

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on : 26.5.2017*
Judgment delivered on : 30.5.2017

CS(OS) 800/2010

M/S HARI CHANDN SHRI GOPAL & ANR

.....Plaintiffs

Through: Mr. Pravin Anand & Ms. Prachi Agarwal,
Advocates

Versus

BAL GOPAL FRAGRANCES

.....Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. Present suit is a suit for permanent and mandatory injunction restraining infringement of trademark, rendition of accounts, damages and delivery up.

2. Plaintiff No.1 is a partnership firm registered in New Delhi engaged in the business of manufacturing and selling tobacco products including flavored chewing tobacco, pan-masala etc. since 1950. Plaintiff No.2 is the licensee of plaintiff No.1 vide license agreement dated 01.04.2009.

Plaintiff No.1 is a registered proprietor of the Lord Krishna

device/logo (with Lord Krishna playing the flute with a cow in the background), the trademark GOPAL (in hindi as well as english) and also the labels comprising of the trademark GOPAL and Lord Krishna Device/Logo in relation to flavoured chewing tobacco and has been using the trademark continuously since 1950. The plaintiffs have also extensively promoted and advertised its products under the trademark GOPAL accompanied by the Lord Krishna device/logo.

3. Defendant is a proprietorship firm registered in Cuttack, also engaged in the manufacture and sale of flavored chewing. In March, 2010 the plaintiffs discovered that the defendant was manufacturing and selling flavored chewing tobacco under the trade name of BAL GOPAL FRAGRANCES which appeared on its packaging and was also using the Lord Krishna logo along with the corporate name on its promotional literature such as business cards etc. The suit of the plaintiffs was accordingly filed for permanent injunction seeking restraint of the defendant from infringing plaintiffs' trademark.

4. The defendant had put in appearance. He filed written statement. He submitted that his was a small scale industrial unit engaged in the manufacture and sale of unbranded chewing tobacco without any trade name.

It was admitted that defendant was working in the name and style of BAL GOPAL FRAGRANCES and was using picture of Bal Gopal on its business cards etc. but he denied there being any similarity between his Bal Gopal Logo and the plaintiffs' Lord Krishna logo. He also denied using any logo or brand name for its manufactured product. He otherwise denied the allegations made in the plaint.

5. Replication was filed reiterating the averments contained in the plaint and refuting the submissions made in the written statement.

6. On the pleadings of the parties, on 31.01.2012, the following issues were framed. They read herein as under:-

- (i) Whether the plaintiff No.1 is the registered proprietor of the trademark GOPAL under Nos. 331481, 333612, 814097 and 331482 in relation to its goods? OPP
- (ii) Whether the plaintiff No.1 is the registered proprietor of the Lord Krishna device under No. 268259 in relation to its goods? OPP
- (iii) Whether the defendant has infringed the registered trademark GOPAL and the Lord Krishna device of the plaintiffs'? OPP
- (iv) Whether this Court has no jurisdiction to try and entertain the present suit? OPD
- (v) Whether the plaintiffs are entitled to relief, if any, as claimed in the suit? OPP

7. The plaintiffs in support of their case have examined PW1 Manoj Gupta. He has proved the documents in support of the claim of the plaintiffs as Ex.PW1/1 to Ex.PW1/19. PW1 has reiterated all the averments made in the plaint. None was present on behalf of the defendant since last many dates of hearing and the defendant was accordingly proceeded ex-parte on 28.10.2015. Objection that the name of Lord Krishna when used as GOPAL is *publici juris* was raised in the interlocutory order of 13.05.2016 to which the plaintiffs filed supplementary evidence by way of affidavit dated 30.07.2016 stating that plaintiff No.1 is the sole and exclusive user of the trademark GOPAL for chewing tobacco in class 34 and that no one except the plaintiffs is using the mark GOPAL with or without variations under the said class. The plaintiffs have also produced records of the Trademark Registry regarding various trademark registrations in class 34 using GOPAL where out of a total 111 registrations 95 registrations belong to the plaintiffs for chewing tobacco/zarda and 13 of such are using GOPAL with Lord Krishna device and there is only 1 third party registration for zarda for which the plaintiffs have already filed a lawsuit and is *pendente lite*.

8. The oral and documentary evidence which has been placed on record which includes the statement of PW1 as also the supplementary affidavit

(dated 30.07.2016) duly supported by the documents establishes the case of the plaintiffs. The plaintiffs have proved that the trademark GOPAL with or without variations is solely used and associated with the plaintiffs for chewing tobacco in the entire tobacco industry. The plaintiffs are entitled to the relief as claimed for by them. Learned counsel for the plaintiffs has pressed for prayers (a) and (b) in the prayer clause; he has given up his claim for damages and costs.

9. Learned counsel for the plaintiff has also drawn attention of this Court to a letter dated 2.08.2011 written by the defendant to the Central Board of Excise and Customs wherein he had stated that he is closing down his factory and had also undertaken to surrender his Registration Certification.

10. The suit of the plaintiffs is accordingly decreed and a decree of permanent injunction is passed in favour of the plaintiffs and against the defendant restraining the defendant, its partners or proprietor, its officers, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on its behalf from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with tobacco related products including flavored chewing tobacco bearing the Lord Krishna device/logo under the trademark GOPAL by itself or in conjunction

with other words including the trademark/tradename BAL GOPAL FRAGRANCES or any mark similar thereof. No order as to costs.

11. Suit of the plaintiffs is decreed and disposed of in the above terms. Decree sheet be drawn up. File be consigned to record room.

INDERMEET KAUR, J

MAY 30, 2017

