

(2018) 02 DEL CK 0042

In the Delhi High Court

Case No : 31 of 2018

GCMC GAAY CHHAP MASALA COMPANY

APPELLANT

Vs

M/S RADHA KISHAN GOBIND RAM LTD

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39 Rule 4](#)

Citation : (2018) 02 DEL CK 0042

Hon'ble Judges : G.S.Sistani, Sangita Dhingra Sehgal

Bench : Division Bench

Advocate : S.K. Bansal, Pankaj Kumar, Kapil Kumar Giri, Vinay Kumar Shukla, Sanjeev Singh, Vikas Aggarwal

Final Decision : Disposed

Judgement

CM.APPL 6329/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

FAO(OS) (COMM) 31/2018

3. Present appeal is directed against the order dated 12.01.2018, passed by a learned Single Judge of this Court in CS (Comm) 28/2018, by

which an ex-parte ad interim injunction was granted in favour of the respondent herein (plaintiff in the suit). While passing the impugned order, a

local Commissioner was also appointed for search and seizure of the impugned goods.

4. The appellant is also aggrieved by the order dated 31.01.2018 by which the application filed by the appellant under Order XXXIX Rule 4 CPC

was adjourned for 13.03.2018, however, a leave was granted to the appellant for removal of spices from the seized packaging.

5. The brief facts of the case are that the respondent herein has filed a suit, being CS (Comm) No.28/2018, seeking permanent injunction

restraining infringement of trademark and copyright, passing-off of trademark, damages and renditions of accounts, etc., with respect to the trade

mark GAI CHAAP in relation to all types of spices, edible oils, flour and/or related goods. The bone of contention between the parties is the use

of the word "GAI CHHAP" and the device of a cow.

6. By the impugned order dated 12.01.2018, while appointing a local Commissioner, the appellant herein (defendant before the learned Single

Judge) was restrained from using, marketing, selling, offering for sale, advertising or displaying directly or indirectly or dealing in any other manner

or mode in relation to trade and business of all types of spices, edible oils, flour and related goods/products under the impugned trade mark

GCMC and GCMC GAAY CHAAP LABEL and the trade mark/label/packaging/trade dress GCMC and GCMC GAAY CHAAP and trade

name Gai Chhap Masala Co. or any other trade mark/trade name/label/packaging/trade dress similar to the plaintiff's trade

mark/label/packaging/trade dress GAI CHAAP in any manner whatsoever.

7. Today, after some hearing in the matter, counsel for the parties, on instructions, had expressed a desire to enter into an amicable settlement. The

matter was passed over once to enable the counsel for the parties to discuss the terms of settlement with their respective parties.

8. At the second call, we are informed that the parties have arrived at an amicable settlement. Mr.Sachin Gupta, Constituted Attorney of appellant

company, is present in Court, who submits that he is duly authorised and competent to enter into an amicable settlement. One of the Directors of

the respondent (plaintiff in the suit), Mr.Vikas Aggarwal, is also present in Court, who submits that he is duly authorised and competent to enter

into an amicable settlement. Both the parties submit that they have carefully understood the terms of settlement and they have arrived at the

settlement out of their own free will and without any coercion or duress of any kind. As per the parties, the agreed terms of settlement are as under:

(i) The appellant (defendant in the suit) shall not use the word "GAI CHHAP" in

any form whether as "GAI" or "GAAY" on their packaging material and part of the trade name.

(ii) It is, however, agreed that the appellant-defendant in the suit would continue to use "the device of cow" as depicted in the present packaging.

(iii) The appellant submits that all the materials containing the word "GAI CHHAP" would be destroyed but the appellant/defendant would be free

to remove the spices from the packaging within a period of two weeks in the presence of a representative of the respondent herein.

(iv) The rectification petition filed by the respondent/plaintiff in IP Appellate Board for the removal/cancellation of the trademark "GCMC LABEL"

with device of cow registered under no.3531286 in class 30 would be withdrawn within two weeks.

(v) CS (COMM) 28/2018 be decreed in terms of the settlement.

9. The Constituted Attorney of the appellant and the Director of the respondent pray that CS (Comm) No.28/2018 may be decreed as per the

above agreed terms of settlement arrived at between them and they shall be bound by the terms of settlement.

10. Accordingly, having regard to the facts that the parties have arrived at an amicable settlement, CS (Comm) No.28/2018 filed by the

respondent herein stands decreed in view of above agreed terms of settlement. The date fixed for 13.03.2018 also stands cancelled. Parties shall

be bound by the above terms of settlement. Let a decree sheet be drawn up accordingly.

11. Since the matter has been settled through mediation, the respondent herein (plaintiff in CS (Comm) No.28/2018) would be entitled for refund

of Court fee. Let a necessary certificate be issued in this regard.

12. In view of above, no further orders are required to be passed in the present appeal and the same stands disposed of.

13. Parties shall append their signatures on each page of the order as token of acceptance.

CM APPL 6328/2018 (stay)

14. The application stands disposed of in view of the order passed in the appeal.