



BEFORE THE SPECIAL COMMERCIAL JUDGE,
&
4TH ADDITIONAL DISTRICT JUDGE, SURAT.

IN COMMERCIAL TRADE MARK (CIVIL) SUIT NO. 30 OF 2021

ORDER BELOW EXHIBIT - 5

Appearances

Mr. J.B. Verma : *Ld. Advocate for the Plaintiff.*
Mr. D.V. Dave : *Ld. Advocate for the Defendants.*

1. The Plaintiff has preferred the present Suit for declaration, infringement and passing of Trade Mark, mense profits, damages and delivery up etc.
2. The plaintiff has filed application under Section 5 for praying therein that :
 - 2.1. An order pending the hearing and final disposal of the suit, restraining the defendants, whether acting by themselves or through their partners or proprietor, as the case may be, their officers, servants, agents and representatives, or any of them, from in any manner using, by way of packing, manufacture, sale, distribution, the plaintiff's registered trademark "SIDDHANT" and "GSP" and "DEVICE OF PEACOCK

FEATHER" and/or any mark/s similar thereto so as to amount to infringement of plaintiff's trademark referred above;

- 2.2. An order pending the hearing and final disposal of the suit restraining the defendants, whether acting by themselves or through their partners or proprietor, as the case may be, their officers, servants, agents and representatives, or any of them, from in any manner using, by way of manufacture, sale distribution and/or advertisement, the plaintiff's trademark/packaging or any other mark/packaging deceptively similar thereto in respect of plaintiffs registered trademarks;
- 2.3. An order for rendition of accounts of profits earned by the defendants by the sale of the impugned goods under the impugned trademarks and also to direct the defendants to submit to this Hon'ble Court the audited books of accounts from the date of incorporation of the defendants;
- 2.4. An order for the delivery up of all impugned materials of the defendants, including the products bearing the impugned mark, brochures, container boxes, labels and stationary or any other material of the defendants containing the infringed trademarks of the applicants;
- 2.5. Such other and further reliefs that may be deemed fit and proper be granted;
3. Ld. Advocate for the plaintiff has submitted that plaintiff is a private limited company and it manufactures, exports and supplies edible lime. It is submitted that plaintiff has secured registration of its trademarks like "**SIDDHANT**", "**GSP**" and "**DEVICE OF PEACOCK FEATHER**" under the Trade Marks Act, 1999 and has also got its Logos/Artistic Works registered under the Copyright Act,1957. It is submitted that the plaintiff has been

using its trademarks as mentioned here-in-above on an extensive scale and has also widely advertised the said trademarks for its goods and built up the reputation and goodwill of the said marks on account of their marketing efforts and investment. It is submitted that the said trademarks have become popular amongst the public and the plaintiff has come to enjoy wide and enviable reputation and goodwill in the said trademarks. The plaintiff further submits that the products of the plaintiff are also sold in different form of packaging including bottles, boxes, pouches etc. in different sizes and these bear distinctive features of labelling including logos, graphics colour combinations, stylized scripts and overall arrangement of features. It is submitted that it was found by the plaintiff that many unscrupulous persons are trying to infringe the registered Trademarks/Artistic Works of the Company and pass off their goods as the goods of the plaintiff and thereby, inflicting irreparable injury and great loss to the brand, reputation, revenue and goodwill of the plaintiff. It is submitted that in order to prevent this and in order to bring it to the notice of the public at large, the plaintiff regularly publishes advertisements in print as well in electronic media cautioning the public at large from consuming such infringing and adulterated product and warning such unscrupulous persons from indulging into such act of duplicating the product of the plaintiff's products.

3.1. Further, it is submitted that the plaintiff received an information that the defendant no.1 being represented by its partners i.e., defendant no.2 and 3 were printing polythene pouches for the purpose of packing edible lime to be used for consumption with pan masala, whereby the pouches are printed with the name as well as artistic works of packaging of the plaintiff i.e., "**SIDDHANT**" as well as with the deceptively similar trademark to the same and thereby the intellectual property right of the plaintiff are being infringed. Thereafter, the plaintiff had conducted raids at the premises of defendants, pursuant to FIR No.II/454/2018 led to seizure of large quantities of counterfeit plastic rolls of **SIDDHANT CHUNA PARCEL AND 10 (Ten) ROLL CYLINDERS OF SIDDHANT CHUNA PARCEL** products. Further, during raid, certain plastic rolls of printed labels with the name of **SIDDHANT** which is identical to the plaintiff's trade mark as well as with the names **SIDDHARATH & SIDDHNATH** which are deceptively similar to that of plaintiff's trademark printed thereon, were also found from the premises of the defendants which were manufactured by the defendants. It is submitted that all the relevant materials have also been produced on record at Annexure-22 with plaintiff. The activities conducted by the defendants itself suggest the fact that the defendants have been undertaking illegal activities on a large scale as well by using various trademarks which are identical as well as

deceptively similar to that plaintiff's trademarks. It is submitted that plaintiff has not granted any license or permission to use its any trademark to the defendant, however, the defendants were distributing/selling lime in the name and style of trademarks of plaintiff, thus, defendants are in violation of plaintiff's trade mark and copyright in their artistic labels and packaging. It is submitted that the above act of defendants have made irreparable losses, irreparable damages of goodwill of the plaintiff. Therefore, it is prayed that defendants be restrained by an order from producing, manufacturing, offering for similar trademarks which are recognized as trademarks of the plaintiff. Hence, it is submitted that present application be allowed and plaintiff be granted ad-interim reliefs as prayed for.

4. Pursuant to filing of present suit and injunction application notices were issued to other side. Pursuant to which, defendants were appeared before the court and have filed their reply before the court.
5. The defendants have denied all the facts, allegations made in the plaint. It is submitted that the plaintiff's suit is barred by non-joining of parties. It is submitted that allegations leveled against them are false. It is submitted that defendants that FIR was lodged before Morbi Police Station and some seizure was made by the police, but defendants denied the fact that they have made any counter fake plastic roles of "**SIDDHANT CHUNA**

PARCEL". It is further submitted by the defendants that they are doing any illegal activities on a large scale by using various trademarks which are identical similar to the trademarks of the plaintiff. Defendants have denied that they have manufactured any kind of edible lime containing the intellectual property rights of the plaintiff. It is submitted by the defendants that they have neither contacted the plaintiff for any kind of permission or licence to distribute, sale the lime under the trademark of "**SIDDHANT**" nor they have interest in selling, distributing edible lime. It is submitted by the defendants that they are not engaging themselves in manufacturing, distrusting, selling of **SIDDHANT EDIBLE LIME (CHUNA)** nor manufactured such kind of products and due to any act of defendants, no any loss or irreparable loss caused to the plaintiff.

5.1. Further, it is submitted by the defendants that the real culprit Mr. Sureshbhai Patel who is one of the accused in the case for which FIR was filed before Morbi Police Station has given his statement before the police that he has given material for printing to the defendants and thereafter, Sureshbhai had not gone to receive the printed material from the defendants and so cylinder or dye and ready material plastic role was lying with the present defendant and which were seized by the police after filing the FIR and therefore, defendants have not independently done any act which infringed any law or trademarks as alleged by the plaintiff. So, it

is crystal clear that defendants have not independently done any act which infringed any law of trademark. Considering the above mentioned facts, it is submitted by the defendants that they are mere printer of the plastic role and there is no mala fide intention on the part of the defendants. Considering the above mentioned all the facts, it is submitted that there is no *prima facie* case in favor of the plaintiff and there is no balance of convenience lies in favor of the plaintiff. There is no irreparable injury to the plaintiff and also the suit is not maintainable. Hence, prayed to reject the present application with costs.

6. I have heard Ld. Advocates for both the parties and perused the entire record alongwith present application.
7. For the purpose of any interim injunction order, plaintiff has to show that there is *prima facie* case in his favor, the balance of convenience also lies in his favor and he shall suffer irreparable loss and injury if the order prayed for is not granted.
8. Perusal of the record of the present case shows that plaintiff is a private limited company and it manufactures, exports and supplies edible lime. It is submitted that plaintiff has secured registration of its trademarks like "SIDDHANT", "GSP" and "DEVICE OF PEACOCK FEATHER" under the Trade Marks Act, 1999 and has also got its Logos/Artistic Works registered under the Copyright Act,1957. It is submitted by the plaintiff that

defendant no.1 partnership firm is also in the business of edible lime to be used for consumption with pan masala and whereby to deceive the public and with mala fide intention they have been utilizing identical trademark of the plaintiff and marketing their products and thereby misleading and defrauding the consumers. However, it is submitted by the defendant that they are not doing any illegal activities by using various trademarks which are identical similar to the trademarks of the plaintiff. They have further denied that they have manufactured any kind of edible lime containing the intellectual property rights of the plaintiff. It is further submitted that they are not engaging themselves in manufacturing, distrusting, selling of **SIDDHANT EDIBLE LIME (CHUNA)** nor manufactured such kind of product.

9. First of all, it is to be noted that an FIR has been registered against the defendant no.2 and 3 and one Mr. Dasrathbhai in Morbi Police Station on dated 23.09.2018 under Section 63,64 and 65 of the Copy Right Act and U/s 103,104 of the Trade Mark Act 1999 and police has also seized certain quantities of counterfeit plastic rolls, machines, dye and cylinders and sealed the premises. Upon perusal of FIR as well panchnama, it is crystal clear that defendants were found in possession of aforesaid alleged materials and also the defendants have admitted that fact that they were printing the pouches which indicates that they are directly involved in

production of counterfeit and pirated products as that of the genuine product of the plaintiff. It is required to be noted that the pouches are being supplied to and used by the manufacturers of counterfeit product i.e., edible lime (Chuna), who passed off spurious and substandard product as genuine product of plaintiff. Further, the pouches being manufactured by defendants are identical to the genuine pouches and are causing confusion and deception public at large. I have also gone through the photographs, which is produced on record. It appears that defendants on pouches are using mark R (i.e, registered), Copyright, the mobile number 98251 13616 as well as the **FSSAI** number of the plaintiff, which clearly appears violation on the part of defendants. The defendants are not authorized to provide printed pouches to the retailers (which being supplied and used by manufacturers of counterfeit edible lime (Chuna). The customers who have been purchasing products from the retailers which were being marketed by the plaintiff will definitely get confused by purchasing such counterfeit edible lime (chuna) and also the customers may get mislead by the same. Further, it appears that Trademark of the plaintiff i.e., **SIDDHANT, GSP, DEVICE OF PEACOCK FEATHER** are exclusively registered under different Class and also a license has also been issued in favor of the plaintiff by the **FOOD SAFETY AND STATNDARDS AUTHORITY OF INDIA**, however, the defendants are not

registered for any such trademarks which is identical similar to the plaintiff. Therefore, there is *prima facie* case in favor of the plaintiff and against the defendants.

10. Further, the Balance of convenience also lies in favor of the plaintiff as he is the owner of the registered Trademark and the defendants do not have any registration of the Trademark in their favor. The defendants are not authorized to provide printed pouches to the retailers (which being supplied and used by manufacturers of counterfeit edible lime (Chuna) and such products of the similar nature, which is sold by the retailer after packaging in pirated pouches of the defendant, and by the name which are deceptively similar to that of the plaintiff. The plaintiff shall suffer irreparable loss and injury, if the defendants continue to use the goodwill of the plaintiff and keep on selling the pouches to retailers similar to that of the plaintiff.
11. On the basis of above discussion, it is clear that the Plaintiff has fulfilled all the requirements of Order 39, Rule 1 and 2, R/W Section 151 of C.P.C. and is entitled to the relief as sought for. Under the aforesaid facts and circumstances, I pass the following orders : -

:: O R D E R ::

1. The Application Ex. 5 is hereby **ALLOWED**.

2. The defendants their partners or proprietor, their officers, servants, agents and representatives, or any of them, are hereby restrained in any manner from using, by way of packing, manufacture, sale, distribution, the plaintiff's registered trade marks **SIDDHANT, GSP** and **DEVICE OF PEACOCK FEATHER** and/or any other similar thereto so as to amount infringement of plaintiff's trademark as referred above.
3. The Defendants are further directed not to use impugned mark/label/artwork including brochures, container boxes, labels and stationary or any other infringing material bearing the impugned trademarks/label/artwork to the plaintiff or the authorized representative of the plaintiff till the final disposal of the suit.
4. No order as to costs.

**ORDER SIGNED AND PRONOUNCED IN OPEN COURT TODAY i.e.,
12.06.2024**

Date: 12.06.2024

Place : Surat

PPS/HIMANSHU KAWAD

(ASHISH J.S. MALHOTRA)
Special Commercial Judge &
4th Additional District Judge,
District & Sessions Court, Surat
(Unique Code: GJ01054)