



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7790 of 2024

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BOT ORGANIC PRIVATE LIMITED
Versus
PIRUZ KHAMBHATTA & ANR.

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Appearance:
ARJUN R SHETH(7589) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

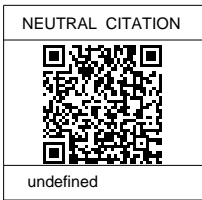
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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 06/05/2024

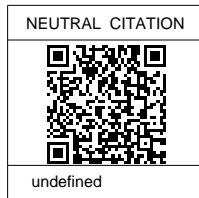
ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)

1. This is a defendant's petition under Article 227 of the Constitution of India challenging the order dated 20.01.2024 passed by the Commercial Court in allowing the application under Order VI, Rule 17 of the Code of Civil Procedure in Commercial Trademark Civil Suit No.22 of 2023.
2. The plaintiff has filed application Exh.28 under Order VI, Rule 17 of the Code of Civil Procedure, *inter alia*, seeking amendment of plaint and injunction application. The plaintiff has come out with the case in the suit seeking relief for injunction against the



defendant for infringement of trade mark. A perusal of the copy of the plaint of the said suit indicates that the plaintiff has come out with a categorical stand pleading that in the month of July, 2023, the plaintiff came to know about the illegal activity of the defendant when one of its marketing personnel came across the goods of the defendant under the trade mark RUS Organic Cranberry Juice on Amazon.com, Jiomart.com, Dunzo.com, Naturesbasket.com and Shopsy.in online market platform, which is assessable from and in the city of Ahmedabad. The contention is that the defendant herein is selling its goods, namely fruit juice with the word 'RUS' appearing prominently on the packaging and the said act clearly amounts to infringement of trade mark and passing-off action. It is contended that the word 'RUS', which is phonetically identical and deceptively similar appears prominently on the defendant's packaging /label. RUS is forming the essential and phonetically necessary part of the trade mark RASNA of the plaintiff.

3. It is also contended that the plaintiff has recently come to know that the defendant applied for the registration of the impugned mark RUS before the Trade Mark Registry on 01.09.2018. The Application No.3933156 for goods: Fruit juices and fruit



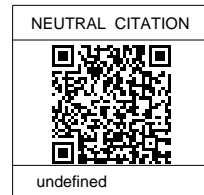
beverages; fruit juices and drinks in Class 32 on proposed to be used basis was refused by the Trade Mark Registry under Section 9(1)(b) and Section 11(1) of the Trade Marks Act, 1999. However, with *mala fide* intention, by playing fraud on the Trade Mark Registry, the defendant has once again applied for the same mark RUS on 01.09.2018 in Class 35 vide another Application No.3933157. The said application was registered as on today, but for the services “retail or wholesale” services for Fruit juices and fruit beverages; Fruit juices and drinks” and not for goods falling in the relevant Class for juices, which is Class 32.

4. With these contentions, it is stated that the defendant is clearly liable for infringement of trade mark and the registration in Class 35 does not come in the way of the plaintiff to file the suit for infringement of trade mark. The plaintiff is well known by the name and mark RASNA and is prior adopter and registered proprietor of the mark RASNA not only in India but across multiple countries. The defendant is guilty of dishonestly and knowingly adopting the infringing mark RUS, which is visually, phonetically and structurally similar to the plaintiff’s mark.
5. The reliefs prayed by the plaintiff in the suit are relevant to be extracted hereunder:-



“36. Therefore, in light of submissions made hereinabove, the plaintiff most humbly prays to this Hon’ble Court:

- A. That the Defendant company, its directors, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trademark RUS and thereby the Defendant may be restrained permanently from infringing the Plaintiff’s well-known and registered trade mark(s) RASNA.
- B. That the Defendant company, its directors, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trade mark RUS and thereby the defendant be permanently restrained from passing-off its goods under the trade mark RUS, which is capable to cause confusion, deception and amounts to misrepresentation done by the Defendant by using the disputed mark which is identical/deceptively similar as that of the Plaintiff’s prior adopted, well-known and reputed trade mark RASNA.
- C. The Hon’ble Court be pleased to order Defendant to pay token damage of Rs.50,00,000/- in favour of the plaintiffs with 18% interest from the date of suit till realization, for the damage caused by the Defendant to the goodwill, prestige, reputation of the Plaintiffs.
- D. The Hon’ble Court may be pleased to direct the Defendant to produce the true and correct books of accounts/records of sale before the Hon’ble Court, which can be assessed by the Plaintiff in order to calculate the illicit profits earned by the Defendant in the course of the trade under the infringing trade mark RUS.
- E. The Defendant, by themselves and/or their directors, partners, agents, heirs, assigns, and all other related business personnel or persons be ordered to destruct and demolish the materials, posters, brochures, literature, merchandise, promotional materials, blocks, dyes, letterheads, pamphlets, books, stationery, hoardings, moulds, goods (packed and unpacked), print or media material containing and consisting the word



mark/trade mark RUS or other variants of the said trademark/logo for their goods namely, FRUIT JUICE, and any other allied & cognate goods and direct them to hand over all the aforesaid materials bearing the trade mark/word “RUS” to the Plaintiff for destruction.”

6. By means of the amendment application under Order VI, Rule 17 of the Code of Civil Procedure, the plaintiff sought addition of the statement to the effect that the plaintiff has obtained registration over other marks as indicated therein, namely, the registration in the name of the plaintiff is for variant marks or series marks of RASNA such as RAS, RUSSS, RASME, RACHANA. It is contended that the plaintiffs have specifically obtained *per se* trade mark “RAS and “RUSSS”, which are valid and in force till date. The amendment in the relief prayed in the plaint has, thus, been sought to the following effect:

“A. That the Defendant company, its directors, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trademark RUS and thereby the Defendant may be restrained permanently from infringing the Plaintiff’s well-known and registered trade mark(s) RASNA or its variants marks such as RUSSS and other as mentioned in Paragraph No.6 and 6A hereinabove.”

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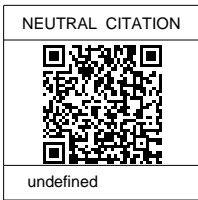
B. That the Defendant company, its directors, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trade mark RUS and thereby the defendant be permanently restrained from passing-off its goods under the trade mark RUS, which is capable to cause confusion, deception and amounts to misrepresentation done by the Defendant by using the dispute mark which is identical/deceptively similar as that of the Plaintiff's prior adopted, well-known and reputed trade mark RASNA or its variants marks such as RUSSS and other as mentioned in Paragraph No.6 & 6A hereinabove.

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B. That the Defendant company, its directions, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trademark RUS and thereby the Defendant may be restrained temporarily from infringing the Plaintiff's well-known and registered trade mark(s) RASNA or its variants marks such as RUSSS and other as mentioned in Paragraph No.6 & 6A hereinabove.

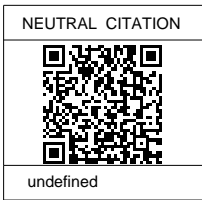
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B. That the Defendant company, its directors, partners, heirs, assigns, licensees, agents and all related business personnel may please be restrained from manufacturing, selling, advertising, distributing, circulating, displaying and marketing its goods namely Fruit Juices and/or allied, cognate goods through offline or online/internet mode, under the identical-deceptively similar as well as phonetically similar trade mark RUS and thereby the defendant be temporarily restrained from passing-off its goods under the trade mark RUS, which is capable to cause confusion,



deception and amounts to misrepresentation done by the Defendant by using the disputed mark which is identical/deceptively similar as that of the Plaintiff's prior adopted, well-known and reputed trade mark RASNA or its variants marks such as RUSSS and other as mentioned in Paragraph No.6 & 6A hereinabove."

7. By the order impugned, the amendments prayed by the plaintiff to the above noted fact have been permitted with the finding that by way of proposed amendments, the plaintiff wants to add other series of trade marks associated with the suit trade mark "RASNA" and do not want to replace the word "RASNA" with proposed amendment.
8. The contention of the defendant that by way of the amendment the plaintiff wants to change the nature of the suit or is extending the scope of the cause of action to the extent of bringing a new cause of action, has been turned down.
9. As against the categorical finding recorded by the Commercial Court in allowing the amendment, in order to avoid the multiplicity of the proceedings, nothing concrete could be argued before us. During the course of the arguments, the learned counsel for the petitioner tried to enter into the merits of the contention of the defendant in the suit for infringement of the trade mark "RASNA" which is not subject matter of consideration at this stage. Only

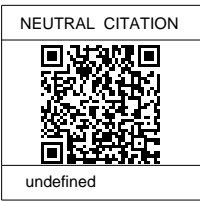


issue which could be raised by the defendant is that the effect of allowing the amendment application would be that a new cause of action has been incorporated in the pending suit, which will change the entire nature of the suit, could not be substantiated before us.

10. As noted hereinbefore, the suit was essentially for infringement of the trade mark, RASNA and by way of the amendments, the plaintiff sought to bring on record, the registration of other variants of the trade mark RASNA, which according to the plaintiff phonetically and deceptively similar to the trade mark “RUS” got registered by the defendant under Class 36 and being used for the goods, allegedly to be registered in Class 32.

11. The fact remains that by addition to the variants registered in the name of the plaintiff to that of the well known trade mark RASNA, registered trade mark of the plaintiff, it cannot be said by any stretch of imagination that the nature of the suit has been changed with allowing of the amendment application. No error, therefore, can be found in the order passed by the Commercial Court. The findings returned by the Commercial Court that the amendments are being allowed in order to avoid multiplicity of litigation, is found to be justified in the facts and circumstances of the case.

12. In view of the above, no interference is called for within the scope



of Article 227 of the Constitution of India. The petition stands dismissed being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ)

SUDHIR

(ANIRUDDHA P. MAYEE, J.)