



\$~34

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

+ CS(COMM) 1042/2024 with I.A. 45989/2024, I.A. 45990/2024, I.A. 45991/2024, I.A. 45992/2024, I.A. 45993/2024, I.A. 45994/2024 and I.A. 45995/2024

TATA SONS PRIVATE LIMITED & ANR.Plaintiffs

Through: Mr. Pravin Anand, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Mr. Swastik Bisarya, Advocates.

versus

NAMITA BHUYAN & ANR.Defendants

Through:

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

ORDER
25.11.2024

%

I.A. 45992/2024 (exemption from filing originals, clearer copies, certified copies of originals, translated copies)

1. Allowed, subject to the plaintiff filing legible copies of the annexures within four (4) weeks from today.
2. The plaintiffs are exempted from filing original documents at this stage.
3. The application stands disposed of.

I.A. 45993/2024 (seeking exemption from advance service to defendants)

4. The plaintiffs seek urgent interim relief against infringing products and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought to confiscate the goods. It is submitted that there is a probability that



the defendants may remove the infringing products if the defendants are given advance service of the plaint paper book. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

5. The application is disposed of.

I.A. 45994/2024 (u/s 12A of Commercial Courts Act)

6. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

7. The application stands disposed of.

I.A. 45991/2024 [O-XI R-1(4) of the Commercial Courts Act]

8. The present application has been filed on behalf of the plaintiffs seeking leave to file additional documents under the Commercial Courts Act, 2015.

9. The plaintiffs are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

10. Accordingly, the application is disposed of.

I.A. 45995/2024 (extension of time for filing Court Fee)

11. Mr. Pravin Anand, counsel appearing on behalf of the plaintiffs submits that the requisite court fees shall be paid within one (1) week.

11.1 The aforesaid statement is taken on record.

12. The application is disposed of.

CS(COMM) 1042/2024

13. Let the plaint be registered as a suit.



14. Issue summons.

15. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

16. Liberty is given to the plaintiffs to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

17. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

18. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

19. List before the Joint Registrar on 30th January, 2025 for completion of service and pleadings.

20. List before the Court on 18th March, 2025.

I.A. 45989/2024 (O-XXXIX Rule 1 & 2 of CPC)

21. The present suit has been filed seeking permanent injunction restraining the defendants from infringing the copyrights to the packaging/trade dress, infringement of trademark, along with passing off and other ancillary reliefs.



22. The plaintiff no. 1, i.e., Tata Sons Pvt. Ltd. was established in the year 1917 and is the promoter and principal investment holding company of various TATA Companies. The plaintiff no.1 is the registered proprietor of the well-known trademark TATA and is one of India's oldest and best-known business conglomerate.

23. The plaintiff no.2 is an associate company of the TATA Group and focuses on fast-moving consumer goods with a long history and experience in the beverages market and a heritage of innovation and development. The plaintiff no.1 has allowed the plaintiff no.2 to use the mark TATA and permutations/combinations thereof by virtue of a trademark license agreement dated 18th December 1998.

24. It is submitted that the TATA TEA products of the plaintiffs were launched in the year 1985 and for the financial year 2023-24, the plaintiff no.2 had earned a net revenue of Rs. 4,399.49 crores and has spent Rs. 183.95 crores for publicity in relation to its TATA TEA products.

25. The present case concerns the plaintiff no.2's products under the brands and trademarks "TATA TEA PREMIUM", "TATA TEA AGNI", "TATA TEA ELAICHI CHAI" and "TATA TEA GOLD" which were launched in the years 2003, 2005, 2016 and 2018 respectively. Photographs of the packaging/trade dresses of the plaintiffs' products are detailed at paragraph 26 of the plaint.

26. The plaint avers that the plaintiffs have various trademark registrations with respect to its labels in Class 30, which are detailed at paragraph 21 of the plaint.

27. It is further submitted that apart from the various trademark registrations for its "TATA", "TATA TEA", "TATA TEA PREMIUM",



“TATA TEA AGNI” and “TATA TEA GOLD” products, the plaintiff no.2 also has copyright registrations for the packaging of the various sub-brands of their TATA TEA products, detailed at paragraph 25 of the plaint.

28. It is stated in the plaint that the goodwill of the plaintiffs’ products can be seen from the following:

(a) For their TATA TEA PREMIUM product, the plaintiffs have a turnover of Rs. 1337.72 crores and they claim to have spent Rs. 58.41 crores as regards promotional & advertisement expenditures for the years 2023-2024.

(b) For their TATA TEA AGNI product, the plaintiffs have a turnover of Rs. 724.07 crores and they claim to have spent Rs. 24.79 crores as regards promotional & advertisement expenditures for the years 2023-2024.

(c) For their TATA TEA GOLD product, the plaintiffs have a turnover of Rs. 771.44 crores and they claim to have spent Rs. 32.71 crores as regards promotional & advertisement expenditures for the years 2023-2024.

(d) For their TATA TEA ELAICHI CHAI product, the plaintiffs have a turnover of Rs. 394 crores and they claim to have spent Rs. 9 crores as regards promotional & advertisement expenditures for the years 2023-2024.

29. Based on the aforesaid figures, Mr. Pravin Anand, counsel appearing on behalf of the plaintiffs argues that the plaintiff no.2’s products *i.e.*, “TATA TEA PREMIUM”, “TATA TEA GOLD”, “TATA TEA AGNI” and “TATA TEA ELAICHI CHAI” enjoy significant goodwill and reputation



and the same have now become well-known and exclusively associated with the plaintiffs.

30. In early September 2024, it came to the knowledge of the plaintiffs that the defendants have launched their tea under the brands “JAGANNATH AJANTA PREMIUM”, “JAGANNATH AJANTA AGNI TEA”, “JAGANNATH AJANTA GOLD” and “JAGANNATH AJANTA ELAICHI CHAI” using packaging/trade dress that is deceptively similar to the plaintiffs’ “TATA TEA PREMIUM”, “TATA TEA AGNI”, “TATA TEA GOLD” and “TATA TEA ELAICHI CHAI” packaging/trade dress.

31. A comparison of the plaintiffs’ packaging with that of the defendants’ packaging is given below:

PLAINTIFFS’ PACKAGING/TRADE DRESS	DEFENDANTS’ PACKAGING /TRADE DRESS
	





32. The plaintiffs have argued that they investigated the defendants and on 13th September 2024, the investigator met the defendant no.2 who introduced himself as the owner of the defendant concern and stated that the products “JAGANNATH AJANTA PREMIUM”, “JAGANNATH AJANTA AGNI TEA”, “JAGANNATH AJANTA GOLD” and “JAGANNATH AJANTA ELAICHI CHAI” were launched by the defendants in the year 2023.

33. Thereafter, an order was placed by the investigator for the defendants’ products to be delivered in New Delhi and on 24th September 2024, the said



products were received by the investigator at his New Delhi address. The plaintiffs have also placed on record an affidavit of their investigator regarding the aforesaid events.

34. At this stage, Mr Anand submits that even though the plaintiffs have filed this suit against all the products of the defendants, *i.e.*, “JAGANNATH AJANTA PREMIUM”, “JAGANNATH AJANTA AGNI TEA”, “JAGANNATH AJANTA GOLD” and “JAGANNATH AJANTA ELAICHI CHAI”, today, the plaintiffs’ counsel is pressing his case against the following defendants products “JAGANNATH AJANTA PREMIUM”, “JAGANNATH AJANTA AGNI TEA” and “JAGANNATH AJANTA GOLD”.

34.1 It is stated that as regards the defendants’ fourth product “JAGANNATH AJANTA ELAICHI CHAI”, notice may be issued and the plaintiffs reserve their right to press for an order after the defendants have been heard.

35. It is stated in the plaint that the defendants are actively promoting their products on their YouTube and Facebook pages, details of which are given at paragraph 53 of the plaint.

35.1 It is further submitted that the defendants are advertising and selling their products through various e-commerce platforms such as www.indiamart.com, www.amazon.in, www.meesho.com etc and screenshots of the said pages have been reproduced at paragraph no. 52 of the plaint.

36. Mr Anand informs this court that on 24th November 2024 *vide* diary no. E-5468739/2024, the plaintiffs have filed certain orders passed by this Court and documents through a list of documents dated 25th November 2024



and a copy of the same has also been handed over in court today.

37. The above comparison makes it evident that the label/package used by the defendants is a slavish imitation of the plaintiffs' packaging and trade dress.

38. According to the plaintiffs, the aforesaid manner of use of the plaintiffs' packaging and trade dress, on identical nature of goods by the defendants is likely to cause deception and confusion among unwary members of trade and public, who are likely to believe that the impugned goods originate from the plaintiffs and/or are in some manner associated with or endorsed by the plaintiffs, which is not the case.

39. Based on the averments made in the plaint and the submission made on behalf of the plaintiffs, the plaintiffs have established their statutory rights over the packaging and trade dress of its TATA TEA products.

40. On perusal of material placed on record, this Court finds that a *prima facie* case to grant *ex-parte ad-interim* injunction relief in favour of plaintiffs against the defendants is made out. Balance of convenience is in favour of the plaintiffs and against the defendants. Irreparable injury would be caused to the plaintiffs if the defendants continue to use the impugned packaging/trade dress.

41. Accordingly, till the next date of hearing, the defendants and all others acting for and on their behalf are restrained from directly or indirectly dealing in the infringing products *i.e.*, "JAGANNATH AJANTA PREMIUM", "JAGANNATH AJANTA AGNI TEA" and "JAGANNATH



AJANTA GOLD” bearing the packaging/trade-dress “



” and/or “ and/or from using any other packaging/trade-dress that may be deceptively similar to the plaintiffs’ “TATA TEA PREMIUM”, “TATA TEA AGNI” and “TATA TEA GOLD”

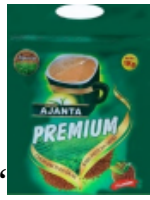


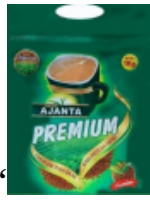
packaging/trade-dress “ and/or “ and/or



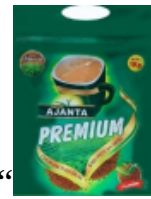
” and/or “ in any form or manner amounting to infringement of the plaintiffs’ copyrights and registered trademarks and also amounting to passing off of the defendants’ products as that of the plaintiffs’.

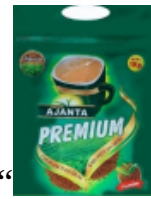
42. The defendants are also directed to file on record their books of accounts, invoices, sales memo and/or any other documents recording/evidencing sale of the infringing products, i.e., “JAGANNATH AJANTA PREMIUM”, “JAGANNATH AJANTA AGNI TEA” and “JAGANNATH AJANTA GOLD” bearing the packaging/trade dress



“” and/or “” and/or “” from the adoption of the said infringing packaging till date.

43. The defendants are further directed to take down all references of their



products bearing the packaging/trade-dress “” and/or “”



and/or “” from all their online and offline platforms, including but not limited to YouTube, Facebook, www.indiamart.com, www.amazon.in, www.meesho.com etc.

44. In view of the fact that the plaintiffs have sought appointment of a Local Commissioner to seize the infringing goods, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendants are given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (*hereinafter* “CPC”) prior to the execution of the commission. Hence, it is directed that the plaintiffs shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.

45. Issue Notice.

46. Notice be issued to the defendants *via* all permissible modes, including e-mail.



47. Reply(ies) be filed within four (4) weeks.
48. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.
49. List before the Joint Registrar on 30th January, 2025 for completion of service and pleadings.
50. List before the Court on 18th March, 2025.

I.A No. 45990/2024 s (O-XXVI R-9 of CPC)

51. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of a Local Commissioner to visit the premises of the defendant no.2 so as to discover the infringing products manufactured/stocked/stored for supply.
52. In view of what is stated above, the plaintiffs have made out a case for appointment of a Local Commissioner.
53. Accordingly, Mr Nishaank Mattoo, Advocate (Mobile No. +91-8800917722) is appointed as Local Commissioners to visit the following premises of the defendant no.2, situated at:

*M/s Chiku Auto Parts, Laxman Nath Road,
Jaleswar, Balasore, Odisha – 756032.*

54. The following directions are passed in this regard:
 - i. The Local Commissioner, along with a representative of the plaintiffs and its counsel, shall be permitted to enter upon the premises of the defendants mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
 - ii. The Local Commissioner shall conduct a search and seize all the infringing products including but not limited to



label/packaging material and promotional material (*hereinafter referred to as 'infringing material'*).

- iii. After seizing infringing material, the same shall be inventoried, sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- iv. The Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, *etc* insofar as they pertain to the infringing products.
- v. The defendants and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
- vi. In case, the aforesaid premises of the defendants or any part thereof is found locked, the Local Commissioner is permitted to break open the locks and doors for execution of the commission.
- vii. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioner, if and when sought.
- viii. The Local Commissioner shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the



report.

55. The Local Commissioner shall file the report within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

56. The fees of the Local Commissioner, to be borne by the plaintiffs, is fixed at Rs.1,50,000/-. The plaintiffs shall also bear expenses for travel, lodging and other miscellaneous out-of-pocket expenses for the execution of the commission.

57. The application stands disposed of in the above terms.

58. The order passed today shall not be uploaded for a period of two (2) weeks from today.

59. *Dasti.*

AMIT BANSAL, J

NOVEMBER 25, 2024