CONDUCT DISENTITLING A PARTY TO THE GRANT OF DISCRETIONARY RELIEF OF AN INJUNCTION

Plaintiff:	**M/s HILAL FOODS (PVT.) LIMITED (FORMERLY HILAL CONFECTIONARY (PVT.) LIMITED) through Company Secretary, Karachi.**
Defendants:	**M/s DABUR INDIA LIMITED and 8 others.**
Decision:	**Application for grant of interim injunctive relief as prayed for was dismissed being devoid of merit, while application for seeking setting aside ad-interim order was dismissed, on becoming infructuous.**

In this case, the plaintiff filed a suit for interim injunction along with an application for grant of ad-interim injunction, which was granted. Thereafter the plaintiff filed a C.M.A. No. 14653/2019 under Section 94, C.P.C. and defendants filed a C.M.A. No. 15207/2019 under Order XXXIX, Rule 4, C.P.C. seeking setting aside ad-interim order dated 05.11.2019, whereby the defendants were restrained from manufacturing, distributing, marketing and selling any product with imitated trademark HAJMOLA in any manner whatsoever.

The facts necessary and germane for the disposal of above C.M.As., were that the plaintiff filed the suit for permanent injunction, rendition of accounts, surrender/recalling of the goods and damages against infringement of trade mark HAJMOLA under the Trade Marks Ordinance, 2001, alleging that it was a duly incorporated company engaged in the business as a manufacturer and merchant of a wide range of sweets, bakery and confectionary products including candies, toffees, chocolates, digestive tablets and other allied products and adopted house-mark Hilal and launched candies under the trade mark HAJMOLA in the year 1985 and in order to secure its proprietary rights in its trade mark, the plaintiff obtained registration on 04- 11-1982 in class-05, till date. The defendant No.2 imported goods in bulk under the infringed trade mark HAJMOLA and started commencing commercial sale of the same causing damage to plaintiff's right and goodwill and that it was not the first attempt of the defendant No.1, but in past it created Asian Consumer Care (Pvt.) Limited (ACCPL) and then Dabur (Pvt.) Limited. The plaintiff took action against the said companies and succeeded in obtaining restraining orders accordingly, now the defendant No.1 had once again attempted to infringe the plaintiff's exclusive right in trade mark HAJMOLA, therefore it maintained the instant suit.

The counsel for the plaintiff contended that the use of the plaintiff's registered trade mark HAJMOLA by the defendants was illegal and fraudulent as they knowingly were deceiving the public at large into believing that their products were the products of the plaintiff and created a false impression in the minds of the public with regards to plaintiff's brand and its goodwill. The use of HAJMOLA on their products reflected poorly on the brand image associated with the trademark of the plaintiff, it was apparent that the defendants were using the mark with a dishonest intent of misrepresentation, impersonating the plaintiff without its express knowledge, permission or authorization. The use of the mark by the defendants was against honest business, industrial and commercial practices and violated sections 39 and 40 of the Trade Marks Ordinance, 2001. That plaintiff had a good prima facie case for the grant of interim relief and balance of convenience was also in its favour hence, interim relief of restraining was sought by the plaintiff in terms of C.M.A.

The learned counsel for defendants maintained that it was a public limited company incorporated in India and owner of the well-known trade mark 'Dabur Hajmola' which was protected under the Paris Convention section 86 while, the defendant No. 2 was a private limited company incorporated in Pakistan since 2015 and was a licensee of defendant No.1 authorized to use the trade mark 'HAJMOLA' in Pakistan. The product of the defendant No.1 under trademark 'Dabur Hajmola' was a globally recognized ayurvedic digestive tablet, and its mark was registered in various countries which were party to the Paris Convention and included inter alia, India and the United Kingdom; that both the plaintiff and defendant No.1 had been involved in litigation for decades and these matters were still sub-judice before the courts and the plaintiff had chosen not to disclose the pending litigation and the relevant orders passed therein, which went to the root of the matter and showed the extent of the mala fides of the plaintiff and the lengths the plaintiff's was willing to go to in order to mislead this Court and obtained the ad-interim order. That suit was barred by the doctrine of res judicata, constructive res judicata and res sub-judice enshrined in Sections 10 and 11 of the C.P.C. The plaintiff failed to make out prima facie case for the grant of interim injunction and no irreparable harm had been caused to it. In fact, it was the defendants who should have suffered irreparable loss if its C.M.A. was allowed; therefore the same may be dismissed and the interim order passed in favour of plaintiff may be recalled.

After hearing the arguments of counsels of both sides and perusal of the material available on record, the court observed that the plaintiff filed a suit for permanent injunction, infringement, passing off, unfair competition, rendition of accounts and damages against the defendant No.1 before the Intellectual Property Tribunal Lahore, wherein the tribunal passed an Order restraining the defendant from passing off goods by using the offending trade mark. Subsequently, the Tribunal passed another order observing that the injunctive order passed earlier would have no effect in view of order passed in H.C.A. No. 275 of 1999 and thereafter, the Tribunal adjourned the said Civil Suit sine die till adjudication of H.C.A. No. 275 of 1999. The plaintiff had not disclosed filing and pending adjudication of said cases in its pleadings, especially the order passed in H.C.A. No. 275 of 1999, whereby the defendant had been permitted to use the trade mark 'Hajmola' on its products.

The concealment of factum as to the earlier litigation between the same parties, in the subsequent suit, was a conduct which disentitled a party to the grant of the discretionary relief of an injunction. Further observed that complete disclosure, about previous connected, related or relevant proceedings and orders was essential when a litigant approached a Court and unless such non-disclosure could be satisfactorily explained, the claimant should not, as a matter of general principle, be granted interim relief. It was settled principle of law that he who came to equity should come with clean hands. In the instant case, it was evident from the conduct of the plaintiff concealing the pending litigation between the parties and the order dated 11-04- 2000 prior to obtaining ad-interim order dated 05-11-2019 that it had acted inequitably and had not approached the Court with clean hands.

Consequently, the court held that since the order dated 11 -04 -2000 passed in H.C.A. No. 275 of 1999 was binding upon this Court, as the same was passed by a Division Bench of that Court and continued to hold the field, the plaintiff had failed to make out prima facie good arguable case for the grant of interim injunctive relief as prayed for, and as such C.M.A. No. 14653/2019 was dismissed being devoid of merit, while C.M.A. No. 15207/2019 was dismissed on becoming infructuous.