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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 701/2023 and I.A. 19499-19505/2023, 19515/2023**
DHARAMPAL SATYAPAL FOODS LIMITED Plaintiff
Through: Mr. Pravin Anand, Ms. Vaishali
Mittal, Mr. Siddhant Chamola, Mr.
Shivang Sharma and Ms. Gitanjali
Sharma, Advocates (M:
[REDACTED])

versus

STUDY LOVER & ORS. Defendants
Through: Ms. Mamta Rani Jha, Mr. Rohan
Ahuja, Ms. Shruttima Ehersa and
Ms. Amishi Sodani, Advocates for
D-5 (M: [REDACTED])

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **05.10.2023**

1. This hearing has been done through hybrid mode.

I.A. 19501/2023 (for additional documents)

2. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, 'Commercial Courts Act'*). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

3. Accordingly, application is disposed of.

I.A. 19505/2023 (u/S 12A of the Commercial Courts Act)

4. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation. In view of the orders passed in ***Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd,***



2022/DHC/004454, the application is allowed and disposed of.

I.A. 19515/2023(exemption from advance service to the Defendants)

5. In view of the fact that the Plaintiff has sought *ex parte ad-interim* injunction, the exemption from advance service to the Defendants is granted.

6. Accordingly, application is disposed of.

I.A. 19502/2023 (seeking to file certain documents and videos)

7. This is application seeking permission to file certain documents and videos on a pendrive. The permission is granted. The Plaintiff shall file the identified videos created and uploaded on the internet by Defendant Nos.1-4 in a pen-drive within four weeks.

8. Application is disposed of.

I.A. 19503/2023 (for Court fee)

9. This is an application extension of time for filing of court fees. Let the Court fees be deposited within one week.

10. The Application is disposed of.

I.A. 19504/2023 (exemption)

11. This is an application seeking exemption from filing executed and notarised affidavits. Exemption is granted to the Plaintiff from filing clearer copies and originals of the relevant documents at this stage. The Plaintiff shall file the duly executed and notarised copies of the pleadings and supporting affidavits within four weeks.

12. Application is disposed of.

CS(COMM) 701/2023 and I.A. 19500/2023 (seeking administration of interrogatories on D-2)

13. Let the plaint be registered as a suit.

14. Issue summons in the suit and notice in the I.A. to the Defendants



through all modes upon filing of Process Fee.

15. The summons to the Defendants shall indicate that the written statement to the plaintiff shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

16. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar for marking of exhibits on 20th November, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

18. List before Court on 26th March, 2024.

I.A.19499/2023 (u/O XXXIX Rules 1 & 2 CPC)

19. Issue notice.

20. The Plaintiff-Dharampal Satyapal Foods Limited has filed the present suit seeking an injunction in respect of the alleged defamatory and derogatory videos which have been uploaded by Defendant Nos. 1 to 4, 6 and 7.

21. The case of the Plaintiff is that it is a well-known manufacturer of various food products including candies under the brand name RAJNIGANDHA, CATCH, PASS-PASS, CHINGLES, PULSE *etc.* According to the Plaintiff, various videos have been uploaded by Defendant



Nos. 1 to 4, 6 and 7 wherein a message has been portrayed to the viewers that consumption of Pulse Candy causes cancer.

22. According to the Plaintiff, the mark “PULSE” was adopted by it sometime in 2013 under the umbrella brand “PASS PASS” for confectionery business. The said product is duly certified and licensed by the FSSAI. The Pulse Candy is a hard-boiled flavored candy which is filled with salt and spices and is promoted with the tagline “*Pran Jaaye par Pulse Na Jaaye*”. Candies under the mark “PULSE” are sold in various flavours such as *Kachcha Aam, Guava, Orange, Pineapple, Litchi and Lemon*. The marks “PULSE” is also used by the Plaintiff for sweetened drink. It also has a “*No Salt, Sugar Free*” variant as well. The case of the Plaintiff is that the pulse candies have achieved a large-scale turnover of Rs.298,24,58,644/- in 2021-2023 and more than Rs.5 crore has been expended on advertisement and publicity of the “PULSE” trademark.

23. As per the Plaintiff, Mr. Ashu Ghai- Defendant No.7 uploaded the impugned video under the title “HARMFUL EFFECT OF PULSE TOFFEE| MOST FAMOUS CANDY OF INDIA” and it had the following thumbnail:



Harmful Effects Of Pulse Toffee 🤢 | Most Famous Candy Of India | Ashu Sir



24. As per the Plaintiff, the video in question contained false, distasteful, defamatory and objectionable allegations against the Plaintiff's product sold under the mark "PULSE". Upon attaining knowledge of the impugned video, the Plaintiff sent a cease-and-desist notice to Mr. Ghai asking the said Defendant to delete/disable or take down the impugned video. In response to it, Mr. Ghai responded stating that he will delete the impugned video and he gave an undertaking to that effect. As per the Plaintiff, Defendant No.7 has not abided by the undertaking as the impugned video has only been made private and not deleted. Further, the said video has been re-uploaded by Defendant Nos.1-4 which is still available on the internet.

25. Mr. Anand, Id. Counsel appearing for the Plaintiff submits that the videos which have been uploaded are available at different URLs. There are broadly two categories of videos. The first one is a eleven minutes video wherein Defendant No. 7 is portrayed as doing certain experiments in order to come to a conclusion that pulse candy can cause cancer. The said video has been uploaded by Defendant Nos.1 and 2 who appear to be Defendant No.7's students.

26. Defendant Nos.3 and 4 have also uploaded a one-minute abridged version of the same video. According to Id. Counsel for the Plaintiff, the said videos are damaging the Plaintiff's goodwill and reputation and are causing dilution of the Plaintiff's brand. Moreover, it is submitted that none of the allegations in the videos are true and Defendant No.7 had himself given undertaking earlier that he would not upload any videos which would be defaming of "PULSE" candy which has been declared to be a well-known mark.

27. The Court has perused the impugned video and the undertaking given



by Defendant No.7. The terms of the undertaking are as under:

“1. I acknowledge that your companies are the manufacturers and sellers of the PULSE candies, besides being the proprietors of the well-known



PULSE trademark and trade-dress .

2. I apologize for the video that I had created and uploaded on YouTube, titled Harmful Effects of Pulse Toffee/Most Famous Candy Of India/ Ashu Sir relating to your company's PULSE candies, and I understand and acknowledge that the video has caused harm to your company.

3. I apologize for the unauthorized use of your company's intellectual property, including trademarks and copyright protected images, for the purpose of creating my video.

4. I hereby acknowledge that the video posted by me titled Harmful Effects of Pulse Toffee/Most Famous Candy Of India/Ashu Sir made misleading statements regarding the effects on health of your company's PULSE candies.

5. I hereby acknowledge that the video posted by me titled Harmful Effects of Pulse Toffee/Most Famous Candy Of India/Ashu Sir, constitutes a violation of your company's trademark PULSE and violation of copyright protected artwork and images that is used in advertisements of your company's PULSE candies.

6. I confirm that I have deleted the abovementioned video from YouTube, and that the video is no longer accessible to any person, and that it shall not be made accessible to any person at any point of time in future.

7. I undertake to immediately cease and desist from making, publishing, promoting, advertising, playing or in any other manner endorsing the video Harmful Effects of Pulse Toffee/Most Famous Candy Of India/Ashu Sir, which is hosted at the URL



<https://www.youtube.com/watch?v=10DqkdENqBcor>
any other video which is similar in content and claims,
with respect to the effects on health of your company's
PULSE candies.

8. **I undertake to ensure that any re-uploaded versions of my video are taken down and do not subsist on the internet now and in the future.**

9. I hereby undertake to cease and desist from creating, making, publishing, advertising, playing, or in any other manner endorsing the video Harmful Effects of Pulse Toffee/Most Famous Candy Of India/Ashu Sir, or any other video that is similar in content and claims from platforms including but not limited to YouTube, Instagram, Facebook, X, or any other social media platform, the internet, or playing them in the physical world.

10. I hereby affirm that I am authorized to give this undertaking, and that **the undertaking is binding upon me, and my companies as well as its successors, assignees, licensees, heirs, legal representatives, servants, agents and upon any business in which we may be directly or indirectly involved.** If this undertaking is violated, I undertake to pay your companies damages and costs incurred by you. Your companies shall be at liberty to take action as they deem fit in respect of violation of this undertaking or any part thereof.”

28. There can be no doubt that the right to freedom of speech deserves to be protected in order to communicate facts which are verifiable. Such facts ought to be based on credible test reports. However, the sensationalization of the same would also have to be avoided as the same could also lead to unnecessary panic. A baseless fear being created especially in respect of products that are approved, would not be permissible. In ***Mother Dairy Vs. Zee telefilms 117 (2005) DLT 272***, it was observed as under:



“...29. It would be seen from the foregoing judgments, that the settled legal position is that where truth, justification and fair comment are pleaded, there is to be no prior restraint on publication unless the Court can find it to be a case of malafides. This was the situation in the case of Hari Shankar (Supra) where repeatedly false and defamatory imputations were being maliciously published. The Gulf Oil case (Supra) relied on by the plaintiff would also not advance its case. In Gulf Oil (Supra) the Court held that:

"The principle that an interlocutory injunction would not be granted to restrain publication of defamatory material where the defendant intended to plead justification did not apply where the material was being published in pursuance of a conspiracy which had the sole or dominant purpose of injuring the plaintiff."

30. *In the present case there is no plea of conspiracy, even the plea of malafides as set-forth is lacking in material particulars. It was averred in the plaint that it appears that it is being done at the behest of the competitors. No name or particulars of the competitors were mentioned. During the oral arguments reference was made to the poster/ hand-bills taken out by the employees of Delhi Milk Scheme. The plaintiff has failed to make out even a prima facie case of mala fides, leave aside giving particulars of mala fides, as required or of any conspiracy to defame the plaintiff.*

31. *The defendants have in the programme reproduced the views of the plaintiff's representative at Parag Dairy, as also of their Deputy General Manager and thereby claim to have followed the fairness doctrine. Pursuant to the orders passed by the Court, the Managing Director of the defendant was also given an opportunity to give plaintiff's version. In these circumstances, it cannot be prima facie said that the defendants acted mala fide or set about telecasting the programme with the intention of defaming the plaintiffs. Defendants case has been that till they had shot the sequence of making of synthetic milk, they did not know that it would lead them to supplier of the plaintiff namely Parag Dairy. In view of the foregoing*



discussion and the principles enunciated in the judicial pronouncements noted earlier, no case is made out for grant of interlocutory injunction and restraining the telecasting of the programme especially when the defendants' seek to justify the programme. Plaintiffs assertion about the authenticity of the samples as also possibility of change of samples and the samples having not been kept in proper condition and thereby vitiating the tests reports are matters which are to be decided during trial after recording of evidence. The programme has already been telecast and the prayer for restraint of its re-telecast is liable to declined and is so declined in view of the foregoing discussion.

32. Ordinarily, the publication of any defamatory news item or any falsehood can be and is dealt with by the aggrieved party by availing of legal remedies to safeguard its rights and reputation by instituting an action for libel or a criminal complaint for defamation. The media has been a zealous guardian of freedom of expression and speech. It has a right to comment vigorously and fearlessly especially on matters of public interest. Recent times witnessed a tendency to make news sensational and full of hype, following the edit "News is what Sells".

33. This raises the issue of accountability and responsibility of media to its readers and the public in general. Reference in this context may be usefully made to the work " Media Ethics. A philosophical approach" edited by Mathew Kieran which contains articles authored by media professionals, academics and philosophers. It covers issues of impartiality, objectivity in reporting, role and responsibility of media. Mr. Andrew Belsey in his article on "Journalism and ethics can they co-exist"? notes that Journalists provide a vital service in the democratic set up. They act as distinctive facilitators for the democratic process to function without hindrance. Virtues associated with ethical journalism namely accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people are part of and required in the democratic process. Practical considerations, namely, pursuit of successful career, promotion to be obtained, compulsion of meeting deadlines and satisfying Media Managers by meeting growth targets, are recognised as factors for the temptation to print trivial stories



salaciously presented. In the temptation to sell stories, what is presented is what "public is interested in" rather than "what is in public interest". Recent example of the above is prime space and headlines following an isolated gay murder for days together in National Dailies.

34. Unethical journalistic activity muckraking or deceit will undermine public trust in media and without that relationship of trust, democratic function of Journalism cannot be fulfilled.

Matthew Keiran in his article on "Objectivity, impartiality and good journalism" says that media is an unofficial fourth estate. It has the fundamental duty to be impartial and evaluate appropriately and report event that affects our lives as members of the society. While noting the divergence that may emerge while reporting on interpretation and evaluations of facts and events, he observes that the essence of the story in underlying causes or features which are salient ought to be noted while aiming to reach truth. Good journalism aims at discovering and promoting the understanding of an event via truth promoting events. A failure of impartiality in journalism is a failure to respect one of the methods required in order to fulfill the goal of journalism; getting at the truth of the matter. Where reporting turns away from the goal of truth and journalists treat events as open to many interpretations, according to their prejudices, assumption, news agenda or the commercial drive towards entertainment, the justification and self-confessed rationale of journalism threatens to disappear.

*35. Let us consider the above aspect of adherence to journalistic norms, as noted above, qua the programme telecast. **The defendant's efforts in unearthing and bringing to the notice of public the menace of manufacturing of synthetic milk and its possible supply to leading manufacturers such as plaintiff was no doubt a laudable measure for public good. However, prima facie there does not appear to have been any serious effort of actually estimating the extent of synthetic milk produced.** The defendants projected in the programme as if poison of synthetic milk was being supplied to crores of persons. During the hearing of the case, defendants were asked to indicate whether any data was collected or research done in support of above statement.*



Reference was made by defendants to clippings of news reports regarding making of synthetic milk and raids carried out. There was one report which mentioned the value of equipment involved in the illegal operation as being Rs. 10 to 12 lakhs. There was no mention of quantity of synthetic milk produced. No serious efforts or research appear to have been done to estimate the quantity of synthetic milk manufactured clandestinely in these operations. **Undoubtedly, it is the author's prerogative to decide the contents of the programme. It has complete freedom regarding its composition or expression of views and opinions. It has the right to criticize in a scathing manner, lack of quality control tests or procedure and or ineffective processes and to bring out need for maintenance of standards to ensure quality. However, any exaggeration or sweeping comment on subjects concerning health and quality of commodities of human consumption can cause immense harm to the public and psyche of masses. Media has the onerous responsibility to ensure that facts are verified and the matter is thoroughly investigated and researched and salient and critical information is collected. The extent of operations and quality of synthetic milk being allegedly produced, was an essential element for programme's objectivity. This appeared to be missing. A sweeping comment that no part of country is free from adulterated and synthetic milk and crores of people will keep on consuming this poison or "think before you take the deadly sip" can effect the psyche of people.** This can have wide ramifications with doubts being raised on the very availability of pure quality milk and food in this nation of 100 crores and above without actually fully knowing or fathoming the extent of malaise. It would, therefore, appear that media as part of its responsibility and accountability to public and its readers should eschew sensationalism, exaggeration and sweeping comments, especially in matters of food and public health.”

29. From a reading of the above judgement it is clear that the settled legal position is that if the Defendant is pleading justification, no interim injunction can be granted. However, if there are any *mala fides* which is shown or other factors that show sweeping comments having wider



ramifications, that would not be permissible. Sometimes, such videos and content may also create an awareness about the harmful effects of some products, which may be in consumer interest. However, some of such content could also be actuated by *mala fides* at the behest of competitors. Therefore, each case would have to be therefore specifically examined to see if an injunction ought to be passed.

30. In the present case, the main defendant i.e., Mr. Ghai has already given an undertaking, which has been reproduced above, agreeing that the video is misleading. If the main protagonist has himself acknowledged that the video is misleading, then no one else would be entitled to re-post the said video or an abridged version thereof.

31. In the present case, Defendant No. 7, for whatever reason, has given an undertaking wherein it is clearly recorded by him that he would take down the video from YouTube and the same would not be made accessible. Under such circumstances to permit the impugned video to be continued to be made viewable on YouTube would be contrary to the undertaking. The abridged version of the impugned video being made available would also be impermissible in view of the undertaking given by Defendant No.7.

32. Accordingly, the impugned videos shall be taken down. However, if there is any factual or other kind of videos which the Defendants wish to upload against the Plaintiff's pulse candy, without sensationalizing the same on the basis of third party issued, scientifically verifiable test reports, the Defendants are free to do so.

33. Defendant Nos. 1,2,3,4 and 7 and the unknown Defendants shall take the impugned videos down from the date of service of the present order. If the same are not taken down within 48 hours, then the Plaintiff shall give the



URLs to Google LLC which shall take them down within 72 hours.

34. Google LLC shall also disclose the identity, any BSI and account registration details of all the uploaders of the two videos in respect of which the details are not available with the Plaintiff.

35. Compliance of Order XXXIX Rule 3 CPC within a week.

36. Let reply to the application be filed within 4 weeks from the date of service.

37. List before Court on 26th March, 2024.

PRATHIBA M. SINGH, J.

OCTOBER 5, 2023

mr/sk