

(2023) 05 DEL CK 0174

In the Delhi High Court

Case No : Civil Suit (COMM) No. 758 Of 2022

**Casename?Counsel??Hari Chand Shri Gopal Vs Dinesh And Company
Through Its Proprietor Mr. Dinesh Chandra Gupta**

Date of Decision : 22-05-2023

Acts Referred:

Citation : (2023) 05 DEL CK 0174

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Prachi Agarwal, Mishthi Dubey, Aditi Srivastava, D.K. Yadav, Navdeep Shridhar

Final Decision : Disposed Of

Judgement

C.Hari Shankar, J

CS(COMM) 758/2022, I.A. 17834/2022 (Order XXXIX Rules 1 and 2 of the CPC) I.A. 17835/2022 (Order XXVI Rules 4, 9 and 10 of the CPC), I.A. 17836/2022(Order XI Rule 1(6) of the CPC) and I.A. 21728/2022 (Order XXXIX Rule 4 of the CPC)

1. The disputes between the parties stand settled with the intervention of the Delhi High Court Mediation and Conciliation Centre. Settlement Agreement dated 27th March 2023 has been placed on record. The terms of settlement read thus:

"1. The Defendant acknowledges the Plaintiff to be the registered proprietor and prior user of the trademark "GOPAL"(in English and Hindi) by itself or accompanied by numerals or in conjunction with other words or variants including but not limited to GOPAL GRENE, GOPAL GOLD, DELUXE GOPAL ZARDA GRENE, GOPAL 100, GOPAL ZARDA 100, GOPAL 132, GOPAL 60, GOPAL 40, GOPAL 24, 132 etc. (hereinafter GOPAL formative marks) with or without the Lord Krishna Device for tobacco related products including but not limited to chewing tobacco, zarda etc. The list of Plaintiff's GOPAL and GOPAL formative marks is enclosed herewith as Annexure C.

2. The Defendant further acknowledges the Plaintiff's rights in the packaging, get up, shape, lay out, colour scheme i.e. trade dress along with its other essential features and arrangement in any material form being employed by the Plaintiff regarding its products including but not limited to tobacco related products, being sold under the trademark GOPAL (in English and Hindi) by itself or any other GOPAL formative marks and the Lord Krishna Device.

3. The Defendant hereby undertakes that it will not by themselves or through its officers, partners, servants, employees, dealers, distributors, agents, representatives and all others acting for and on its behalf, manufacture, sell, offer for sale, advertise, or deal in any manner whatsoever with tobacco related or allied/cognate products including but not limited to chewing tobacco bearing a 'Lord Krishna' Device/Logo; the trade name/trademark/logo GOPAL (in English and Hindi) by itself or any other GOPAL formative marks or any mark which is phonetically or visually deceptively similar to GOPAL, which may amount to infringement of trademark, copyright, passing off, dilution, tarnishment etc.

4. The Defendant also undertakes that it will not use a packaging, get up, shape, lay out, colour scheme, font, manner of writing the mark in repetition across the circumference of the cap etc. i.e. trade dress along with its other essential features and arrangement in any material form including the which may be identical with or similar to that of the Plaintiff's products being sold under the Plaintiffs registered trademarks including but not limited to GOPAL (both in English and Hindi) by itself or any other GOPAL formative marks and/or the 'Lord Krishna' Device/Logo, in relation to goods and business identical and/or related/allied products etc., which may amount to infringement of trademark, copyright, passing off, dilution, tarnishment etc.

5. That the Defendant undertakes that it has discontinued manufacturing, promoting and selling tobacco products bearing the mark GOLDEN GREEN, GOLDEN 232, 232 as well as the trade dress and device, as depicted below:

'GOLDEN GREEN' TIN

OUTER PACKAGING FOR THE 'GOLDEN GREEN' TINS

'GOLDEN 232 PRODUCTS'

6. That the Defendant hereby undertakes that they have withdrawn all products mentioned at Clause 5 above from the market and will destroy all unsold stock of the said products in the presence of a Plaintiff's representative within a week from the date of decree of the suit.

7. That the Defendant also confirms that they are not dealing in any other products using a trade dress, trademark, packaging, trade name etc. which may be identical or deceptively similar to the Plaintiffs registered trademarks including but not limited to GOPAL (both in English and Hindi) by itself or any other GOPAL formative marks and/or the 'Lord Krishna' Device/Logo and the trade dress thereof.

8. That the Defendant confirms that it has changed its trademark and product packaging. The revised packaging is enclosed herewith as Annexure D.

9. That the Defendant undertakes that it has withdrawn its trade mark application No. 5205262 and 5542922 for the GOLDEN GREEN device/label as well as its trade mark application no. 5579848 for the GOLDEN 232 label/device before the Indian Trademark Registry. The withdrawal letters are enclosed herewith as Annexure E.

10. That the Defendant undertakes that it will not adopt/seek registration of a mark/logo/trade name/trade dress etc. which may be identical or deceptively similar to the Plaintiff's registered trademarks including but not limited to GOPAL (both in English and Hindi) by itself or any other GOPAL formative marks and/or the 'Lord Krishna' Device/Logo and the trade dress thereof and has no other pending applications except as stated above in Para 9 i.e. 5205262, 5542922 and 5579848.

11. The Defendants acknowledge that the infringing goods that were seized from the Defendants' premises during the Local Commission proceedings at Kanpur on 12th November 2022 and released on Superdari to the Defendants, may be destroyed in the presence of a Plaintiffs representative within a week from the date of decree of the suit. The report of the local commissioner is on the record of this Hon'ble Court along with the inventory of seized goods.

12. The Plaintiff is willing to forego claims regarding damages, rendition of accounts and costs as per its Prayers.

13. The Plaintiff may be entitled to the refund of the court fees as per the provisions of the Court Fees Act, 1870.

14. That the aforementioned terms entered into between the Plaintiff and Defendant are without prejudice to the statutory rights vested in the Plaintiffs intellectual property rights with respect to Plaintiff's registered trademarks including but not limited to GOPAL (both in English and Hindi), and other GOPAL formative marks and/or the 'Lord Krishna' Device/Logo and the trade dress thereof, thereby enabling the Plaintiff to institute fresh legal proceedings against the Defendant in an event a fresh cause of action arises against the Defendant in the future.

15. Notwithstanding the foregoing, in the event of a breach by the Defendant or any of its affiliates, directors, employees, officers, servants, agents, assignees and all others acting for and on behalf of the Defendant, the Plaintiff reserves its right to seek from the Defendant any remedies available in law and equity and the Defendant shall be liable to indemnify the Plaintiff against all costs and damages incurred by the Plaintiff or its directors, employees, officers, servants, agents, assignees and all others acting for and on behalf of the Plaintiff as a result of such breach.

16. The present suit may be decreed in view of the aforesaid terms.

17. That each person signing this Agreement hereby represents and warrants that he/she has the authority to bind the entity on behalf of which he/she has signed.

18. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future in terms of the Settlement Agreement.

19. The parties agree that they have arrived at the present Settlement Agreement with their own free will and desire and without any pressure, fraud, force, coercion or undue influence by either of the parties and they undertake to be bound by the terms thereof.

20. The parties agree that they shall appear before the Hon'ble court as the case may be, hearing to record their statements in terms of the present Settlement Agreement.

21. It is agreed between the parties that upon fulfilment of the above, especially the obligations embodied in clauses 6 and 11 above, all disputes and differences in the present dispute shall stand settled and satisfied, fully and finally.

22. By signing this Agreement the parties hereto state that they have no further claims or demands against each other and all the disputes and differences inclusive of all the issues in the afore-mentioned civil suit have been amicably settled by the Parties hereto through the process of Mediation and they further undertake that they will not indulge in any litigation with each other in future in respect of the present dispute."

2. Parties are represented by their respective learned Counsel. The Court has perused the terms of settlement and find them to be lawful and in order.

3. As such, the dispute does not survive for adjudication.

4. Learned Counsel, who appear on behalf of the parties, undertake on behalf of their clients to remain bound by the terms of the settlement.

5. The suit stands decreed in terms of the Settlement Agreement dated 27th March 2023, by which the parties shall remain bound.

6. The Court has perused the terms of settlement and find them to be lawful.

7. Let the decree-sheet be drawn up accordingly.

8. The plaintiff is entitled to refund of the court fee, if any, deposited by the plaintiff.

9. The Mediation Centre is directed to provide colour copies of the Settlement Agreement dated 27th March 2023 to learned Counsel for both sides.

10. Miscellaneous applications do not survive for consideration and are disposed of.