
(1984) 02 DEL CK 0010

In the Delhi High Court

Case No : First Appeal No. 96 of 1983

Jawahar Lal and Another

APPELLANT

Vs

Bharat Tobacco Manufacturing Co.

RESPONDENT

Date of Decision : 24-02-1984

Acts Referred:

Citation : (1984) 25 DLT 459

Hon'ble Judges : D.P Wadhwa, J;D.K. Kapur, J

Bench : Division Bench

Advocate : S.K. Kaul, Anoop Singh, H.P.Singh and M.M. Singh, for the Appellant;

Judgement

D.K. Kapur, J.

(1) Temporary injunctions have been issued against the appellants in Suit No. 964/83, pending on the Original Side of this Court. The Suit in question can be described as a passing-off action based on the alleged infringement of the plaintiff's trade mark and the use of certain labels by the defendants. The appeal was admitted by us on 21st September, 1983, and stay of the injunctions in question was also granted. At the hearing of the stay matter after notice, we came to the conclusion that the interim order and the final order bad to be the same) so we directed the appeal itself to be heard.

(2) We have now heard learned counsel for the parties. The matter is a comparatively small one. The plaintiffs and the second defendant were carrying on business in the name and style of M/S. Chanan Dass Gobind Lal/Bharat Tobacco Manufacturing Company, Weavers Colony, Panipat. One of the products being manufactured in partnership was Bharat Scented Khaini, which we are told is a compound of tobacco with certain other ingredients. The name of the firm M/ S. Bharat Tobacco Manufacturing Company together with a trade-mark consisting in a photograph of Shri Gobind Lal, defendant No. 2 aad the name Bharat Scented Khaini appeared on the tin. There was a deed of dissolution on 31st March, 1979, one of the terms of which was that the plaintiffs would have the

absolute right to use the trade-mark containing snap of Shri Gobind Lal with the words "Bharat Scented Khaini Banga Khushbudar Tobacco manufactured by Bharat Tobacco Manufacturing Co. Panipat". Thus, it came about that the plaintiffs were using "Bharat Scented Khaini and the photograph of defendant No. 2".

(3) The subject-matter of the suit is the fact that the defendants and particularly Shri Jawahar Lal who is the son of Shri Gobind Lal) started the business of "Nav Bharat Tobacco Manufacturing Company" and started selling "Nav Bharat Scented Khaini" with a photograph of Shri Gobind Lal. In appearance, the two tins are practically similar and this is the reason principally which has led to the grant of the interim injunction.

(4) Of course, the learned Single Judge has noted that the trade-mark has been assigned to the plaintiffs by means of the dissolution deed dated 31st March 1979, and on this basis the plaintiffs were entitled to the injunction. It has also been noticed that the defendants had claimed that there had been a fraud on defendant No. 2 in obtaining the right to use his (Shri Gobind Lal's) photograph on the tin.

(5) The learned counsel for the appellants has attacked the decision of the learned Single Judge on various grounds, but we are not impressed with these contentions. The main point which has to prevail in our opinion is the fact that the two tins are more or less similar in appearance. It should not be possible for two parties to manufacture practically the same product with the same appearance of the tins. The very basis of the passing off action is the fact that somebody else is using a name and a style which appears to public into believing that the product is one being manufactured by the other party.

(6) Normally, in a passing off action, the injunction is not to be granted at the interim stage because there still has to be a trial. But, in this case the products are so similar in appearance that there is absolutely no way of avoiding the grant of an interim injunction.

(7) As stated already, the product, i.e., the scented Khaini is the same or practically the same. It is marketed in tins which are practically identical in appearance. In one case, there is a photograph of Shri Govind Lal with the name Bharat Tobacco Manufacturing Company and the product Bharat Scented Khaini, and in the other case, there is an almost identical tin with the name Nav Nav Bharat Tobacco Manufacturing Company and also carries the photograph of Shri Gobind Lal, whereas the product is Nav Bharat Scented Khaini. The two tins are identical in appearance; the names of the two firms are almost practically identical except that the word "Nav" is added in one case and even the product has the same name except that the word "Nav" is added. The change is so slight that to any ordinary customer the two tins would appear to contain the product of the same manufacturer. There is thus strong prima facie case showing the deception is likely to result to an ordinary customer, which shows that the

learned Single Judge has rightly granted the interim injunction.

(8) It was urged by learned counsel for the appellants that this means that Jawahar Lal is prevented from using the photograph of Shri Govind Lal who is own father on the tin and this cannot be done. As pointed out by us at the hearing, there is no magic in the photograph of Shri Govind Lal. The real damage which is being done to the plaintiffs is the fact that the product as well as the tin as well as the wording on the tin and the photograph on the tin are so similar to the product and appearance of the tin being used by the plaintiffs that any reasonable man would be deceived into believing that the product being manufactured by the defendants is the same that is being manufactured by the plaintiffs. This conclusion is a prima facie conclusion based on the material now on the record; it is possible that at the actual trial this conclusion may be displaced or weakened, but at the present there is no other order possible except to uphold the injunction granted by the learned Single Judge. We accordingly dismiss the appeal, but as the parties are closely related, we leave them to bear their own costs in this appeal.