
(2002) 02 RAJ CK 0066

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 869 of 2001

Perry Bottling Company

APPELLANT

Vs

S.S. Soda and Soft Drinks Company and Others

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Trade and Merchandise Marks Act, 1958 — Section 28, 31

Citation : (2003) 26 PTC 555 : (2003) 1 RLW 77 : (2002) 3 WLC 333 : (2002) 2 WLN 593

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; K.L. Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

Tatia, J.—This appeal is against the order dated 18.6.2001 passed by the learned Additional District Judge No.2, Jodhpur in S.B. Civil Misc. Appeal No. 869/2001 by which the trial Court dismissed the injunction application under Order 39 Rules 1 and 2 of the CPC filed by the plaintiff-appellant.

2. Brief facts of the case are that the plaintiff-M/s Perry Bottling Company filed the suit for injunction against the defendants with the prayer that the plaintiff is holder of the trade mark and the defendants are, to deceive customers, using a mark which is a copy of the registered trade mark of the plaintiff. The defendants, by using trade mark of the plaintiff, are selling product of inferior quality. According to the plaint allegations, the action of the defendants is offence under Sections 77, 78 and 79 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the "Act of 1958") and Sections 63, 64, 65 and 67 of the Copy Rights Act and Sections 420, 120-B, I.P.C., for which a complaint has been lodged by the plaintiff against the defendants. According to the plaintiff, anticipatory bail was rejected by the learned Sessions Judge No.2, Jodhpur on 11.7.2001. The plaintiff also placed on the record the photographs of the bottle

showing the trade mark of the plaintiff's product which reads as under;-

"Perry"s?Fruit Beer QwV ch;j**

3. The plaintiff also submitted an application for grant of temporary injunction under Order 39 Rule 1 and 2 read with section 151 of the CPC in the suit. The defendants submitted reply to the injunction application and contested the case of the plaintiff-appellant by submitting that the plaintiff is selling his product by putting mark of "Perry"s? Fruit Beer QwV ch;j** as registered trade mark of the plaintiff whereas the defendants are selling their product having mark "Hello Fruit Beer". According to the defendants, defendant No. 1 also got the registration of the above trade mark under the Act of 1958. It was also submitted by the defendants that the plaintiff in his plaint submitted that the plaintiff is doing business since 1980 but he got the registration of the mark only on 8.10.1990. Therefore, it cannot be believed that the plaintiff is owner of the product since last 20 years.

4. The defendants further submitted that "Fruit Beer" is a flavour and a product based upon flavour is permissible item under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act of 1954") under the heading of "Fruit and Cold Drinks". The ingredients of this product are also given in the above Act. It was also submitted by the defendants that even according to the plaintiff himself, "Perry"s" word is registered and the plaintiff is using the work "Perry", in Hindi and English for his product whereas the defendants are using words, "Hello Fruit Beer" for their product. According to the defendants the defendants are using not only the above trade mark but also there is clear mention of name of the company. The containers, bottles, covers, seal etc. are different of the defendants, therefore, there cannot be question of any misrepresentation by the defendants. The defendants denied that the plaintiff started the name of Fruit Beer in the year 1983.

5. After hearing the arguments, the trial court, in the impugned order held that the trade mark of the plaintiff is a registered one but observed that as per the certificate issued in favour of the plaintiff, the "Perry"s Fruit Beer" was got registered by the plaintiff and it was renewed as it is, therefore, it cannot be said that only "Fruit Beer" is a registered mark of the plaintiff. It is also taken note by the court below that the plaintiff produced cash memos wherein though in the list of products "Fruit Beer" has been shown as product of plaintiff firm but under this there is a monogram of "Perry"s(r) Fruit Beer", therefore, it is not proved that "Fruit Beer" is a registered trade mark of the plaintiff. The trial court also found that there is a dissimilarity in the mark of the plaintiff and the mark used by the defendants. The trial court also observed that in the present matter, Fruit Beer, is a type of beer which contains no alcohol and it can be produced by the firm or company Perry or even any other one. No one can claim exclusive right over the name "Fruit Beer", therefore, the trial court found that there is no prima facie case in favour of the plaintiff and also found that no irreparable injury will be caused to the plaintiff if the injunction is not granted and balance of

convenience does not lie in favour of the plaintiff. Hence injunction was refused by the trial court against which the plaintiff-appellant preferred this appeal.

6. The learned counsel for the appellant has vehemently submitted that the trial court failed to appreciate the facts of the case. According to the learned counsel for the appellant, the plaintiff is having the trade in the name of M/s. Perry Bottling Co. The Perry is name of plaintiff's firm. The plaintiff is engaged in manufacturing of several products in which the main product is non-alcoholic Fruit Beer which falls in the category of edibles as per the provisions of the Act of 1954. The name "Fruit Beer" was invented by the plaintiff. According to the learned counsel for the appellants, the "Fruit Beer" is not a word identifying a particular commodity but it identifies the only product of the plaintiff which was also invented by the plaintiff only. The trial court misunderstood because of use of word "Perry's" which is name of plaintiff's firm with the trade mark of the plaintiff in the label and came to a wrong conclusion that "Perry's? Fruit Beer QwV ch;j** is integral and complete combination is registered trade mark. By using "Hello" word instead of "Perry's", the defendants can also use the "Fruit Beer" for their product as trade mark. It is also submitted by the learned counsel for the appellant that the judgment of the Hon'ble Apex Court delivered in the case of M/s. S.M. Dyethem Ltd. v. Cadbury (India) Ltd. relied upon by the trial court has been specifically overruled in the case of Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., therefore, also order of the trial court is based upon an overruled judgment.

7. The learned counsel for the respondents submitted that the Fruit Beer is a description of a good, therefore, no one can claim any exclusive right to use words "Fruit Beer". It is also submitted by the learned counsel for the respondents that there is a lot of difference between the two marks and there cannot arise any question of misleading of the consumers using the product.

8. In para 14 of the reply, the defendants submitted that the plaintiff has got only registered mark of "Perry" and there is no registration of Fruit Beer. According to the defendants, if Fruit Beer will be registered then no one will be registered then no one will be entitled to use the words "Fruit" as well as "Beer" which is not permissible under the law to be registered.

9. Both the counsels relied upon the several judgments of the Hon'ble Supreme Court as well as of various High Courts but before proceeding with all these, it is relevant to examine the provisions of the Act of 1958. The procedure for registration of trade mark is given in the above Act of 1958 and Chapter II deals with the procedure for registration. Section 9 of the Act of 1958 provides requisites for registration in Parts A and B of the register, whereas Section 11 provides prohibition of registration of certain marks. Section 13 provides prohibition of registration of names of chemical elements. Chapter III provides the procedure for and duration of registration whereas Chapter IV provides effect of registration. In Chapter IV, Section 27 provides that no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the

infringement of an unregistered trade mark whereas Sub-section (2) of Section 27 provides that nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. Section 28 confers the rights which are available due to the registration of the mark which provides exclusive right to use of the trade mark by the registered proprietor of the trade mark. Section 29 prescribed contingencies of infringement of trade mark. Section 31 shows that the registration is to be treated as prima facie evidence of validity and Chapter VII deals with rectification and correction of the register whereas Chapter VIII deals with certification of trade mark. Chapter X deals with offences, penalties and procedure.

10. Therefore, it is clear from the above provisions of law that complete procedure has been prescribed by the enactment giving an exclusive right of using of registered trade mark to the proprietor u/s 28 of the Act of 1958. The trial court, in its impugned order, held that the plaintiff is having registered trade mark but, while interpreting what is the registered trade mark, the trial court held that "Perry's(r) Fruit Beer" is the registered trade mark of the plaintiff whereas the defendants are using "Hello Fruit Beer" representing his product.

11. The trial court, whether has committed any illegality in interpreting the certificate issue by the authorities under the Act of 1958? There appears to be no dispute that "Perry's" is the part of the plaintiff's firm name which can be said to be trade name of the plaintiff. Perry's is registered trade mark of the plaintiff for which certificate u/s 23(2) read with Rule 65(1) has been issued by the Registrar of Trade Mark on 20.10.1984. The Registration Certificate for "Perry's? Fruit Beer QwV ch;j** is having registration No. 538033 is dated 8.10.1990. The certificated dated 8.10.1990 was renewed on 10.8.1998. In this certificate, against the column "Trade Mark Type Word", there is mention of "Fruit Beer (label)" and in the column of "Goods Description" it has been shown as "Cold Drinks and its concentrate". In the column of "History Data" condition" it is mentioned which is quoted here:

"History Data:

Registration renewed for a period of 7 years from 10th August, 1997. Advertised in Journal No. 1221.

Condition : Registration of this trade mark shall give no right to the exclusive use of the words "Fruit and Beer" separately appearing on the label."

Another document in the head of representation of work contains diagram of over boundary in which there is a mention of "Perry's" word underlined and below which, "Fruit Beer" in English and below which, in Hindi, ^QwV ch;j** are-written. In Licence under Fruit Products Order, 1955, the name of the licensee has been given as "M/s Perry Bottling Company."

12. In view of the above documentary evidence and in view of the fact

mentioned in the renewal certificate dated 10.8.1997, it is clear that the plaintiff is registered proprietor as defined in Sub-clause (q) of Sub-section (1) of Section 2 of the Act of 1958 and the trade mark of the plaintiff is registered trade mark as per Section 1(1)(r). There is a clear mention of the condition that the registration of this trade mark shall give no right to the use of the words "Fruit" and "Beer" separately appearing on the label. Therefore, the authorities, after application of mind, exercising statutory power granted a certificate of the trade mark for the name "Fruit Beer" and were fully conscious about the fact that no one including the plaintiff can claim exclusive right to use word "Fruit" or "Beer". It appears that by combination of two words, "Fruit" and "Beer" a unique word was developed which was accepted by the authorities by granting certificate as back as on 10.8.1990 and renewed on 10.8.1997 for further period of 7 years. If the "Fruit Beer" was not the registered trade mark of the plaintiff then the authorities could not have put any condition restricting the plaintiff from using "Fruit" and "Beer" separately. Admittedly, the plaintiff cannot claim exclusive right to use the word "Fruit" or "Beer". So far as word "Perry" is concerned, admittedly, this is the trading name of the firm of the plaintiff. It represents the plaintiff-Firm.

13. Assuming for the sake of argument that the entire description given in the above certificate "Perry's? Fruit Beer QwV ch;j**" is a registered trade mark of the plaintiff even then the trial court did not consider whether the defendants can choose all the parts of the trade mark of the plaintiff except the name of the plaintiff's firm name and say that they are not using trade mark of the plaintiff. It is an admitted case that the defendants have no right to use word "Perry's" as it is not only the trade name of the plaintiff but is also a trade mark of the plaintiff. Therefore, the trial court has committed serious illegality in interpreting the documents produced by the plaintiff.

14. So far as the contention of the learned counsel for the respondents raised particularly in para 14 of the written statement that the word "Fruit" and "Beer" are descriptive words, therefore, it could not have been registered by the authorities. This plea of the respondents, in fact, do not support the respondents but this supports the view that the authorities were conscious that no one claim registration of the words "Fruit" and "Beer" as trade mark but by combination of two, one can claim exclusive right to use the word "Fruit Beer". This is further clear from the certificate of registration containing the condition that the plaintiff cannot use "Fruit" or "Beer" separately. Section 31 of the Act of 1958 clearly provides that the registration of trade mark shall be prima facie evidence of validity thereof. Therefore, in view of the facts mentioned above, there is no reason to hold that the registration has not been granted to the plaintiff for the words "Fruit Beer."

15. The learned counsel for the respondents tried to support the impugned order of the trial court by submitting that the rules framed under the Prevention of Food Adulteration Act, 1954 provide for the standards for Fruit Juice as well as

four Fruit Beverage or Fruit Drinks. I perused clause A. 16.01 of the Prevention of Food Adulteration Rules, 1955 which provides that Fruit Juice means the unfermented and unconcentrated liquid expressed from sound, ripe, fresh fruit and with or without the substance mentioned in clauses (a) and (b) of Clause A.16.01 and it also provides the standards of the acidity which should be present for different category of fruits etc. Fruit Syrup is provided under clause A. 16.03 whereas Fruit Squash is provided under Clause A. 16.04 and Fruit Beverage or Fruit Drinks is provided under Clause A. 16.05 and, for other articles, in subsequent clauses but no word is given like "Fruit Beer" under these Rules also. It is also alleged by the plaintiff that the word "Fruit Beer" is a combination word invented by the plaintiff and is being used by the plaintiff since its inception. It is not the case of the defendants that the defendants invented this word "Fruit Beer". The respondent-defendants could not place on record any material to show that the above word "Fruit Beer" was in existence prior to its use by the plaintiff and also that "Fruit Beer" represents a particular item or commodity by which it can be gathered that "Fruit Beer" is a description of a particular item and it was in existence before the date from when the plaintiff is claiming that he invented it. Learned counsel also could not point out from any dictionary that "Fruit Beer" is a name or has been defined anywhere. Therefore, prima facie, it is held that the plaintiff is registered holder of the trade mark.

16. According to the learned counsel for the respondents, the work or the words "Fruit Beer" is not invention of the plaintiff otherwise the plaintiff would have got its registration under the Patents Act, 1970 (hereinafter referred to as "the Act of 1970"). I perused the various provisions of the Act of 1970 also. Section 6 of the Act of 1970 provides the persons who are entitled for submitting application for getting patent under the Act of 1970, As provided under the Act of 1958, the provisions are there in the Act of 1970 for giving patent to the inventors of their work. Section 48 of the Act of 1970 confers exclusive right to make, use, exercise, sell or distribute the invention of the patent. Section 108 of the Act of 1970 empowers the court to grant injunction and relief of damages in case of infringement of the patent right of patentee.

17. The learned counsel for the respondents could not point out that how the person holding registration under the Act of 1958, cannot maintain a suit for injunction, if he has not got registration of his work under the Act of 1970. There is no force in the submission of the learned counsel for the respondents.

18. It is clear from the above discussion that the plaintiff is the prima facie registered proprietor of the registered trade mark "Perry's? Fruit Beer QwV ch;j**" and, at this stage, it cannot be said that the registration granted to the plaintiff is wrong or illegal or was not permissible under law, particularly in view of Section 31 of the Act of 1958, therefore, the plaintiff has prima facie exclusive right to use above trade mark "Perry's? Fruit Beer QwV ch;j**" u/s 28 of the Act of 1958.

19. Now, the next question arises whether the defendants by using "Hello Fruit

Beer" for their product, prima facie infringes right of the plaintiff. Prima facie "Fruit Beer" is a registered trade mark of the plaintiff and it is also clear that "Perry's" is name of the plaintiff-Firm which is mentioned in a manner in the label so as to show that the "Fruit Beer" belongs to the "Perry's". In either case whether "Perry's" is part and partial of the trade mark "Fruit Beer" or whether "Fruit Beer" is separate from "Perry's" and registered as trade mark of the plaintiff, the defendants have no right to use the word "Perry's(r) Fruit Beer" or part of it like "Fruit Beer" only. The defendants failed to prove his defence that the word "Fruit Beer" is descriptive in nature, therefore, the defendants have no right to use the word "Fruit Beer".

20. The next question comes whether the use of word "Fruit Beer" by the defendants infringes any right of the plaintiff as the mark used by defendant cannot cause any deception or confusion or misrepresentation to any body using the product.

21. To give answer to the above question, the trial court considered the decision of the Hon''ble Apex Court reported in : Parle Products Pvt. Ltd. v. J.P. & Company, Mysore (1), and the decision reported in : Kali Aerated Water Works Tiruchirapall v. Rashid and Ors. (2), and held that the above judgments do not help the appellant on facts and to distinguish the plaintiff's case, the trial court again held that plaintiff's trade mark is registered as "Perry's (R) Fruit Beer", whereas by looking to the trade mark of the defendant, it cannot be said that any person will be deceived. The trial court also considered the judgment delivered in : S.M. Dyechem Ltd. v. Cadbury (India) Ltd. (3), and the judgment of the Hon''ble Apex Court delivered in : Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board and Ors. (4), and the judgments delivered in : Fritco-Lay India and Anr. v. Uncle Chipps Private Ltd. (5), Rochem Separation Systems (I) Pvt. Ltd. v. Tas Engineering Co. Pvt. Ltd. (6), Bharat Enterprises (India) v. C. Lall Gopi Industrial Enterprises and Ors. (7), S.B.L. Limited v. Himalaya Drug Co. (8), Himalaya Drug Co. v. Aarya Aushadhi Pharmaceuticals Works (9), and after considering the above judgments held that in view of the law discussed above, if the matter is examined of the plaintiff and the defendant, there appears to be no violation of the trade mark of the plaintiff.

22. The Hon''ble Apex Court in the judgment delivered in : Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (10), after discussing various aspects of the matter, overruled the detailed judgment delivered by two Judges Bench of the Hon''ble Apex Court delivered in : S.M. Dyechem Ltd. v. Cadbury (India) Ltd. The law has been thoroughly discussed in the above two judgments in the cases of M/s. S.M. Dyechem Ltd. and Cadila Health Care Ltd. The cases of M/s. S.M. Dyechem and Cadila Health Care, both were action based on the foundation of passing off and was not based upon the action u/s 28 of the Act of 1958. The right in favour of a holder of a registered trade mark is at higher pedestal and it has been held by the Hon''ble Apex Court after considering various earlier judgment, that even if suit for passing off may fail but a suit for infringement

may succeed and in a judgment delivered in *N.S. Thread Co. Ltd. v. James Chadwick & Bros. Ltd.* (11), the Hon"ble Apex Court held that the judgment in the passing of a case could not be relied upon by the opposite side in latter registration proceedings. Hon"ble Apex Court considered the commentary of Halsbury (Trade Marks, 4th Edition, 1984 Vol. 48 para 187) which says that in a passing off action the degree of similarity of the name, mark or other features concerned is important but not necessarily decisive so that an action for infringement of a registered trade mark may succeed on the same facts where a passing of action falls or vice versa. The Hon"ble Apex Court further noticed the view taken in *Kerly* which says that an infringement action may fail where plaintiff cannot prove registration or that its registration extends to the goods or to all the goods in question or because the registration is invalid and yet the plaintiff may show that by imitating the mark or otherwise, the defendant has done what is calculated to pass off his goods as those of plaintiff. After discussing the above, the Hon"ble Apex Court observed that "defendant's name on his goods is an indication of there being no case of passing off." and it is held in the above case of *M/s S.M. Dychem Ltd.* that the defendant's wrapper contains the word "Cadbury" above the words PICNIC as therefore a factor which is to be taken into account. Again it may be relevant to mention here that was an action for passing off and not a case of infringement of trade mark by a holder of registered trade mark and, presently, this is with respect to not an action of passing off but of infringement of trade mark which is available to the plaintiff-appellant u/s 28. Therefore, the plaintiff was required to prove that he was the holder of registered trade mark and he prima facie proved it as held above. In the light of above, it is to be seen whether the plaintiff is entitled for any relief or not.

23. The Hon"ble Apex Court in the case of *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (supra), considered the following reasonings given in the case of *M/s. S.M. Dychem Ltd.* (supra) :-

"Whether common marks are included in the rival trade marks, more regard is to be paid to the parts not common and the proper course is to look at the marks as a whole, but at the same time not to disregard the parts which are common."

and overruled by holding:-

"We are unable to agree with the aforesaid observations in *Dychem* case. As far as this Court is concerned, the decisions in the last four decades have clearly laid down that what has to be seen in the case of a passing-off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion. This is evident from the decisions of this Court in the cases of *National Sewing Thread Co. Ltd.* case, *Corn Products Refining Co.* case, *Amritdhara Pharmacy* case, *Durga Dutt Sharma* case and *Hoff-mannla Roche & Co. Ltd.* case."

The Hon"ble Apex Court further considered the following view taken in the case

of M/s. S.M. Dyechem Ltd. :-

"The above three dissimilarities have to be given more important than the phonetic similarity or the similarity in the use of the word "PICNIC for PIKNIK".

and overruled by observing that:-

"With respect, we are unable to agree that the principle of phonetic similarity has to be jettisoned when the manner in which the competing words are written is different and the conclusion so arrived at is clearly contrary to the binding precedent of this Court in Amritdhara case where the phonetic similarity was applied by judging the two competing marks. Similarly, in Durga Dutt Sharma case it was observed that : (AIR P. 990 para 28) :

"In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiffs and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated."

In the case of Cadila Health Care Ltd, the Hon^{ble} Apex Court held that the following observations given in para 54 in the case of M/s. S.M. Dyechem are contrary to the decision given in the case of Amritdhara :

54. As to scope of a buyer being deceived, in a passing-off action, the following principles have to be borne in mind, Lord Romer, L.J. has said in Payton & Co. v. Snelling, Lampard & Co. that it is a misconception to refer to the confusion that can be created upon an ignorant customer. The kind of customer that the courts ought to think of in these cases is the customer who knows the distinguishing characteristics of the plaintiff's goods, those characteristics which distinguish his goods from other goods in the market so far as relates to general characteristics. If he does not know that, he is not a customer whose views can properly be regarded by the Court. (See the cases quoted in National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. which was passing-off action. In Schweppes case Lord Halsbury said, if a person is so careless that he does not look and does not treat the label fairly but takes the bottle without sufficient consideration and without reading what is written very plainly indeed up the face of the label, you cannot say he is deceived."

and the Hon^{ble} Apex Court held that:-

"These observations appear to us to be contrary to the decision of this Court in Amritdhara case where it was observed that the products will be purchased by both villagers and townfold, literate as well as illiterate and the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. A trade may relate to goods largely sold to illiterate or badly educated persons. The purchaser in India cannot be equated with a purchaser of goods in England. While we agree that in trade mark matters, it is

necessary to go into the question of comparable strength, the decision on merits in Dyechem case does not, in our opinion, lay down correct law and we hold accordingly."

24. The above judgment makes the position of law clear and, therefore, other judgments relied upon by the learned counsel for the respondents are of no help to the respondents in view of the judgment delivered in the case of Cadila Health Care Ltd. (supra).

25. In the light of above discussion, if the facts of this case are seen then it is clear that the product of the plaintiff is non-alcoholic soft drink which is being used by the general public in the cities as well as in the villages, therefore, it can be presumed that the product will be purchased by both villagers and residents of cities, illiterate as well as literate and, therefore, the question has to be approached from the point of view of a man of average intelligence and imperfect recollection and the Hon^{ble} Apex Court held that the purchaser in India cannot be equated with a purchaser of goods in England. So far as the violation of the right of trade mark of the plaintiff is concerned, there cannot be any dispute with respect to the phonetic similarity in the trade mark used by the plaintiff and the defendants because both are using the same word "Fruit Beer", even if it is in Hindi or in English but it is phonetically similar. Therefore, it is clear that the trial court has not looked into the matter from this angle whether the trade mark of the plaintiff as well as the defendants are phonetically similar or not and thereby committed serious illegality in deciding the application of the plaintiff. Above phonetic similarity with the trade mark of the plaintiff and in view of the fact that the plaintiff is a registered holder of the trade mark which is being used by the defendants, itself is a sufficient ground for grant of injunction in favour of the plaintiff. A customer will certainly ask for "Fruit Beer" from the seller who may be a small shop-holder and the seller will give "Fruit Beer" which is product of the defendants without knowing that the customer had intention to purchase the product of the plaintiff only. This may result into not only loss to the trade of the plaintiff but may also result into the loss of goodwill and reputation of the plaintiff, if the product of the defendants is found to be of sub-standard which may cause serious irreparable injury to the plaintiff, which cannot be ascertained in the terms of money. Therefore, in my opinion, the plaintiff is entitled for grant of relief of injunction.

26. It is also clear from the submission of the learned counsel for the respondents that the respondents also applied for registration and submitted an application, which according to the learned counsel for the respondents, was accepted but, admittedly, no registration certificate has been granted to the defendants then the defendants, at this stage, has no legal right to use the word "Fruit Beer".

27. In view of the above discussion, the reasonings given by the learned trial court cannot be accepted. They appear to be contrary and perverse to the settled principles of law and the same deserve to be set aside.

28. Therefore, this appeal is allowed and the order of the learned trial court dated 18.6.2001 is set aside. The respondents-defendants are restrained from using the words "Perry"s(r) Fruit Beer" or "Fruit Beer" over his product in Hindi or English till the decision of the suit.