

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).5479/2007

(From the judgement and order dated 13/11 / 2006 in AN 745/2006 in  
N M NO. 170/2006 in SN No. 24/2005 of The H I G H COU R T O F B O M B A Y )

M / S. G O D R E J S A R A L E E L T D. Petitioner(s)

V E R S U S

M / S. K N I G H T Q U E E N I N D U S T R I E S P V T. L T D. Respondent(s)

(With appln(s) for permission to place addl. documents on record  
and stay and with prayer for interim relief and office report)  
(For Final Disposal)

Date: 19/03 /2009 This Petition was called on for hearing today.

C O R A M :

H O N ' B L E M R. J U S T I C E L O K E S H W A R S I N G H P A N T A  
H O N ' B L E M R. J U S T I C E B. S U D E R S H A N R E D D Y

For Petitioner(s) Mr. Ashok H. Desai, Sr. adv.  
Mr. Rajiv Tyagi, Adv.

For Respondent(s) Mr. Yashoban Dass, Sr. adv.  
Mr. Ajay K. Jain, Adv.  
Ms. Seema Jain, Adv.  
Mr. M. P. Vinod, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order.

No order as to costs.

(Ajay Kr. Jain)  
Court Master

(Vinod Kulvi)  
Court Master

(Signed order is placed on the file)  
I N T H E S U P R E M E C O U R T O F I N D I A  
C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O. 1754 OF 2009  
(Arising out of S L P (C) No. 5479 of 2007)

Godrej Sara Lee Ltd. .... Appellant

Versus

Knight Queen Industries Pvt. Ltd. .... Respondent

O R D E R

1. Leave granted.

2. The plaintiff-Godrej Sara Lee Ltd. in Suit No. 24/2005 on the record of the High Court of Judicature at Bombay is the appellant before us challenging the order of the Division Bench of the High Court dated 13.11.2008 in Appeal No. 745/2006 whereby the plaintiff's appeal against the order of the learned Single Judge dated 3.3.2006 in Notice of Motion No. 170/2005 has been dismissed in limine.

3. The plaintiff filed Notice of Motion No. 170/2005 against the defendant-respondent alleging that the defendant's adoption of the trade mark 'Knight Queen' itself is dishonest and was solely with a view to encroach upon the tremendous reputation and goodwill gained by the plaintiff in the trademark 'Good Knight'. It was the case of the plaintiff that the defendant has deliberately with ulterior motive used the lettering style of the mark 'Knight Queen' as that of the plaintiff's trade mark 'Good Knight'. On these premise the suit was filed by the plaintiff for infringement of their trademark and copyright 'Good Knight'. The Notice of Motion was resisted by the defendant before the learned Single Judge, who by order dated 3.3.2006 disposed of the Notice of Motion in the following terms.

"The learned counsel appearing for the Defendant has placed on record two labels, which are taken on record and marked "X" and "Y" for identification. The learned Counsel appearing for the Defendant, without prejudice to his rights and contentions in the suit and in opposition proceedings, submits that during the pendency of the suit the Defendant will only use the label at "Y" in relation to mosquito repellants and electrically operated apparatus in respect thereof. The learned Counsel further states that they have existing stock of labels, cartoon and other advertising material bearing label at "X" and that within a period of six months from today that stock will be disposed of. He further states that the value of the material referred to above is approximately Rs. 1 crore. The learned Counsel further submits that except for disposing of the stock as aforesaid, the label at "X" shall not be used by the Defendant in relation to mosquito repellents machines and electrically operated apparatus in respect thereof during the pendency of the suit.

Statement is accepted.

In view of the statement, Notice of motion is disposed."

Being aggrieved against the said order of the learned Single Judge, the

plaintiff-appellant filed Appeal No. 745/2006 before the Division Bench.

The

Division Bench dismissed the said appeal in the following terms.

"1. We heard the counsel for the Appellant.

2. The counsel for the Appellant strenuously urged that letters and the fonts in the label at 'Y', continue to be closely similar to the Appellant's label "G O O D K N I G H T " .

3. We are unable to agree with the counsel for the Appellant.

The label at "Y", which the defendants have undertaken to use for their mosquito coils and electrically operated apparatus, cannot be said to be exactly identical or closely similar to the plaintiff's trade mark and copyright. As a matter of fact, the label at 'Y' has a different colour scheme. Instead of red background, it has green background.

Letter 'K' in label at 'Y' is so designed that it gives an impression of mosquito attached to it. The font 'K' in the Appellant's trade mark word "Knight" is distinct and dis-similar to the font 'K' in the defendant's trade mark. Besides that the word "Knight" in the Plaintiff's label has a different look than the word "Knight" appearing on the defendants' label at 'Y'.

4. In this view of the matter, the impugned order does not call for any interference.

5. Appeal is dismissed in limine."

Now, the plaintiff is before us in this appeal by special leave.

We have heard learned counsel for the parties. On examination of the orders of the learned Single Judge and the Division Bench extracted hereinabove, it becomes manifestly clear that the High Court has not even referred to the factual situation of the case while deciding Notice of Motion nor has recorded reasons for dismissing the Notice of Motion as well as the appeal arising therefrom. This position is not disputed before us by the learned counsel for the parties.

In that view of the matter, we find that both the orders of the Division Bench and learned Single Judge deserve to be set aside on the sole ground that they do not contain any reason. Ordered accordingly. Consequently the Notice of Motion No. 170/2005 in Suit No. 24/2005 on the file of the High Court of Judicature at Bombay shall stand restored to its original number for disposal in accordance with law after giving reasonable opportunity to the parties. We request the High Court to

expedite the hearing and disposal of the Notice of Motion, as far as practicable,  
within three months from the date of this order.

The appeal stands disposed of in the above terms. No order as to costs.

.J.

.....  
(LO K E S H W A R S I N G H P A N T A)

.....J.

.....  
(B. SUD E R S H A N R E D D Y )

New Delhi  
March 19, 2009