retail invoices of year 2006 to 2015 produced with list at Mark 5/5.

11. Therefore prima facie plaintiff has proved that they are carrying the business in the name and style of "AKSHAY SEED" and having their own logo for the same.

12. Now it is the defence of the defendants that they are carrying the business in the name and style of Akshay Seeds Junagadh and have their logo which is quite different from that of the plaintiff. That it becomes pertinent to first of all to look at the logo used by the defendant. The logo used by the defendant is "bAKSHAY". Here at this juncture it is to be noted that the name looks quite similar to that of the plaintiff except in that there is a small character "b" inserted before the name "AKSHAY". As discussed

earlier, the brand and trade mark used by the plaintiff is much famous and having much transaction in their name. Therefore it seems prima facie that by inserting a small character "b" before the brand name used by the plaintiff, the defendant are trying to sell the products as if in the name of the plaintiff's brand/mark. It is well settled that the defendants are not the proprietors or agents or dealers of the plaintiff. Therefore they are trying to sell the products as if they are selling the goods of the plaintiff. It is the defence raised by the defendants that their trademark / logo is completely different from that of the plaintiff. If that was so the intention of the defendant than they ought to have not inserted merely a small character "b" before the brand/ logo name of the plaintiff "AKSHAY" or else they would have used character capital "B" to differentiate their product from that of the plaintiff. But not done so which creates a doubt on the behaviour and intention of the defendants themselves.

Section 29 of the Trade Marks Act, 1999 reads as under:

"Infringement of registered trade marks :-

(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical

with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark."

13. Thus, it is clearly shown in the above section that trade mark which is identical with or deceptively similar to, the trade mark is termed as infringement. Here in the case on hand, the trade mark used by the defendants is some how identical and appears deceptively similar to that of the plaintiff and therefore there is clear cut infringement. Therefore the plaintiff has got its prima facie case.

14. It is the defence of the defendants that they are carrying the business in the name of "AKSHAY SEEDS JUNAGADH" and in support of their defence they have produced the license and certificate at Mark 33/1 and 33/2. On the other hand, the plaintiffs are also carrying the business in the name and style of "AKSHAY SEED". Therefore the brand name used by the defendant is also somehow similar to that of the plaintiff merely the word "JUNAGADH" is being inserted at the end of the name. Therefore the act of the defendant prima facie appears to be suspicious and that act reveals that they are trying to take the benefit of the brand name / logo used and

marketed by the plaintiff and trying to sell the goods in the name and style which is somehow similar to that of the plaintiff. Therefore also the plaintiff has got its prima facie case.

15. It is the defence of the defendants that they are selling different seeds than that being sold by the plaintiff. While perusing the Form TM-1 produced by the defendant at Mark 33/5, it reveals that they have also registered their brand / logo looking similar to that of the plaintiff and it is clearly mentioned that it is for seeds for agriculture use being the goods included in class-31. On the other hand from the certificate produced by the plaintiff at Mark 5/2 it reveals that they are also dealing in seeds for agriculture use being the goods included in class-31 and therefore the defence raised by the defendant that they are dealing in different type of goods than that of the plaintiff as both have got the certificate for the goods included in Class-31, cannot be considered atleast at this interim stage. Therefore also the plaintiff has got its prima facie case.

16. The defendants have produced license at Mark 33/1, certificate at Mark 33/2 wherein the address is mentioned as "GIDC, shop No.1, Dolatpura, Junagadh-362001" This Court has granted the application for appointment of the

Court Commissioner filed at Exhibit 8 by the plaintiff. But it is very shocking to note that the notice for the commission work was returned unserved from the said address as per the endorsement of the Bailiff and G.I.D.C., Junagadh has given in writing on their letter pad that no such firm is being allotted the so called shop No.1. If the defendants are really carrying their business at the address mentioned in the license and certificate of Junagadh then the notice ought to have been served. On the contrary it is given in writing by the G.I.D.C., Junagadh that no such shop has been given to so called Akshay Seeds or its proprietor and the same is also being reflected from the Rojkam prepared by the Court Commissioner at Mark 29/1. This act of the defendant also raises doubt about the genuineness of the statements made before this Court. Therefore also the plaintiff has got its prima facie case.

17. It further reveals from the record that the defendants have got their logo registered on 16/09/2014 as revealing from certificate at Mark 33/5. On the other hand, the plaintiff has got its trademark registered on 29/03/2010 as revealing from Mark 5/2. Therefore the plaintiff has got its trademark registered before that of the defendant or else case would have been different.

18. The Honourable High Court of Delhi has in the case of MARVEL TEA ESTATE INDIA LTD. Vs. NUSUN GENETIC REASERCH LTD. 2012 LAWSUIT(DEL) 1626 wherein the Honourable High Court had affirmed the interim injunction order and restrained the defendants from using the trademark which is identical with and/or deceptively and confusingly similar to that of the plaintiff. The said Judgment is helpful in the present case.

19. Therefore as per the discussion made hereinabove, it is crystal clear that the defendants are carrying the business in the name and style and using logo which is somehow similar to that being used by the plaintiff and therefore the plaintiff has got its prima facie case. Therefore, if the injunction is not granted at this juncture than in that event the plaintiff will have to suffer loss which cannot be compensated in terms of money and therefore points of balance of convenience and irreparable loss are favouring the plaintiff. Therefore, in the considered opinion of this Court, the present application at exhibit 6 is required to be allowed and the defendants are required to be restrained from using the name and style and logo as of the similar nature that being used by the plaintiff. Hence, in view of the above discussion, I answer the relevant points

accordingly and pass the following order towards the point No.4 in the interest of justice:

-: O R D E R :-

→ The present application at Exhibit 6 is allowed.

→ The defendants, their agents, servants, persons, partners, proprietors etc. are hereby restraining by way of injunction from manufacturing, offering/ stocking for sale, selling, marketing, advertising, distributing, printing, supplying and otherwise dealing, directly or indirectly in any manner with seeds or any other goods falling in Class 31 in the mark of "bAKSHAY" or "AKSHAY SEEDS JUNAGADH" or under the plaintiff's registered label and trademarks "AKSHAY" or any other deceptive variant including but not limited to "AKSHAY" in any fashion, which amounts to infringement of the plaintiff's trade mark or which amounts to passing off their goods as those of the plaintiff's or in any manner which suggests a connection or association with the plaintiff or which amounts to infringement of the plaintiff's copyright till the final disposal of the suit.

→ Parties to bear their own costs.

Signed and pronounced in open Court on this 12th day of May, 2015.

Junagadh

Date : 12/05/2015

(Prathmesh V. Shrivastav)
Additional District Judge
Junagadh(GJ00372)

