

(2016) 11 DEL CK 0131

In the Delhi High Court

Case No : CS (COMM) No. 1532 of 2016 and IA No.14411 of 2016

Sambhav Kapur

APPELLANT

Vs

British Indo German Industrial Organics Private Ltd.

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2017) 236 DLT 123 : (2017) 2 MIPR 72 : (2017) 69 PTC 617

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : None, for the Defendants; Mr. Dhanesh Ralhan and Mr. Aashita Manocha, Advocates, for the Plaintiff

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J. - The plaintiff has instituted this suit against the defendants no.1 to 9 namely (i) British Indo German Industrial Organics Private Ltd.; (ii) BIG Industrial Organics Private Limited; (iii) Mr. Nitin Khullar; (iv) Mr. Rakesh Rathour; (v) Mr. Mangat Rai; (vi) Mr. Raj Kumar Rathour; (vii) Mr. Raman Kumar; (viii) Mr. Vikram Rathour and (ix) Akash Rathour for (i) permanent injunction restraining the defendants from manufacturing, selling the goods under the mark "PUREPASTE SAFETY SKIN PASTE" or any other mark as may be identical or deceptively similar to the plaintiff's mark "REINOL SAFETY SKIN PASTE" amounting to passing off by the defendants of their goods as the goods and business of the plaintiff and diluting the plaintiff's mark "REINOL SAFETY SKIN PASTE" (ii) for delivery of all the impugned goods; and, (iii) for accounts.

2. The suit had come up first before this Court on 22nd November, 2016 when on the statement of the counsel for the plaintiff that there were some mistakes in pagination and amended plaint needs to be filed, the suit was adjourned for today.

3. The plaintiff has since filed amended plaint and which is taken on record.

4. It is the case of the plaintiff in the plaint (i) that the plaintiff is the sole proprietor of M/s. Treadfast Ventures and M/s Reinol Obstfeld India; (ii) M/s. Reinol Obstfeld India markets and sells the products manufactured by M/s. Treadfast Ventures; (iii) that the trademark "REINOL" was the property of M/s. Reino Industrial Organics Private Limited (RIOPL) which has assigned its rights in the said trademark vide Assignment Deed dated 28th August, 2014 in favour of the plaintiff; (iv) that the trademark "REINOL" is registered under number no.428103 in Class-01 since 2014; (v) RIOPL was set-up by the father of the plaintiff for manufacturing industrial chemicals and the said company started manufacturing a safety skin paste by the name of REINOL SAFETY SKIN PASTE which is used by the industrial workmen to protect their hands from hazardous chemicals used in various industries; (vi) M/s. Gebr. Obstfeld GmbH & Co. + KG, Germany developed the formula of the paste and RIOPL acquired the technical knowhow for the formulation of the paste from the said German Company; (vii) that since 1984 RIOPL has improved upon the said paste; (viii) at the time when REINOL SAFETY SKIN PASTE was launched in 1984 there were no other similar paste and though in the last 30 years other pastes have come in the market, REINOL SAFETY SKIN PASTE has the largest market share; (ix) that at the time when the father of the plaintiff set-up RIOPL, he had also involved the defendant no.3 Mr. Nitin Khullar, who is the brother of the mother of the plaintiff, in the said business since the defendant no.3 Mr. Nitin Khullar was then unemployed and 2% of the shares of the RIOPL were also issued to the defendant no.3 Mr. Nitin Khullar; (x) however the presence of the defendant no.3 Mr. Nitin Khullar in RIOPL was namesake and the said Company progressed with the sole efforts of the father of the plaintiff; (xi) that the defendant no.3 Mr. Nitin Khullar left the country in 1993 and totally disassociated himself from RIOPL in 2008; (xii) other disputes and differences have arisen between defendant no.3 Mr. Nitin Khullar on the one hand and the parents of the plaintiff on the other hand; (xiii) in July, 2016, it has come to the notice of the plaintiff that "PUREPASTE SAFETY SKIN PASTE" with deceptively similar packing, instructions and formulae has appeared in the market and purports to be marketed by the defendant no.1; (xiv) the plaintiff however on search on the website of Registrar of Companies did not find any Company by the name of defendant no.1; (xv) the distributors of the plaintiff also informed the plaintiff that they had been offered distributorship of PUREPASTE SAFETY SKIN PASTE by the defendant no.2; (xvi) a perusal of the photographs of PUREPASTE SAFETY SKIN PASTE show that though the company named on the label is defendant no.1 but on top surface of the container containing the product, the letters "BIG" have been written in bold; (xvii) the said product has copied the label and packaging of "REINOL SAFETY SKIN PASTE" (xviii) that the defendants no.3 to 9 through defendants no.1&2 are engaged in marketing and sale of PUREPASTE SAFETY SKIN PASTE; (xix) that the defendants have illegally and wrongfully used the words "British Indo German" at two places on the label of the box and a non-existent company i.e. defendant no.1 is mentioned as its manufacturer; (xx) the use of the words "British Indo German" is malicious, deliberate and intentional to portray international

collaboration in formulation of paste to put it on the same pedestal as the "REINOL SAFETY SKIN PASTE" of the plaintiff; (xxi) the brochure and other literature being distributed by the defendants on the letterhead of defendant no.1 claims "BIG marks the coming together of experts in the field of chemistry and bio chemical engineering from United Kingdom, Germany and India" (xxii) the brochure of the defendants also claim the defendants to be having over 60 years of experience in the field of industrial skin care and claim the defendant no.3 Mr. Nitin Khullar to have pioneered the production of SAFETY SKIN PASTE 30 years ago; (xxiii) the defendants are thereby deceiving the consumers by disseminating false information; (xxiv) though PUREPASTE SAFETY SKIN PASTE is new in the market but is falsely being claimed as 30 years old; and, (xxv) that the defendant no.3 Mr. Nitin Khullar has also recruited some of the employees of the plaintiff at much higher salary to manufacture PUREPASTE SAFETY SKIN PASTE.

5. I may at the outset record that in para 31 of the plaint, spanning from internal page 30 to 34 of the plaint, the plaintiff has quoted passages from various judgments.

6. A plaint is supposed to contain only facts and law is not to be pleaded.

7. Burdening the plaint with passages of judgments and citing the said judgments is contrary to the tenet of pleadings and Orders VI and VII of the Code of Civil Procedure, 1908 (CPC) which requires a pleading to contain "only" a statement in a concise form of material facts on which the party relies for his claim or defence laying down negatively that it shall not contain evidence or law. It was also so held in *The Maharashtra State Electricity Board v. Madhusudan Dass* AIR 1966 Bom 160 (DB), *Guruswami Achari v. Vengiduswami Achari* AIR 1963 Mad 71, *Lakshmi Narain v. Union of India* AIR 1962 Pat 64 (DB) and *Sampuran Singh v. Aryan Singh* AIR 1961 P&H 414 (DB). Supreme Court also, in *Ram Sarup Gupta v. Bishun Narain Inter College* (1987) 2 SCC 555 held "it is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute, nor the question of law is required to be pleaded." The Division Bench of this Court also in *Abhay Sapru v. Chitralekha Bukshi* 2008 (106) DRJ 589 held that though "pleadings must contain only the material facts and not the law, yet copious reference to the law has been made." Such burdening of the plaint with what is not required to be contained therein has a cascading effect, with the defendant replying thereto, the plaintiff filing replication thereto, issue, though not really required to be framed being framed thereon and often, evidence also being led thereon and is one of the causes of delay in disposal of suits. Rule 16 Order 6 empowers the Courts to strike out pleadings which are unnecessary or vexatious or which may delay trial. Though power thereunder is found to have been used often in the past, with pleadings not conforming to the requirement of law being labelled as *mofussil* pleadings and being blamed on weakness, in language and law, of pleaders in *mofussil* courts but owing to docket explosion is now exercised rarely. The Division Bench

of this Court in *Teva Pharmaceutical Industries Ltd. v. Natco Pharma Ltd.* 210 (2014) DLT 591 also lamented on the malady afflicting courts in cities including on the original side of the High Court. However refrain of the courts in exercising powers to strike off such pleadings is resulting in the principles of drafting of pleadings being thrown to the wind and passages of judgments being quoted in the plaint. A time has perhaps come for the Courts, which are responsible for maintaining the discipline of the legal proceedings before them, to refuse to entertain such pleadings to send a message to the pleaders. The plaint, being not in accordance with law and as provided in CPC, is liable to be rejected on this ground alone.

8. However I refrain from doing so as I otherwise also find the suit to be liable to be dismissed at the threshold.

9. The counsel for the plaintiff has thus been heard.

10. The counsel for the plaintiff has at the outset drawn attention to page 38 of the documents, being a Dermatological Test Certificate dated 1st October, 2014 issued by one SFN Testing of London and which according to the plaintiff has been circulated by the defendant no.3 Mr. Nitin Khullar to the distributors of PUREPASTE SAFETY SKIN PASTE. The counsel for the plaintiff has argued that there is no such institution as SFN Testing. The basis of making such contention is the print out of the internet search result for SFN Testing as a Company. By reference to page 50 it is stated that the son of the defendant no.3 Mr. Nitin Khullar has a Company at the same address as given of SFN Testing.

11. There is however nothing to show that the defendants have or are distributing the said test certificate. There is no covering letter of the defendant no.3 Mr. Nitin Khullar or any of the other defendants enclosing the said test certificate though the counsel for the plaintiff states that the distributors of the plaintiff have informed the plaintiff of having received the said test certificate from the defendants.

12. The said argument has no relevance to the relief claimed in the plaint on the right to restrain the defendants from passing off their goods as that of the plaintiff. Representations made by the defendants qua their product to others of the same having been tested and certified by a laboratory, even if false, have no bearing to the issue of "passing off" which has to be decided by gauging the similarities if any in the trade mark and trade dress under which the two products are marketed and the possibility of deception of consumers thereof i.e. of buying product of the defendants presuming it to be of the plaintiff. It is not even the case of the plaintiff that any such representation has been made to the plaintiff.

13. To the same effect are the arguments of the counsel for the plaintiff, of the defendants having made other false claims in their advertisements and of having misrepresented to the distributors of the plaintiff who were approached for marketing PUREPASTE SAFETY SKIN PASTE and to the consumers.

14. The plaint, though claiming reliefs as aforesaid only, is also replete with pleas of alleged misdemeanour by the defendants vis-a-vis others and which are found to be scandalous, and tending to prejudice and embarrass and in abuse of process of court, also within the meaning of Order 6, Rule 16 of CPC. In the same vein, averments of defendants poaching employees of the plaintiff are pleaded when the counsel for the plaintiff admits that the plaintiff has no right to restrain its employees and no relief in that respect is made. Similarly, averments of the defendants using technology and formula of the plaintiff are made when the counsel agrees that the plaintiff has no patent or right to restrain the defendants or any others from using the same technology and formula.

15. The suit, instead of with intent to restrain passing off and claim other reliefs with respect thereto, is found to be filed as a tool of harassment and a counter blast to the claims made by the defendants and other members of family against the plaintiff's parents, and using the Courts to play out family politics.

16. As far as the relief claimed of passing off is concerned, the counsel for the plaintiff has handed over in the Court the following:-

Plaintiff's packaging Defendant's packaging Basis of Passing Off

Logo omitted Logo omitted Same Shape and Size of Label

Same Placement of logo

200 gm. pack label Copied 200 gm. label trade dress Same Place of Brand names

Use of same Nomenclature

Use of Similar 3 pictures

Same Container Shape and Dimensions of 200gm. pack size of the plaintiff adopted by the defendant

200gm. pack design 200 gm. Copied pack Design

Same Container Shape and Dimensions of 400 gm. pack size of the plaintiff adopted by the defendant.

400 gm. label and pack Copied 400 gm. label and pack
design design

Exact copy of all elements of the dispenser Shape and Dimensions of this pack size. of 3 kg of the Plaintiff.

Original Wall Dispenser Copied Wall Dispenser

Same Size and Same Dimensions and Design of 3 kg. of the Plaintiff adopted by the defendant.

The nomenclature, words, manner and

SAFETY SKIN P SAFETY SKIN P Style of writing of the Plaintiff is adopted by the defendant.

Original Nomenclature on label Word by Word Copied Nomenclature on Label

The use of colour block by the Plaintiff for the words safety skin paste has again been copied/adopted by the defendant

PROTECTS CLEANS CONDITIONS HANDS PROTECTS CLEANS CONDITIONS HANDS The instructions on the box of the Plaintiff have been adopted by the defendant on its box.

Original trade dress used Copied Trade dress used. The colour of bullet points is also the same as that of the defendant

TAKE REINOL MASSAGE WITHOUT WATER ADD 3-4 DROP OF WATER CONTINUE MASSAGE RINSE WASH OFF WITH WATER MASSAGE BIG Pure Paste gently without water add 3-4 drop of water continue massage Rinse wash off with water The manner of writing of instructions by the plaintiff on its box has been copied word to word by the defendant on its box.

Original Instructions to Use Word by Word Copied Instructions to Use

17. I have enquired from the counsel for the plaintiff as to how any industry which may be purchasing the said paste for its workmen can possibly confuse PUREPASTE SAFETY SKIN PASTE for REINOL SAFETY SKIN PASTE. The two trademarks and trade dress are as distinct as Sun and Moon and it is just not understandable on what basis a case for passing off is made out.

18. As regard the shape and size, I have enquired from the counsel for the plaintiff whether not Kraft Cheese as well as Amul Cheese in paste form as also a large number of other bread spreads are marketed in containers of the same shape.

19. No answer has been forthcoming.

20. The colour scheme of the two labels is also entirely different.

21. The counsel for the plaintiff then states that the photographs on the label of the plaintiff are the same as that of the plaintiff.

22. As would be evident from the above, photographs are not identical. The only similarity is that the photographs on both labels depict hands.

23. I have enquired from the counsel whether not the label of any skin care product for hands would necessarily depict hands and cannot possibly depict feet or head or any other part of human body.

24. The counsel for the plaintiff then states that the defendants have used the same words "protects", "cleans" and "conditions hands".

25. The same are descriptive words, to use whereof none can have any exclusive

right.

26. Though the plaintiff in the document aforesaid handed over has also alleged the defendants having copied the design of the Wall Dispenser of the plaintiff but admittedly the plaintiff has no registration as a design.

27. The suit is thus nothing but an outburst against a family member and the plaintiff though has pleaded judgments on five pages of the plaint but the counsel is unable to state his right in law which is violated by the defendants or as to how the said judgments are applicable.

28. I have, for reasons given in detail in *Staar Surgical Company v. Polymer Technologies International* 2016 SCC OnLine Del 4813 and in *Bright Enterprises Pvt. Ltd. v. MJ Bizeraft LLP* 2016 SCC OnLine Del 4421 inter alia relying on *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.* (2002) 2 SCC 147 followed by the Division Bench of this Court in *Larsen & Toubro Ltd v. Lachmi Narain Trades* (2008) 149 DLT 46, held that evidence hardly serves any purpose in such suits and the suit, if found to be not disclosing a case of passing off on which relief is based, can be dismissed at the threshold. This suit has also to suffer the same fate.

29. The suit is dismissed holding that the pleadings and documents of the plaintiff do not disclose any case of the defendants passing off their goods as that of the plaintiff; once that is so, the question of the plaintiff being entitled to ancillary reliefs of delivery and accounts does not arise.

30. No costs.

31. Decree sheet be prepared.