

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION (L) NO. 3205 OF 2018
IN
COMMERCIAL IP SUIT (L) NO. 1766 OF 2018

Sapat and Company (Bombay) Private Limited ... Applicant

In the matter between :

Sapat and Company (Bombay) Private Limited ... Plaintiff

Versus

Feel Good India and another ... Defendants

Mr. Himanshu Kane alongwith Ms. Shaziya Tyabji instructed by W.S. Kane & Co. for the Plaintiff.

Mr. Neerav Merchant alongwith Mr. Vipul Shah and Mr. Vinod Bhatia for the Defendants.

CORAM : S.J. KATHAWALLA, J.

DATED : 10th JANUARY, 2019

P.C.:

1. The Plaintiff - Sapat and Company (Bombay) Private Limited is a Company incorporated under the Companies Act, 1956, and is inter-alia engaged in manufacturing and/or marketing of medicinal and pharmaceutical preparations and substances and has been selling the said goods under distinctive trade marks and trade dress.

2. Defendant No.1 - Feel Good India, is carrying on the business of inter-alia manufacturing cough syrups from its address at 108, Sector-29, Part-I, Huda, Panipat

- 132103, Haryana. Defendant No.2 – Narendra Marketing is carrying on the business of inter-alia marketing of cough syrups from its address at 102/103, T.V. Industrial Estate, 248-A.S.K. Ahire Marg, Worli, Mumbai – 400 025.

3. In or about the year 2015, the Plaintiff adopted and started using the label marks annexed and marked as Exhibits “A-1” and “A-2” to the Plaintiff, in relation to its cough syrup. Sometime in the first week of December 2018, the Plaintiff came across cough syrups (‘impugned goods’) manufactured by the Defendant No.1 and marketed by the Defendant No.2 under a label mark annexed and marked Exhibit “D” to the Plaintiff (‘impugned label mark’), which is a substantial reproduction of the Plaintiff’s said label marks. The Plaintiff’s label marks annexed at Exhibit “A-1” and “A-2” and the Defendants’ impugned label marks annexed at Exhibit “D” to the Plaintiff, are reproduced hereunder :-

Plaintiff’s said label marks	Defendants’ impugned label marks
	

4. The Plaintiff Company has therefore filed the above Suit, inter-alia seeking to restrain the Defendants by a perpetual order and injunction of this Court from infringing the Plaintiff's copyright in the artistic works comprised in the said label marks shown at Exhibits "A-1" and "A-2" to the Plaintiff, and/or from passing off the Defendants' cough syrups as and for the Plaintiff's well known cough syrups, and/or for damages, costs and other consequential reliefs.

5. In the above Suit, the Plaintiff has also taken out the above Notice of Motion seeking an order of temporary injunction and appointment of the Court Receiver. On 21st December, 2018, the Plaintiff moved this Court for ex-parte ad-interim reliefs, when this Court by its detailed Order dated 21st December, 2018, restrained the Defendants by an order of temporary injunction from infringing the Plaintiff's copyright in the artistic works comprised in the said label marks shown at Exhibits "A-1" and "A-2" to the Plaintiff. This Court also appointed the Court Receiver, High Court, Bombay as Receiver to seize and take charge, possession and control of all goods bearing the impugned label mark shown at Exhibit "D" to the Plaintiff, with the help of the police if necessary and also break open the lock/s, if necessary. The Court Receiver was also directed to keep the impugned goods under his seal in the safe custody of the Defendants and to submit his report on 7th January, 2019.

6. On 7th January, 2019, the Court Receiver submitted his Report to this Court and the representative of the Plaintiff also submitted his Affidavit proving service. From the said Report as well as the Affidavit submitted by the Plaintiff, it was clear that the

Order was executed peacefully at the premises of Defendant No.2. However, what transpired when the representative of the Court Receiver and the representative of the Plaintiff had visited the premises of Defendant No.1, is shocking and is set out hereunder :-

(i) Mr. R.B. Ghadi, representative of the Court Receiver alongwith Mr. Chandrakant Chaudhari, representative of the Plaintiff reached Delhi on 3rd January, 2019 and proceeded to Panipat by road. On 4th January, 2019 at 9.00 a.m. they visited the Police Chowky, Chandni Baugh and contacted Shri. Pramod Gautham, S.H.O. of the said Police Station and explained the purpose of their visit by showing the Order of this Court and also tendered a letter dated 3rd January, 2019 addressed by the Court Receiver to the Police Authorities and obtained their acknowledgment on the Office Copy. The S.H.O. sent the Police Officials/Constables to execute the Court's Order.

(ii) The representative of the Court Receiver thereafter alongwith the representative of the Plaintiff and the Police Officials/Constables proceeded to the factory premises of Defendant No.1 to execute the Court Order. On reaching the said address, the premises were found locked. The watchman at the suit premises stated that the factory was closed on account of marriage in the family of Defendant No.1 and a notice was displayed at the factory gate stating that the factory will remain closed from 2nd January, 2019 and will open on 7th January, 2019. Thereafter, the mobile number of Rajat Bhatia (brother of the Proprietor of Defendant No.1 Ms. Neha Gandhir) was obtained. The accompanied Police Officer/Constable spoke to Mr.

Bhatia and informed him the purpose of the visit and asked him to send someone to open the locks on the premises. Mr. Bhatia informed the Police Officer over the phone that Ms. Neha Gandhir (his sister), was the Proprietor of Defendant No.1 and informed them that Mr. Parvez Ahmed would soon reach the factory premises.

(iii) Thereafter Mr. Parvez Ahmed who claimed to be the General Manager of Defendant No.1 came to the suit premises accompanied by an Advocate and stated that he can accept the papers and proceedings in the matter, but will not open the locks. The Order dated 21st December, 2018 alongwith the papers and proceedings as set out in clauses (a) to (f) of paragraph 2 of the Affidavit of Service filed by Mr. Chandrakant Chaudhary was served on the General Manager, Shri Ahmed, who gave his written acknowledgment for the same.

(iv) Since the Police Officials/Constables accompanying the representatives of the Court Receiver and the Plaintiff, refused to forcefully break open the lock and enter the premises and stated that they would do so only in the presence of their senior, the representative of the Court Receiver left the suit premises with the police officials and headed back to the Police Station. The representative of the Plaintiff waited outside the factory premises of Defendant No.1. On reaching the Police Station, which was within the distance of a kilometer from Defendant No.1's premises, the representative of the Court Receiver was informed by the said Police Officials/Constables that their senior was in Court and will be available only after an hour or so. The representative of the Court Receiver thereupon called up the

representative of the Plaintiff and asked him to come to the Police Station.

(v) After waiting at the Police Station for a long time for the senior police official, the representatives of the Court Receiver and the Plaintiff went back to the premises of Defendant No.1, and found that several persons, who were purportedly the employees of Defendant No.1, alongwith the Proprietor of Defendant No.1, Ms. Neha Gandhir and her husband Mr. Punit Gandhir had opened the premises and were transporting various cartons and packaging material that bore the impugned label mark into a tempo. The representative of the Plaintiff in the presence of the representative of the Court Receiver tried to record the said events on his mobile phone camera, when Ms. Neha Gandhir snatched the phone from his hand asked him to delete what was recorded and threatened them that she will level molestation charges against them. The tempo thereafter left with the loaded goods.

(vi) Thereafter, Police Officers alongwith one Mr. Pramod, Inspector of Chandni Bagh Police Station arrived at the site and he alongwith the representatives of the Court Receiver and the Plaintiff gained access to the factory premises and found only one sealed bottle having 30% quantity inside the bottle of 100 ml. viz. “nm Adulsa STRONG COUGH SYRUP”, and two empty wrappers showing the same name similar to the Plaintiff's product. After preparation of the Site Report, though the General Manager of the Defendant No.1-Company signed the Report, Mr. and Mrs. Gandhir refused to sign the same.

7. This Court therefore on 7th January, 2019, recorded that it appears that the

Proprietor of Defendant No.1 and her husband have obstructed the Court Receiver from performing his duties and complying with the Order passed by this Court dated 21st December, 2018, which amounts to interference with the administration of justice and calls for stern action against them. This Court also recorded the undertaking given by the Advocate for the Defendants that the Proprietor of Defendant No.1 alongwith her brother shall remain present in Court on 8th January, 2019 and her husband will appear at a later date (since his sister was getting married on 8th January, 2019). The matter was thereafter adjourned to 8th January, 2019.

8. On 8th January, 2019, Ms. Neha Gandhir, Proprietor of Defendant No.1 was present in Court. On that day, though she admitted that in a fit of rage, she snatched the photographic equipment and also threatened the representatives of the Court Receiver and the Plaintiff to slap a false case of molestation against them, she asserted that she has not removed any goods from the factory premises and is not aware of any tempo having left the said premises with any material. When the representatives of the Court Receiver and the Plaintiff showed this Court the material loaded in the vehicle which they had videographed, I realized that Ms. Neha Gandhir is making statements which are false and incorrect to her knowledge and she was directed to file her Affidavit setting out her say. Her husband was also directed to remain present on the next date i.e. 9th January, 2019.

9. On 9th January, 2019, when the matter was called out, I was informed that the Counsel for Ms. Neha Gandhir has prepared an Affidavit but they will take some time

to affirm and serve the same. The matter was therefore adjourned to today i.e. 10th January, 2019.

10. Today, the learned Counsel appearing for Ms. Neha Gandhir, Proprietor of Defendant No.1 has tendered an Affidavit. In the said Affidavit, she has stated as follows :

(i) she had received a phone call from her brother Mr. Rajat Bhatia, when she was on her way near Jind, Haryana informing her that there is a problem at her factory and she was further advised to visit the factory immediately.

(ii) she reached the factory premises at 3.00 to 3.15 p.m. alongwith her husband, and on her arrival, one of her employees informed her that two unknown persons are taking photographs of the premises from outside.

(iii) she met the two persons who were taking photographs and objected to the same. She vociferously objected to continue photography by the said two persons and attempted to snatch their photography equipment/camera/mobile phone. She, therefore in a fit of rage threatened to complain and file a case against them, accusing them of misbehavior against herself and related offences such as attempted molestation, as one of the said two persons attempted to push her physically when she tried to prevent him from continuing to take photographs of her premises.

(iv) she was not aware about the identity of the said two persons and that they had not informed her who they were.

(v) that the use of the word 'molestation' was 'unintended in spirit' and was

as such used as a 'term of art' and was said in a state of great fear and apprehension.

(vi) that the loading of goods into the tempo/vehicle took place under her instructions, which she had issued to her staff/employees immediately upon her return to the factory premises, as she was unaware of the motives of the said two persons and she ordered this on the spur of the moment in a state of great fear, tension, stress and without any malice.

(vii) that the said two persons disclosed to her their identity after the aforesaid incident, and when one of them showed her his I-card, she immediately apologized for her prior conduct and statements. Later, after sometime, the local Police arrived at the scene and spoke to her and she readily agreed to co-operate and even organized some refreshments for them.

(viii) that she did not knowingly attempt to hinder or obstruct the administration of justice by the Officers of the Court.

(ix) that she is producing the said goods today alongwith the Affidavit.

11. I am convinced that the Proprietor of Defendant No.1 Ms. Neha Gandhir has made false statements in her Affidavit knowing the same to be false. The Police Constable had much before the arrival of the Proprietor of Defendant No.1, Ms. Neha Gandhir, at the factory premises, informed her brother over the phone, the purpose of their visit. Her brother therefore sent Mr. Parvez Ahmed, General Manager of Defendant No.1 to the suit site alongwith an Advocate. A copy of the Order dated 21st December, 2018 passed by this Court alongwith all the proceedings including the

copies of the Complaint, Notice of Motion, Affidavit in support thereof were accepted by Mr. Parvez Ahmed, who was the General Manager of Defendant No.1. Admittedly, the brother of Defendant No.1 informed the Proprietor of Defendant No.1, Ms. Neha Gandhir about what had transpired at the factory premises and had asked the Proprietor of Defendant No.1, Ms. Neha Gandhir, to immediately attend the factory premises. It is palpably false that the Proprietor of Defendant No.1, Ms. Neha Gandhir, was not aware that two individuals had come from Bombay and that one of them was the representative of the Court Receiver.

12. What exactly transpired at the factory site is now clear and is set out hereunder:

Though the General Manager received all papers and proceedings including the Order of this Court dated 21st December, 2018, he refused to open the factory premises to enable the representative of the Court Receiver to comply with the said Order; the Police Officials/Constables accompanying the representatives of the Court Receiver and the Plaintiff, refused to break open the locks in the absence of their senior, because of which the representatives of the Court Receiver and the Plaintiff went back to the Police Station and waited there to meet the senior police official; since the senior police official was not available, they went back to the suit site which was within a kilometer distance from the Defendant No.1's premises and were shocked to notice that instead of opening the factory premises and allowing the representatives of the Court Receiver and the Plaintiff to implement the Order dated 21st December, 2018, Shri. Ahmed / Shri. Bhatia had in the meantime called the Proprietor of

Defendant No.1, Ms. Neha Gandhir and her husband Punit Gandhir at the factory premises, and since by that time they were aware of the purpose of the visit of the representative of the Court Receiver, they removed the impugned goods from the factory premises and loaded the same in a tempo; when the representative of the Plaintiff who accompanied the representative of the Court Receiver tried to videograph the impugned material loaded in the tempo, the Proprietor of Defendant No.1, Ms. Neha Gandhir tried to snatch away his mobile phone, asked him to delete what was videographed and used the most easily available weapon to an unscrupulous and dishonest woman, when her dishonesty is exposed, by threatening them that she will level false allegations of molestation against them.

13. The Learned Advocate appearing for the Proprietor of Defendant No.1, Ms. Neha Gandhir informed the Court that Ms. Neha Gandhir has committed a grave mistake by conducting herself in the manner set out by the Court Receiver and the representative of the Plaintiff, including threatening them with slapping a false case of molestation and removing the impugned products from the factory premises in a tempo. However, he urged the Court not to issue any show cause notice, but to be compassionate and lenient in imposing cost/fine on the Proprietor of Defendant No.1, Ms. Neha Gandhir, more so since she is a young entrepreneur having two young children. However, he also stated that Ms. Neha Gandhir shall abide by the orders passed by this Court. The husband of Ms. Gandhir though present has not filed any Affidavit in response to the Order dated 7th January, 2019 and is not represented by any

Advocate.

14. This Court has repeatedly noted and also recorded in some of its orders how parties brazenly breach the orders of the Court without any fear. In fact, I have observed and noted that the common man is under a misconception that the Civil Courts cannot pass any orders detaining them in prison and it is only a Magistrate who can do so. Again, those who are aware of the consequences, draw support from the fact that if an order sentencing them to civil prison, or a heavy fine is passed, they will file an Appeal and obtain a stay, which will effectively frustrate the sentence of imprisonment and fine imposed. This impression is required to be dispelled, and the Courts need to take stern action against such offenders. Appeals filed by such offenders also need to be disposed off at the stage of admission itself. In the instant case, the Proprietor of Defendant No.1 Ms. Neha Gandhir and her husband have crossed all limits. She and her husband have not only attempted to defeat the orders passed by this Court by removing the goods from the factory premises before the Court Receiver taking charge of the same, but as admitted by Ms. Neha Gandhir she also attempted to snatch the mobile phone/camera on which their contemptuous conduct was being videographed and the representatives of the Court Receiver as well as the Plaintiff were asked to delete what was recorded under the threat of being slapped with a false charge of molestation. Time and again, it is noted with distress by the courts, that a socially enabling piece of legislation, is being grossly misused with impunity, by the very gender for whose empowerment it has been enacted, leaving the

male/s facing grossly wrong and derogatory charges, which they have to thereafter defend themselves against. Such gross and patent misuse of a socially enabling piece of legislation has to be sternly condemned by the Courts and dealt with a very stern hand.

15. Though it is submitted by the Advocate for the Defendant No.1 that I should not issue any notice against the Defendant, since she has admitted her guilt, and compassion be shown to her by accepting her apology, and minimal punishment be awarded to her, I have made it clear to him that the same cannot be accepted, because it is the duty of the Court to protect its officers and also the litigants who obtain reliefs from the Court by following the due legal process. If such abhorrent behavior is left unpunished, by showing 'compassion' to a person who knowingly, grossly abuses the process of law, and thereafter attempts to justify the same by saying that she did it 'in a fit of rage', the court will send out a wrong message to the general public, that it is not out of place for women to hold out such threats to their male counterparts, and thereafter plead for 'compassion'. Such conduct may also deter court officials from executing court orders against women, for fear of such false and baseless charges being levelled against them.

16. Keeping in mind that the Proprietor of Defendant No.1, Ms. Neha Gandhir has at this stage admitted her guilt and has informed the Court that she will abide by the orders passed by this Court, I, keeping in mind the above mentioned conduct of Ms.Neha Gandhir and the complicity of her husband in aiding her in removing the

impugned goods from the factory premises on 4th January, 2019, proceed to impose collective costs of Rs.25 Lacs, which she and her husband have undertaken to pay in three installments i.e.

- i. Rupees 10 Lakhs on or before 18th January, 2019 ;
- ii. Rupees 7.5 Lakhs on or before 15th February, 2019 ; and
- iii. Rupees 7.5 Lakhs on or before 28th February, 2019.

17. In view thereof, the following Order is passed :

- (a) The unconditional apology of the Proprietor of Defendant No.1 Ms. Neha Gandhir is accepted.
- (b) The undertaking given by her and her husband to pay Rs.25 Lakhs towards costs, in the installments set out above, is accepted.
- (c) Out of the said sum of Rs.25 Lakhs, an amount of Rs.5 Lakhs shall be paid to the Plaintiff, and the balance amount of Rs.20 Lakhs shall be donated to Tata Memorial Hospital.
- (d) The products with the impugned label taken away in the Tempo shall be forthwith handed over to the Court Receiver.

(S.J.KATHAWALLA, J.)