



\$~33

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

+ **CS(COMM) 502/2019**

MALABAR GOLD PRIVATE LIMITED Plaintiff

Through: Mr.Akhil Sibal, Senior Advocate
with Mr.Bishwajit Dubey,
Ms.Surabhi Khattar, Ms. Isha
Malik & Ms.Shriya Misra,
Advocates.

versus

MANUVEL MEZHUKANAL Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **13.09.2019**

I.A. 12669/2019 (for exemption and for taking pen drive and compact disk on record)

The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

For the reasons stated in the application, the permission to file the pen drive and the compact disk is granted. The application stands disposed of.

I.A. 12668/2019 (Under Order XI Rule 1(4) of the CPC seeking leave to file additional documents)

This is an application for filing of additional documents. The additional documents may be filed by the plaintiff, strictly in accordance with the provisions of the Commercial Courts Act, 2015.

The application is disposed of.

CS(COMM) 502/2019

Page 1 of 6



CS(COMM) 502/2019

1. The plaint be registered as a suit. Summons be issued to the defendant by all permissible modes on filing of process fee.
2. The summons shall indicate that the written statement must be filed within thirty days from the date of receipt of the summons. The defendant shall also file an affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.
3. The plaintiff is at liberty to file a replication thereto within fifteen days after filing of the written statement. The replication shall be accompanied by an affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.
4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
6. List before the Joint Registrar for marking of exhibits on 19.11.2019.
7. List before the Court on 16.01.2020.

I.A. 12667/2019 (Under Order XXXIX Rule 1 and 2 of the CPC for Temporary Injunction)

1. The present suit has been instituted alleging infringement of the plaintiff's registered trademark and passing off. The plaintiff carries on business in jewellery, and other articles of gold, silver, precious stones, diamonds and watches. It has registered trademarks as enumerated in paragraph 11 of the plaint.



2. According to the plaintiff, the significant components of its trademark are capital letter “M” alongwith a dot (.), which is extensively used in the colour combination of purple and gold, with or without the

word “MALABAR” –   . The plaintiff claims to have business in several countries and a turnover of over ₹10,000 crores in 2017-18. Its advertisement expenditure in that year was in excess of ₹48 crores.

3. The grievance articulated in the plaint is that the defendant has adopted a similar colour scheme and the name “MALABAR” as well as a device using capital letter “M” and a dot (.), similar to the plaintiff’s device for the business of gold loans, as also for the sale of jewellery. The plaintiff has placed on record the evidence of the defendant’s use of a deceptively similar mark in a newspaper advertisement, wherein the defendant has described itself as a “Malabar Initiative”, also using a purple and gold colour scheme for its gold loan business under the brand name “Minsara”. The logo used by the defendant is the letter “m” and a

 dot (.), although in a stylised font. The plaintiff has also referred to the website of the defendant wherein “Minsara” is described as “an initiative by M. MALABAR” and “A MALABAR GROUP INITIATIVE”. “Minsara” has been described as “a division of Malabar Group”.



4. The plaintiff further claims that the defendant has recently



commenced use of a new logo – for a jewellery business where also the word “MALABAR” is used in capital letters, similar to the use of the word in the plaintiff’s trademark. Although the entire logo is not identical to the plaintiff’s logo, the components of the letter M and a dot (.), as well as a similar colour scheme are visible in the new logo. The plaintiff has placed on record a video published by the defendant, available on his Facebook page, and has handed over screenshots of the same, which shows that the video opens with the capital letter “M” and a dot (.) in a similar colour scheme as adopted by the plaintiff.

5. Relying upon the aforesaid, Mr. Akhil Sibal, learned Senior Counsel for the plaintiff, submits that the defendant has clearly and dishonestly adopted the brand identity of the plaintiff for a business substantially similar to that of the plaintiff. With reference to the similar colour scheme and the elements of capital letter “M” and a dot (.), as present in the plaintiff’s registered trademark, Mr.Sibal submits that the defendant has, in addition to infringement of the trademarks, also sought to pass off his products and services as those of the plaintiff. Mr.Sibal has drawn my attention to the Division Bench judgment of this Court in *Shree Nath Heritage Liquor Pvt. Ltd. and Ors. vs. Allied Blender & Distillers Pvt. Ltd.* 221 (2015) DLT 359, and the judgment of the learned Single Judge in *N. Ranga Rao & Sons vs. Anil Garg & Ors.* (2006) 128 DLT 649, to argue that the aforesaid elements must be looked at in a composite manner to see if the use of the impugned mark is likely to cause



confusion in the mind of consumers. The tests laid down for this purpose, as reiterated in the said judgments, are based on overall similarity of the marks, as may be sufficient to deceive a consumer of less than perfect recollection.

6. Mr. Sibal has also drawn my attention to a decree dated 30.05.2015, passed by the Additional District Judge - II, Kozhikode, Kerala, in O.S. No. 3/2009, between the same parties, wherein the defendant has been enjoined from using the trademark “MALABAR FASHION JEWELLERY” alongwith the logo or any other deceptively similar mark to that of the plaintiff’s registered trademark. Mr. Sibal states that although the decree is under appeal, no stay has been granted by the Appellate Court.

7. Having regard to the aforesaid, applying the tests laid down in the said judgments, I am of the view that the plaintiff has made out a good *prima facie* case for the grant of *ad interim* relief. The balance of convenience is also in favour of such an interim injunction being granted. The plaintiff has established that it will suffer irreparable injury if its intellectual property rights are not protected at this stage.

8. Consequently, until the next date of hearing, the defendant is

restrained from using the impugned “Minsara” logo , or the

new logo , in the colour combination of gold and purple, or any other mark deceptively similar to the plaintiff’s registered trademark, or from passing off its products and services as those of the plaintiff. The



defendant is also restrained from using the phrase “Malabar Group”, or describing itself as an initiative/division of “M. Malabar”.

9. The provision of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be complied with within one week. A copy of the entire paper book be supplied to the defendant. The defendant may file a reply to the application within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

10. List before Court on 16.01.2020.

PRATEEK JALAN, J

SEPTEMBER 13, 2019

‘pv’/s