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

+ **CS(COMM) 697/2017 & I.A. 1501/2018 (O-XIV R-5 of CPC)**

MOTHER DAIRY FRUIT & VEGETABLE PRIVATE LIMITED

..... Plaintiff

Through: Ms. Shweta Bharti with Mr. Shantanu
Malik, Mr. J.S. Narula,
Ms. Yashodhara B. Roy and
Ms. Akshra Arshi, Advocates.

versus

**NALGONDA RANGAREDDY DISTRICT MILK PRODUCERS
MUTUALLY AIDED COOPERATIVE UNION LIMITED**

..... Defendant

Through: Mr. Jaspreet Singh Kapur and
Mr. Manu A. Bhardwaj, Advocates.

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

ORDER
01.12.2022

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CCP(O) 7/2020

1. The present contempt petition has been filed on behalf of the plaintiff/petitioner herein alleging that the defendant/alleged contemnor no.3 herein has willfully disobeyed the interim orders passed by this Court on 18th May, 2015 and 17th May, 2016.
2. Notice in this contempt petition was issued on 30th January, 2020. Reply has been filed on behalf of the alleged contemnor no.3/defendant. In the said reply, it has been stated that the alleged contemnors no.1 and 2 are no longer in the employment of the alleged contemnor no.3. Rejoinder



thereto has also been filed on behalf of the plaintiff/petitioner.

3. A Settlement Agreement dated 22nd April, 2008 has been entered into between the plaintiff/petitioner and the defendant/alleged contemnor no.3 herein. The relevant clauses of the said Settlement Agreement are set out below:

“1. NARMACS agrees that it does not claim any right whatsoever in the MDFVL’s trademark MOTHER DAIRY.”

2. MDFVL allows NARMACS to use the works “MOTHER DAIRY” on the labels for sale of their milk and milk products at the bottom of the logo and above their address “Nalgonda Rangareddy Milk Producer’s Mutually Aided Cooperative Union Limited, Hayatnagar-Hyderabad 501 505” and modify the labels as per Annexure-II & II-A to this agreement. MDFVL agrees not to oppose the registration of the modified labels as and when they are published in Trademark Journal.”

4. Based on the aforesaid settlement, this Court on 18th May, 2015 recorded the statement on behalf of the defendant/alleged contemnor no.3 in the following terms:

“The learned senior counsel for the defendant submits, upon instructions, that for the moment, the defendant shall readily comply with the terms of the aforesaid agreement dated 22nd April, 2008 and it shall use the trade mark ‘MOTHER DAIRY’ only in terms thereof.”

5. A compliance affidavit dated 27th May, 2015 was filed on behalf of the defendant/alleged contemnor no.3 stating compliance with the order passed by this Court on 18th May, 2015.

6. Subsequently, a contempt petition being CCP(O) No.105/2015 was filed on behalf of the plaintiff/petitioner alleging breach of the undertaking



given by the defendant/alleged contemnor no.3 as recorded in the order dated 18th May, 2015. The aforesaid contempt petition was disposed of by this Court vide order dated 17th May, 2016. The operative part of the order is set out below:

“The submission is that the defendant is using the mark MOTHER DAIRY on its letterhead which was not permitted. Moreover, on its packaging material and crates, the mark MOTHER DAIRY has been used without the primary mark of the defendant, and without indicating the address of the defendant.

The defendant has filed its reply stating that the violation is not deliberate and it is bonafide. Learned senior counsel submits that the defendant has already discontinued the use of the letterhead containing the mark MOTHER DAIRY. He submits that the said letterhead has not been used generally and has been used only for communication with the plaintiff. He further submits that the defendant has already taken and shall take steps to use the mark MOTHER DAIRY in terms of the limitation contained in the agreement between the parties and strictly in conformity with the said agreement and orders passed by this Court.

In these circumstances, I direct that Mr. N. Ramesh, the Managing Director/Contemnor no.3 shall file his affidavit certifying that all the stationery and all the letterhead of the defendant which contains the mark MOTHER DAIRY have been destroyed/changed. He shall certify that none of the packaging materials or transportation material such as crates or any other advertising material is not being used in an infringing manner and is being used strictly in conformity with the agreement entered into between the parties. Let the affidavit be filed within two weeks.”

7. Pursuant to the aforesaid order, an affidavit of compliance dated 30th May, 2016 was filed on behalf of the defendant/alleged contemnor no.3 in



the following terms:

*“In compliance of the above order, I state that all the stationery and all the letterhead of the Defendant, which contained the mark MOTHER DAIRY have been destroyed. Further, the Defendant has stopped manufacturing/marketing/selling milk under the impugned trademark and is only using the words 'Mother Dairy' on its packaging in terms of the Settlement Agreement dated 22nd April, 2008. I state that all the Defendant's stationery and all its letterhead have been changed and the same are in compliance with the settlement agreement dated 22.04.2008 and the orders passed by this Hon'ble Court on 18.05.2015 and 17.05.2016. **I further state that none of the packaging materials or transportation material such as crates or any other advertising material is being used in an infringing manner and that it is being used strictly in conformity with the agreement dated 22.04.2008.**”*

8. Subsequently, the present contempt petition has been filed on behalf of the plaintiff/petitioner alleging that the defendant/alleged contemnor no.3 has violated the orders passed by this Court on 18th May, 2015 and 17th May, 2016 by using plaintiff/petitioner's trademark, “MOTHER DAIRY” on T-shirts, A copy of the said T-shirt has been filed along with the contempt petition.

9. In reply to the contempt petition, the defendant/alleged contemnor no.3 has stated that the aforesaid T-shirt bearing the trademark of the plaintiff/petitioner has neither been manufactured by them, nor has been marketed by them.

10. Subsequently, rejoinder to the said reply has been filed on behalf of the plaintiff/petitioner, wherein the plaintiff/petitioner has filed photographs showing that the defendant/alleged contemnor no.3 has used the marks, which were the subject matter of the Settlement Agreement in its various



advertising and promotional materials such as the transport vans, crates, milk booths and walls, which amounts to violation of the orders passed by this Court.

11. Counsel for the defendant/alleged contemnor no.3 submits that the aforesaid photographs filed on behalf of the plaintiff/petitioner along with the rejoinder are beyond the scope of the contempt petition, as the contempt petition is only confined to the T-shirts bearing the infringing mark. He further submits that the terms of the Settlement Agreement set out above permits the defendant/alleged contemnor no.3 from using the words “MOTHER DAIRY” so long as the manner of use is in conformity with the Settlement Agreement dated 22nd April, 2008.

12. Counsel for the defendant/alleged contemnor no.3 draws attention of the Court to Clause 2 of the aforesaid Settlement Agreement to show that the plaintiff/petitioner had agreed not to oppose the registration of the modified labels of the defendant/alleged contemnor no.3 as and when they are published in the trademark journal. Subsequently, the modified labels of the defendant/alleged contemnor no.3 had been registered by the trademark registry in favour of the defendant/ alleged contemnor no.3.

13. I have heard the counsels for the parties.

14. The contempt petition has been filed specifically alleging violation in respect of the aforesaid T-shirts. Therefore, the scope of the contempt petition cannot be expanded to include averments/photographs filed with the rejoinder. The reply on behalf of the defendant/alleged contemnor no.3 had already been filed and it would not be fair to the defendant/alleged contemnor no.3 if the additional averments made in the rejoinder and the photographs placed on record along with the rejoinder are considered.



15. Both the parties have placed extensive reliance on Clause 2 of the Settlement Agreement set out above. Clause 2 of the Settlement Agreement clearly defines the manner in which the defendant/alleged contemnor no.3 would be permitted to use the words “MOTHER DAIRY”, i.e., at the bottom of their logo and above their address.

16. In my view, reading of the Settlement Agreement would show that the plaintiff/petitioner had agreed to the user of the modified trademark by the defendant/alleged contemnor no.3 in a manner stated in Clause 2, i.e., at the bottom of the logo and above its address. Even though the Settlement Agreement records that the said user of the modified trademark would only be in respect of labels for ‘milk and milk products’, in my view, once the defendant/alleged contemnor no.3 is permitted to use the modified trademark on labels for ‘milk and milk products’, there should be no bar on the defendant/alleged contemnor no.3 on using the modified trademark on other promotional material as well. Hence, the contention of the plaintiff/petitioner that the user of the modified trademark has to be confined strictly to the labels for ‘milk and milk products’ is not tenable.

17. In terms of the affidavit of compliance dated 30th May, 2016, the defendant/alleged contemnor no.3 had stated that “none of the packaging materials or transportation material such as crates or any other advertising material is being used in an infringing manner and is being used strictly in conformity with the Settlement Agreement entered into between the parties”. This also indicates that it was the understanding of the parties that the defendant/alleged contemnor no.3 was permitted to use the mark “MOTHER DAIRY” in the manner indicated in Clause 2 of the Settlement Agreement on all promotional/transportation/packaging materials.



18. As regards the T-shirts bearing the words “MOTHER DAIRY”, the statement of the counsel for the defendant/alleged contemnor no.3 is taken on record that the defendant/alleged contemnor no.3 has nothing to do with the manufacturing, sale, or marketing of the aforesaid T-shirts. The defendant/alleged contemnor no.3 shall remain bound by the aforesaid statement.

19. In view thereof, the present contempt petition stands disposed of.

20. Needless to state the plaintiff/petitioner shall have the liberty to file a fresh contempt petition if the cause of action arises.

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21. List before the Joint Registrar on 20th December, 2022 for fixing dates for recording remaining evidence.

AMIT BANSAL, J.

DECEMBER 1, 2022
at