

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Title Suit 18/2022
Renumbered as TS (Com) 42 of 2022
CNR No. WBSP18-000103-2020

Order No. 29

Date: 10.02.2025

In the matter of:

Suit for infringement of trademark under the Trade Marks Act, 1999, and for infringement of copyright under the Copyright Act, 1957, valued at Rs. 5,00,00,000/-.

AND

In the matter of:

Tata Consumer Products Ltd.

Vs.

Radhey Salt Trading Company & 02 Ors.

Order

Today is fixed for hearing of I.A. no. 02 of 2022 *ex parte*.

Plaintiff, defendant no. 1 and defendant no. 2 have filed their respective haziras.

Heard the plaintiff in full.

Now, the instant matter is taken up for passing necessary order.

I.A. no. 02 of 2022

The instant application is filed by the petitioner along with the instant suit and the same was initially moved before this *ex parte* for granting an ad interim order of injunction. This Court by an Order dated 28.09.2022 passed an ad interim order of injunction in respect of prayers (a) and (b) read with prayer (i) of the instant application and the said order has been extended till today.

It appears from the record that by an Order dated 03.12.2024 this Court has fixed the captioned application on the *ex parte* board as the respondent nos. 1 and 2 have failed to show cause as to why the instant application shall not be heard *ex parte*.

The case of the petitioner is succinctly narrated below.

The petitioner by virtue of an order passed by the NCLT, Kolkata Bench on 08.01.2020 merged with another subsidiary of the renowned Tata Group,

namely Tata Chemicals Ltd. i.e. the respondent no. 3 herein and such merger also envisaged a perpetual transfer of all intellectual property rights including trademarks in favour of the petitioner and accordingly, the petitioner became the owner of the copyright registered and subsisting in the trade dress and overall artistic arrangement of the package/receptacle corresponding to the well known "Tata Salt" product.

The aforesaid trade dress has been using a visually striking red-white black colour scheme which is immediately identifiable by a commoner. From the plaint more particularly in paragraph no. 17 it further reveals that the petitioner had incurred a huge amount of expenses to promote its "Tata Salt" trademark.

The contention of the plaintiff/petitioner is that on or about 14.09.2022, the petitioner came to know that certain entities/persons are selling inferior quality salts under a deceptively similar Trademark "Taza Salt" in deceptively similar packaging and/or get up bearing a deceptively similar artistic work and also that a consignment carrying approximately upto 30MT of the said inferior product had secretly arrived at Chitpur Railway Yard of Kolkata by Railway. Immediately, upon receipt of the above information, the petitioner engaged an independent investigation agency who surveyed the said area and thereafter submitted a report on 15.09.2022 observing that the respondent nos. 1 and 2 have brought the offending consignment under the name and style "Taza Salt" which are deceptively similar and/or identical to the widely recognized trade dress/artistic get up of the "Tata Salt" package of the petitioner. Hence, the instant suit.

The present action evidently shows that the trade dress embossing the name "Tata Salt" thereon coined by the plaintiff is more often than not infringed by the respondent nos. 1 and 2 in their product under the name "Taza Salt", which is deceptively similar packaging and/or get up bearing a deceptively similar artistic.

As regards, this Court takes view of the case reported in (2002) 3 SCC 65 (Laxmikant V. Patel vs. Chetanbhai Shah and Another) wherein the Hon'ble Court held that once a case of passing off is made out the practice is generally to grant a prompt *ex parte* injunction followed by appointment of Local Commissioner, if necessary.

In the instant case, on considering and perusal of the material on records, it is *prima facie* appears that the petitioner's registered trademark is grossly infringed by the respondent nos. 1 and 2, therefore, in the light of the aforesaid case, the petitioner's case herein is stronger, as there is no passing off but infringement.

Further, the case reported in (2004) 3 SCC 90 (Midus Hygiene Industries (P) Ltd. and Anr. vs. Sudhir Bhatia and Ors.) the Hon'ble Supreme Court almost took the same view as taken in the *Laxmikant's* case (*supra*) and viewed that in cases of infringement either of trade mark or of copyright, normally an

injunction must follow and mere delay in bringing action is not sufficient to defeat the grant of injunction in such cases. The Hon'ble Court further viewed that the grant of injunction becomes necessary if it *prima facie* appears that the adoption of a mark was itself dishonest. In another case the Hon'ble High Court at Bombay in the case of *Asian Paint Ltd. vs. Virendra Kumar Sharma Trading as Virsum Industries* arising out of *COM IPR SUIT (L) No. 4888 of 2024*, granted interim relief along with appointment of receiver in favour of the plaintiff/petitioner as the plaintiff's reputed mark was infringed by the defendant/respondent therein.

In the premises set forth above, I am of the considered view that in this case an order of injunction should be passed in favour of the petitioner. As such, at this echelon, there is no exigency to interfere with the Order dated 28.09.2022 to the extent of any modification.

So, considering all it appears to me that the petitioner has made out a strong *prima facie* case tilting the balance of convenience and inconvenience in its favour.

Hence, it is

Ordered

that, the I.A. No. 02 of 2022 is allowed on *ex parte* and as such the Order dated 28.09.2022 passed by this Court hereby stands absolute till disposal of the instant suit.

Accordingly, the captioned application being I.A. no. 02 of 2022 is hereby disposed of.

Fix the matter on 12.03.2025 at 11:00 a.m. for fixing first case management hearing of the *per se* suit.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

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