

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO.518 OF 2019
IN
COMMERCIAL NOTICE OF MOTION (L) NO.1618 OF 2019
IN
COMMERCIAL IP SUIT NO.749 OF 2019

Royal International Co. & Ors. .. Appellants

Vs

Arun Mohanlal Joshi .. Respondent

...

Mr. Charanjeet Chanderpal for the Appellants.

Mr. B.N. Poojari with Ms. Nidhi Bangera i/b Asian Patent Law
for the Respondents.

...

CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : 17th JANUARY, 2020.

P.C.:-

1. The Appellants were impleaded as the Defendants in a suit filed by the Respondent. On 09th July, 2019, in the order impugned in the appeal, the learned Single Judge *prima facie*

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opined that the Appellants had marketed identical goods i.e. Pan Masala in a pouch which was a slavish imitation of the design and the colour scheme in which the Respondent marketed Pan Masala. The learned Single Judge *prima facie* opined that it was a case of passing off on account of using the trade mark of the Respondent 'MUSAFIR', albeit prefixing the same with the word 'CHAL'.

2. The learned Single Judge not only restrained the Appellants from marketing their product using the word 'MUSAFIR' or a word deceptively similar thereto but also by infringing the copyright of the Respondent in the pouch.

3. The said order merged in a final order dated 06th August, 2019.

4. Against the said Order dated 06th August, 2019 Commercial Appeal No.519 of 2019, filed by the Appellants was dismissed by this Bench on 27th November, 2019.

5. Learned counsel for the Appellants argues that notwithstanding the final order dated 06th August, 2019 passed by the learned Single Judge being affirmed by the Division Bench, the impugned Order dated 09th July, 2019 can be challenged in the instant Appeal.

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6. We disagree.

7. If an ex-parte ad-interim order is followed by a final order disposing of the Notice of Motion in which the ex-parte ad-interim order was passed, the principles of merger will apply. If the final order has been upheld that would be the end of the matter for the reason independent of the final order, the ex-parte ad-interim order does not survive.

8. The Appeal is dismissed.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)

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