



\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 477/2024**

DS AGRIFOODS PRIVATE LIMITED

..... Plaintiff

Through: Mr. Kirti Uppal, Senior Advocate
with Mr. N.K. Kantawala,
Mr. Prakhar Sharma, Ms. Riya Gulati,
Mr. Swapnil Choudhary and
Mr. Prashant Andrew, Advocates.

versus

M/S SINGHAL ENTERPRISES & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

30.05.2024

I.A. 31001/2024 (for exemption from filing original documents and from filing copies of documents with proper margins, typed and translated copies, dim documents)

1. Exemption is granted, subject to all just exceptions.
2. The Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. The application stands disposed of.

I.A. 31002/2024 (seeking exemption from pre-institution mediation)

4. As the present suit contemplates urgent interim relief, in light of the



judgment of Supreme Court in *Yamini Manohar v. T.K.D. Krithi*,¹ exemption from attempting pre-institution mediation is granted.

5. Disposed of.

CS(COMM) 477/2024

6. Let the plaint be registered as a suit.

7. Upon filing of process fee, issue summons to the Defendants by all permissible modes. Summons shall state that the written statement(s) shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement(s), the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

8. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

9. List before the Joint Registrar for marking of exhibits on 2nd September, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

10. List before Court for framing of issues thereafter.

I.A. 31000/2024 (under Order XXXIX Rules 1 & 2 CPC read with Section 151 CPC, 1908)

11. Mr. Kirti Uppal, Senior Counsel for the Plaintiff, presents the

¹ 2023 SCC OnLine SC 1382.



following facts and contentions for the grant of an ad-interim *ex-parte* injunction against the Defendants:

11.1. The Plaintiff is the proprietor of trademarks “DOONMALAI” and



trade dress/ packaging “ ” and their formative variants, which are currently pending registration in class 30 before the Trademarks Registry. These trademarks/ labels are used for the rice produced and sold by the Plaintiff. In addition to their trademark rights, the Plaintiff claims copyright over the artistic work comprising the afore-noted labels.

11.2. The trademark “DOONMALAI” has been continuously used by the Plaintiff since 01st June, 1986 for the products in question. The year-wise sales figures of the “DOONMALAI” products have been disclosed in paragraph No. 16 of the plaint.

11.3. The present suit is directed against the adoption of a nearly identical



mark “DOODMALAI”/ “ ” by the Defendants for the identical products. Recently, in April, 2024 the Plaintiff discovered that Defendant No. 1, of which Defendants No. 2 to 4 are partners, has filed an



application for registration of the mark “” in class 30 on a proposed-to-be-used basis on 17th October, 2022. This application has been opposed by the Plaintiff. In addition to this application, Defendant No. 1 has filed applications for the marks “LAKHNAWI DOODMALAI” and “KESARIYA DOODMALAI” in class 30 on a proposed-to-be-used basis.

11.4. Defendant No. 1 acted as a dealer of the Plaintiff’s “DOONMALAI” products from at least 2017 till December, 2021. This is demonstrated by the several invoices placed on record. Thus, the Defendants cannot deny their knowledge of the Plaintiff’s trademark/ trade dress “DOONMALAI” and their subsequent adoption, after the cessation of dealership arrangement, is in bad faith.

12. The Court has considered the afore-noted contentions. A comparison between the rival trademarks and accompanying trade dress is as follows:

<i>Plaintiff’s products</i>	<i>Defendants’ products</i>
“DOONMALAI”	“DOODHMALAI”





13. The impugned mark “DOODMALAI” is phonetically, visually, and structurally alike to the Plaintiff’s “DOONMALAI”. The Defendants have also replicated the make and design of the Plaintiff’s products. Considering the previous business relationship between the parties, *prima facie*, the adoption of the impugned mark and packaging by the Defendants appears to be intended to take aid of the Plaintiff’s standing in the market, which is evidenced from the sales figures delineated in the plaint. Thus, in the Court’s *prima facie* opinion, the Defendants are passing off their goods as that of the Plaintiff’s.

14. In view of the above, the Court is convinced that the Plaintiff has made out a *prima facie* case in their favour, and in case an *ex-parte* ad-interim injunction is not granted, the Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiff and against the Defendants.

15. Accordingly, till the next date of hearing, the Defendants, or anybody acting on their behalf, are restrained from using the trademark



“DOODMALAI” and their packaging “ ” or “ ” or any other mark for packaging, which is deceptively similar to the Plaintiff’s



“DOONMALAI” and their packaging “ ” or “ ” for the products in question.

16. Compliance of Order XXXIX Rule 3 of CPC be done with one week from today.

17. Upon filing of process fee, issue notice to the Defendants, by all permissible modes, returnable on the next date of hearing. Reply, if any, be filed within four weeks from the date of service. Rejoinder thereto, if any, be filed within two weeks thereafter.

18. List on 04th November, 2024.

SANJEEV NARULA, J

MAY 30, 2024

nk