

**IN THE COURT OF DISTRICT JUDGE (COMMERCIAL)-04
DISTRICT WEST, TIS HAZARI COURTS, DELHI**

**CS (COMM.) 953/2023
CNR No. DLWT01-010347-2023**

M/s Bongchie India Private Ltd.

Through its Authorised Representative

Mr. Shankar Goel

Registered office at:

2151/9B, New Patel Nagar,

New Delhi-110008.

..... Plaintiff

VERSUS

1. **Mrs. Chandra Kumari**
W/o Kailash chand
R/o D-3, Gole Market,
Shiv Durga, Lakkarpur,
Faridabad, Haryana

2. **Sh. Ish Nagpal**
Godown At
Wazirpur Road,
Neharpur, Faridabad,
Haryana – 121002
Google Map PIN:
28.428144,77.346412

..... Defendants

Date of institution : 22.12.2023

Date of Argument : 04.12.2025

Date of Judgment : 05.01.2026

**SUIT UNDER COMMERCIAL COURTS AC, 2015
AND SECTION 29 OF THE TRADE MARKS ACT,
1999 FOR PERMANENT INJUNCTION
RESTRAINING INFRINGEMENT OF TRADE**

**MARK/LABLE MARK, PASSING OFF OF
TRADEMARK, DILUTION AND RENDITION OF
ACCOUNT ETC.**

Appearance

Sh. Govind Rishi, Ld. Counsel for Plaintiff

Defendant No.1 is exparte

Sh. Kunal Khanna and Ms. Sonia Dhariwal, Ld. Counsels for Defendant.

J U D G M E N T

- 1) This judgement shall dispose of suit filed by plaintiff against defendants for permanent injunction restraining infringement of trade mark/label mark, passing off of trademark, dilution and rendition of account etc.
- 2) Before proceedings to record facts of the case it would be worthwhile to note certain important fact and proceedings which took place after institution of the present suit. Initially present suit was filed against the one Manoj Kumar (the then defendant No.1) and present defendant No.2 Sh. Ish Nagapl. Present suit was instituted on 22.12.2023 and was for the first time listed before the court on 23.12.2023 on which day plaintiff's prayer for grant of *ex-parte* ad interim injunction was accepted and so also its prayer for appointment of Local Commissioner for inspection of the premise of the defendant and for seizure of infringed goods, if found, was accepted. Four Local Commissioner were appointed for inspecting and seizing four different places/premise of the

defendants. Out of four places, plaintiff got the commission carried out only two places. On very next hearing i.e. on 22.02.2024 plaintiff moved application and got the said Manoj Kumar, the then defendant No.1, deleted/dropped from the array of the defendant pleading that it had come to know that said Manoj Kumar was not involved in passing off/infringing plaintiff's trade mark and got Mrs. Chanda @ Chandra Kumari impleaded as defendant No.1 alleging that during inspection of the premise by the Local Commissioner she was found in possession of certain packing material containing Trademark of the plaintiff. Said new defendant No.1 Mrs. Chandra Kumari did not chose to contest and was proceeded against *ex-parte*.

- 3) Briefly stated as per plaintiff it is a company duly incorporated under the provisions of the Companies Act, 1956, and is a juristic person established in the year 2014. The present suit is instituted through its duly authorised Director, appointed vide Board Resolution dated 15.11.2023, who is competent to sign, verify pleadings, depose on oath, and conduct the present proceedings.
- 4) The Plaintiff is engaged in the lawful business of manufacturing, marketing, and distribution of pre-rolled cones, rolling papers, and smoking accessories, and holds valid statutory registrations including GST and incorporation certificates.

- 5) It has been claimed that since its inception, the Plaintiff has emerged as one of the pioneers and market leaders in the niche segment of pre-rolled cones and rolling papers in India. The Plaintiff operates two state-of-the-art manufacturing facilities equipped with advanced technology and stringent quality control systems, supported by a trained workforce of approximately 500 employees, directly and indirectly. The Plaintiff manufactures over 20 product variants and maintains PAN-India sales centers along with a dominant online presence. It is also a major exporter to countries including the USA, Canada, and Israel, thereby establishing a strong domestic as well as international footprint.
- 6) It has been claimed that through consistent quality, innovation, and extensive promotion, the Plaintiff's products have acquired immense goodwill and reputation. The Plaintiff's trade name and brands have become synonymous with rolling papers in India. The Plaintiff's annual sales turnover exceeds Rs. 36 Crores in recent financial years, and substantial investments have been made in product development, branding, packaging, advertising, and trade identification. The Plaintiff's trademarks enjoy wide recognition among consumers and members of trade, who associate the marks exclusively with the Plaintiff's goods and source.
- 7) It has been claimed that Plaintiff is the lawful proprietor of the registered trademark (label) "BONGCHIE" under Class 34 since

18.09.2014 vide application No. 2811914, as well as the registered trademark “PERFECT ROLL” under class 34 since 2019 having protection since 2014., both enjoying statutory protection and priority of use. The Plaintiff has also applied for registration of the wordmark “BONGCHIE” vide application No. 5497102 dt. 20.06.2022, which stands accepted by the Trade Marks Registry. The Plaintiff’s trademarks and trade dress are distinctive, well-known, and exclusively identify the Plaintiff’s goods. Continuous, extensive, and uninterrupted use has conferred upon the Plaintiff valuable statutory and common law rights.

- 8) It has been claimed that on 18.12.2023, the Plaintiff discovered that counterfeit products bearing identical trademarks, packaging, and trade dress were being openly sold at various locations in Delhi. Upon investigation, the Plaintiff traced the reverse supply chain leading to the printing, manufacturing, and storage of infringing goods. The Defendants, acting in concert and conspiracy, were found to be manufacturing, storing, packaging, and distributing cheap and inferior counterfeit goods bearing the Plaintiff’s trademarks, with the sole intention of riding upon the Plaintiff’s hard-earned goodwill and deceiving consumers.
- 9) It has been further pleaded that pursuant to an order dated 23.12.2023 passed by this Court, Local Commissioners were appointed, who conducted raids on 26.12.2023 and seized huge

quantities of counterfeit goods and packaging material from the Defendants' premises. The seized goods bore identical marks and trade dress but did not match the Plaintiff's batch records, conclusively proving counterfeiting. Additional premises were uncovered, leading to impleadment of further defendants and exposure of defendants' connivance.

- 10) It has been pleaded that the Defendants' acts constitute blatant trademark infringement, passing off, unfair trade practice, and dishonest misrepresentation, causing grave and irreparable injury to the Plaintiff's goodwill, reputation, and business. The cause of action first arose on 18.12.2023 upon discovery of counterfeit goods and continues to subsist due to ongoing infringing activities. Unless restrained, the Defendants will continue to erode the Plaintiff's brand value and mislead the public. The Plaintiff has been compelled to approach this Hon'ble Court to protect its valuable intellectual property rights and to prevent further misuse.
- 11) In view of the facts stated above, the Plaintiff substantially prayed to the following effect:-
 - a) Pass a decree of permanent injunction restraining the Defendants, their partners, officers, servants, agents etc. from using the trademarks BONGCHIE and PERFECT ROLL, or any mark identical or deceptively similar thereto, amounting to infringement of Plaintiff's registered trademarks Nos.2811914

and 2811915;

- b) Pass a decree of permanent injunction restraining the Defendants, their partners, officer, agents, servants etc. from passing off their goods as those of the Plaintiff;
 - c) Direct delivery-up and destruction of all infringing goods, packaging material, labels, cartons, dies, and allied materials bearing the impugned marks;
 - d) Declare the Plaintiff's trademarks BONGCHIE and PERFECT ROLL as well-known trademarks under Section 2(1)(zg) of the Trade Marks Act, 1999;
 - e) Pass a decree for rendition of accounts and recovery of profits illegally earned by the Defendants;
 - f) Award damages of Rs. 5,00,000/- in favour of the Plaintiff for loss of reputation, goodwill, and business;
 - g) Award costs of the suit; and
 - h) Grant any other relief(s) as this Hon'ble Court may deem fit in the interest of justice.
- 12) Having been served upon with order dt. 23.12.2023 alongwith copy of plaint and documents, during the execution of Commission as ordered vide order dt. 23.12.2023, defendant No.2 put in appearance and filed his written statement wherein he raised preliminary objections to the maintainability of the suit. Briefly stated according to the defendant No.2, the Plaintiff has not approached the Court with clean hands and has suppressed

material facts and plaint does not disclose any cause of action against Defendant No. 2 and is therefore liable to rejection under Order VII Rule 11 of the Code of Civil Procedure. As per him the suit is barred for non-compliance with Section 12-A of the Commercial Courts Act, 2015, as no pre-institution mediation was undertaken and no exceptional urgency had been pleaded.

- 13) Defendant No. 2 has alleged that the suit has been instituted with malafide intent to harass and pressurise him as a competitor in the same industry. It is stated that both parties are engaged in the business of pre-rolled cones and allied products, along with other market participants. According to Defendant No. 2, the litigation is intended to stifle competition and create monopoly, and therefore constitutes an abuse of the process of law.
- 14) Defendant No. 2 claims to be a lawful manufacturer, seller, and distributor of pre-rolled cones and related products under the trade name and registered trademark “MAALCHI”, bearing Trademark No. 4298962 in Class 34, registered on 29.09.2019. He has an independent business identity, branding, and market presence, and has never adopted or used the Plaintiff’s trademarks “BONGCHIE” or “PERFECT ROLL”.
- 15) Defendant No.2 has specifically denied any act of infringement or passing off. He pleaded that he had never manufactured, sold,

distributed, or dealt in any counterfeit goods bearing the Plaintiff's trademarks or trade dress. Defendant No. 2 contended that the Plaintiff had failed to place on record any documentary evidence or material particulars linking him with the alleged infringing goods, and that the images relied upon did not bear any identifying marks connecting them to Defendant No. 2.

- 16) Relying upon the Local Commissioner's inspection conducted on 26.12.2023 pursuant to the Court's order dated 23.12.2023, he submits that no manufacturing activity, counterfeit goods, or infringing packaging material was found or seized from Defendant No. 2's premises. He further went on to explain that the Plaintiff's products found at the premises had been purchased for research and development purposes, which is stated to be a common practice in the industry, and that the Local Commissioner's proceedings do not substantiate the Plaintiff's allegations.
- 17) Defendant No. 2 has denied any ownership, possession, or control over the premises at D-3, Gole Market, Shiv Durga Vihar, Lakkarpur, Faridabad, Haryana, from where alleged counterfeit goods were recovered from a third party. Defendant No. 2 relies on the Plaintiff's subsequent deletion and impleadment of parties to contend that the Plaintiff's case was inconsistent and based on conjecture rather than established facts.

- 18) Defendant No. 2 maintains that no cause of action has arisen against him and that the Plaintiff has failed to establish infringement, passing off, or any loss attributable to him. According to the defendant No.2, the reliefs claimed in the plaint are speculative and not sustainable in law, and the suit, insofar as it concerns Defendant No. 2, is liable to dismissal with costs.
- 19) Plaintiff filed replication thereby denying the contents of the written statement while reiterating the contents of the plaint.
- 20) From the pleadings of the parties, following issues were framed by Ld. Predecessor of the court on 22.07.2024:-
1. Whether the plaintiff has concealed the material facts and has not come to court with clean hands ? OPD2
 2. Whether the plaintiff is entitled to recovery of suit amount alongwith interest, as prayed for ? OPP
 3. Relief.
- 21) In order to prove its case, plaintiff examined its Director Sh. Shankar Goel who filed his affidavit Ex. PW1/A in examination-in-chief wherein he reiterated the contents of the plaint while relying upon copy Board Resolution dated 15.11.2023 Ex.PW1/1, copy of plaintiff's GST registration certificate Ex. PW1/2, copy of certificate of incorporation Ex PW1/3, copy of plaintiff's certificate of Registered Trademark/label "Bongchie" Ex. PW1/4,

copy of plaintiff's certificate of Registered Trademark/label "Perfect Roll" Ex PW1/5, copy of invoices of plaintiff's company evidencing sales Ex PW1/6, copy of invoices and purchase orders issued in favour of the plaintiff Ex PW1/7, copy of screenshot of the Google Map pin location of defendant No.2 address Ex Pw1/8, copy of colored pictures of plaintiff's goods Ex PW1/9 and copy of colored pictures of the counterfeit goods Ex PW1/10. He was duly cross examined by Ld. counsel for defendant.

- 22) Plaintiff also examined its another director namely Sh. Abhishek Goel who filed his affidavit Ex. PW2/A in examination-in-chief wherein he reiterated the contents of the plaint. He was duly cross examined by Ld. counsel for defendant. Thereafter, plaintiff closed its evidence.
- 23) In support of his case, defendant No.2 examined himself as D2W1 who filed his affidavit Ex D2W1/A in examination-in-chief wherein reiterated his stand as taken by him in his WS while relying upon copy of his trademark certificate Ex D2W1/1 and copy of product/box manufacture by him under the name and style of "Maalchi". He was cross examined by Counsel for plaintiff. Thereafter, defendant closed its evidence.
- 24) Ld. Counsel for plaintiff orally addressed the final argument whereas counsel for defendant has filed written submission and

also addressed orally.

- 25) Having heard submissions of Ld. Counsels for parties, judicial file, testimonies of the witnesses, material on record perused. Before proceedings to record issueswise findings, it is worthwhile to note here that proper or appropriate issue has not been framed and mistakenly none of the parties ever raised this fact to correct the same. There is no suit for recovery of money and therefore issue should not have been framed as to whether plaintiff is entitled to recovery of suit amount alongwith interest as prayed for. In **Swamy Atmananda v. Sri Ramakrishna Tapovanam** (2005) 10 SCC 51, Hon'ble Supreme Court held as under:-

“If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case, without establishing prejudice, it would not be open to a party to raise question of non-framing of particular issue.”

- 26) As both parties knew fully their respective cases and went to the trial knowing fully well the real issues, this court would adjudicate the real issues and accordingly frame following issues in suppression of earlier issues, for rendering findings for the adjudication of the present suit. These issues are as under:

1. **Whether plaintiff has concealed material facts and has not come to the court with clean hands? OPD**
2. **Whether defendants are infringing plaintiff's trademark and passing off their respective goods as that of plaintiff's? OPP**
3. **Whether plaintiff is entitled to the relief of permanent**

injunction as prayed for? OPP

4. Whether defendants are liable to render true accounts and account for profit, if any, to the plaintiff? OPP

5. Whether plaintiff is entitled to damages, if so, for what amount? OPP

6. Relief

27) Issueswise findings are as under:-

ISSUE No.1:- Whether plaintiff has concealed material facts and has not come to the court with clean hands? OPD

28) Onus to prove this issue is upon the defendants particularly defendant No.2 as he is the only contesting party. The doctrine of “clean hands” is an equitable principle, but it is now well settled that only suppression of material facts which go to the root of the matter can dis-entitle a party to relief. Suppression must be deliberate and material so as to affect the merits of the case. Thus, the Court must examine whether alleged inconsistencies are material and intentional, or merely procedural or collateral.

29) From the stand of the defendant No.2, defendant questioned plaintiff’s PW1 authorization as invalid since PW-1 and PW2 admitted lack of knowledge about signing of the board resolution and presence in the meeting. This contention is not sustainable as PW-1 is an admitted Director of the plaintiff company; plaint,

statement of truth and supporting affidavit are signed and verified by PW-1; defendant has not produced any contrary corporate record nor summoned the Registrar of Companies and nor did it plead and prove any internal dispute within the company. The Supreme Court has repeatedly held that technical objections regarding authorization cannot defeat substantive rights, particularly when the company itself continues the litigation. Reference in this regard may be had to rulings in *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660. Hence, such lacuna if any cannot be termed as suppression of material fact or plaintiff not approaching the court with clean hands.

- 30) The defendant No.2 contention that dropping of Manoj Kumar, the then defendant No.1, from the array of defendant, shows falsity of plaintiff's case. The record reveals that during LC proceedings, name of the person allegedly running business from inspected premise was discovered leading to impleadment of another person under Order I Rule 10 CPC, and deletion of a wrongly impleaded party. Such procedural correction cannot be equated with suppression. Procedural amendments to bring real parties on record advance justice and no adverse inference arises.
- 31) The contention that plaintiff was unable to specify names of investigators or shopkeepers during cross-examination. The foundation of plaintiff's case is not private investigation but firm

believe about the existence of counterfeit product and infringement of its trademark which turned out to be true to an extent upon inspection of suspected premise and which fact did not dispute and only claimed that seized materials were genuine. Thus, absence of investigator's names does not weaken the plaintiff's case nor establish concealment.

- 32) Further the contention that PW-1 admitted not filing all QR codes but defendant No.2 categorically claimed that seized materials from its premise is genuine product of the plaintiff and till the time he prove them so, it cannot be said there was no counterfeiting or infringement
- 33) In view of above discussion this Court finds no suppression of material facts. Minor inconsistencies or procedural lapses do not amount to lack of clean hands. Hence, issue No.1 is decided against the defendant No.2 and in favour of plaintiff.

ISSUE No.2:- Whether defendants are infringing plaintiff's trademark and passing off their respective goods as that of plaintiff's? OPP

- 34) Onus to prove this issue is upon plaintiff. It is undisputed that plaintiff is a duly incorporated company and is engaged in manufacture and sale of pre-rolled cones, rolling papers and allied smoking accessories. The plaintiff claims statutory rights in the trademarks “BONGCHIE” and “PERFECT ROLL”, asserts It was

It was thus contended thus contended extensive goodwill and reputation which fact is otherwise undisputed as present defendant No.1 did not contest the present suit and defendant No.2 did not dispute the same. Even otherwise plaintiff has proved its certificate of incorporation Ex PW1/2, its certificate of GST registration Ex PW1/3, copy of its certificate of Registered Trademark/label “Bongchie” and copy of its certificate of Registered Trademark/Label “Perfect Roll” Ex PW1/5 and sales etc. by proving invoices and POs Ex PW1/6 and Ex PW1/7 respectively.

- 35) Defendant No.2 sought to question the institution of the present suit by a duly authorised It was thus contended person. Present suit was signed, verified and instituted by Sh. Shankar Goel (PW1) who claims himself to be one of the director of the plaintiff company and authorised by the Board resolution (BR) dt. 15.11.2023 Ex PW1/1. Defendant No. 2 sought to contend that PW1 in cross examination showed lack of knowledge about the signing of BR and presence in the meeting. Similarly the alleged another director PW2 could not produce documents to the effect that he was the other director of the plaintiff company and he was also unaware as to how many directors were there in the company when the suit was filed by the plaintiff. It was thus contended that plaint has not been signed, verified and instituted by duly authorised person.

- 36) PW-1 is an admitted Director of the plaintiff company as his name is shown in certificate of GST Registration Ex PW1/2 which documents has not been questioned by the contesting defendant. In the said document he has also been described as Managing/Whole Time Directors and Key Managerial Persons. The plaint, statement of truth and affidavit have all been signed and verified by PW-1. Defendant has not produced any contrary corporate record nor summoned the Registrar of Companies. Defendant No.2 has neither pleaded any internal dispute within the company nor has sought to prove the same. The Supreme Court has repeatedly held that technical objections regarding authorization cannot defeat substantive rights, particularly when the company itself continues the litigation. In this regard reference may be had to the rulings in *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660. In this circumstance, it would be too technical to say that plaint has not been signed, verified and instituted by duly authorised person.
- 37) Present defendant No.1 did not contest the present suit and therefore technically she could be said to have not disputed the allegation that was made in the plaint against her and consequently it could be said that she is guilty of infringement of plaintiff's trademark/trade dress and passing off. But it would be unfair if report of Local commissioner (LC) of Sh Manbhar Mittal is not perused before holding anything against her. It is matter of record

that vider order dt. 23.12.2023 Ld. Predecessor of this court in this matter had appointed four local commissioner to visit four places for inspection and seizure of infringing/counterfeit materials/goods. One of the Local Commissioner was Sh. Manbhar Mittal who was ordered to inspect the premise bearing No. D-61, Shiv Durga Vihar, Lakkarpur, Faridabad, Haryana-122002.

38) As per report of said Ld. LC he came to know that Ms. Chanda @ Chandra Kumari D/o Sh. Kailash Chand, R/o D-3, Gole Market, Shiv Durga Vihar, Lakkarpur, Faridabad (Mob. 8810377859) was running a business from the above said premise and was telephonically called to reach the said premise (D-61) and on inspection of the said premise (D-61), no counterfeit products/goods identical or similar to the trade name of the plaintiff “Bonghchie” was found. However, he found certain packaging material at the premise with identical/similar trade name “Perfect Roll” and same were seized in six white Kattas/plastic bags and were sealed with signature of all relevant persons including of Chanda @ Chandra Kumari. Ld. LC also collected the two original packaging material from the said premise with identical/similar trade name “Perfect Roll”. Ld. LC also placed on record photographs of his entire proceedings.

39) Ld. LC. had reported packaging material having tradename “Perfect Roll” was found but materials in the photographs looks

like shredded papers/card board/waste papers and not packaging material with Trade name “Perfect Roll”. The collected two packaging material nowhere matches with any of the material shown in the photographs. The premise does not look like shop or manufacturing unit or packaging unit or printing unit rather it looks like spacious scrap store. The report of the Ld. LC appear doubtful.

- 40) Moreover the two packaging material collected by Ld. LC shows use of expression “Perfect Roll” but no where distantly gets near the trade dress of the plaintiff's packaging. Despite the use of expression “Perfect Roll” in the said packaging material, no one would take it as product from plaintiff. The alleged seller/manufacture of the said “Perfect Roll” is one “High Fly” distinctively mentioned with different color composition. Nothing has come on record that said Ms. Chanda @ Chandra Kumari was doing any same business under the name and style of the “High Fly”.
- 41) Further more, both PW1 and PW2 in their respective examination-in-chief by way of their respective affidavits deposed that apart from defendant No.2's premise, there was one more premises bearing address D-3, Gole Market, Shiv Durga Vihar, Lakkarpur, Faridabad, Haryana where counterfeit goods alongwith packaging material were stored in the possession and control of one Mrs.

Chanda Kumari @ Chanda, the defendant No.1. But Ld. LC did not report seizure of any infringing material or trademark from premise D-3, Gole Market, Shiv Durga Vihar and certainly no counterfeit goods from any of the premises. Thus, the testimonies of PW1 and PW2 to that extent and the report of the Ld. LC with aforesaid reason do not inspire this court to accept, even in the absence of defense from defendant No.1, the claim of the plaintiff that defendant No.1 had indulged in selling of counterfeit goods of the plaintiff or had engaged in infringement of trademark of the plaintiff or passing off her goods as that of the plaintiff. Plaintiff has failed to prove its case against present defendant No.1.

42) Now coming to its case against defendant No.2. There is no dispute that both plaintiff and defendant are in the same trade. Plaintiff initially denied the same but both PW1 and PW2 in their cross examination admitted the defendant No.2 to be in the same trade.

43) In the original plaint, plaintiff had alleged that on 18.12.2023 it had come to know about the counterfeit products of plaintiff bearing plaintiff's trademark "Bonghchie" and "Perfect Roll" being sold over the counter at many pan shops located in the Patel Nagar, Karol Bagh, Connaught Place etc. and with their investigation it got to know about the printing location and manufacturing unit and warehouse where counterfeit goods were

stored after manufacturing. Plaintiff had further alleged that defendant No.1 (now deleted) in connivance with the defendant No.2 was engaged in the printing of the packaging material for the counterfeit goods infringing trademark of the plaintiff. It further alleged that defendant No.2 in conspiracy with defendant No.1 and other unknown persons were manufacturing the cheap counterfeit goods and supplying the same to the market, thereby diluting brand value of the plaintiff's goodwill by selling cheap and inferior quality goods in the market and earning huge profits illegally by riding on the goodwill of the plaintiff. In the amended plaint aforesaid allegation remained same and allegation against old defendant name was retained as it is even against the new defendant No.1.

- 44) The aforesaid allegation would show that defendant No.2 had been alleged to be manufacturer of counterfeit goods as that of plaintiff and to be selling the same under same packaging material using plaintiff's trademark and trade dress. Pursuant to order dt. 23.12.2023, Ld. LC Sh. Abhishek Pandey, Advocate visited the premise of the defendant No.2 at Wazirpur Road, Nehar Park, Faridabad, Haryana-121002. The Ld LC in his report dt. 04.01.2024 reported that he had visited the premise of defendant No.2 and on inspection in the presence of defendant No.2 and other person, infringing goods and packaging material bearing mark "Bongchie" and "Perfect Roll" were found inside the said

premise. As per the inventory prepared on the spot 2000 (approx) pieces of Bongchie Perfect Roll white inner packaging only, 1500(approx) pieces of Bongchie Perfect Roll Natural Inner packaging only and 1000 (approx) pieces Bongchie filter paper were found. This seized materials were handed over to defendant No.2 himself on *superdari*.

- 45) Defendant No.2 neither in his written statement nor in his testimony nor in the cross examination of PW1 and PW2 dispute the recovery/seizure of aforesaid material from his premise during the search conducted by Ld. LC pursuant to order dt. 23.12.2023. Defendant No.2 has claimed that seized goods/packaging materials were not counterfeit but were genuine plaintiff's product purchased by him for Research and Development (R&D) and this was common practice in this trade for improving the quality of product and sell. He claimed himself to be registered owner of trademark "Maalchi" under which trademark he had been selling his goods i.e. pre-rolled cones, rolling paper, smoking accessories etc.
- 46) In the aforesaid circumstance where defendant No.2 undisputedly found in possession of infringing or questioned materials in substantially huge quantity, the onus shift upon him to prove to the satisfaction of the court that seized materials were genuine plaintiff's product and packaging materials, that he had purchased the same, that he did so for the purpose of R&D and that such

practice was common in his trade.

- 47) Defendant No.2 apart from himself did not examine any other independent witness to prove that there is practice of buying substantially huge quantity of goods of competitor by manufacturer of the same trade for R&D purpose and that huge quantity of such goods are required for R&D. Apart from self serving testimony of Defendant No.2, there is no independent evidence/ testimony of person involved in the same trade and industry to support the contention of the defendant No.2 that in their trade and industry there is such practice.
- 48) Further, defendant No.2 himself does not claim to be an expert of such research and development and therefore did not depose as to how much quantity of sample product of his rival competitor, in this case plaintiff's, was required for R&D purpose. Though court is not an expert but still feels that for R&D purpose, quantities as seized from defendant No. 2 would not be required for R&D.
- 49) Furthermore, in order to prove that seized materials from him were genuine product/packaging materials of plaintiff, defendant No.2 was required to prove that he purchased the same either from plaintiff or from authorised seller of the plaintiff products. Defendant miserable failed to produce any invoices/bills regarding the purchase of those seized materials either from plaintiff or from

any authorised seller of the plaintiff's product/packaging materials. Defendant alternatively did not produce any statement of his business account showing expenses on the genuine purchase of those materials. Defendant did not prove that he had any team for research and development nor did he name any person who was doing research and development for him.

- 50) Thus, defendant miserably failed to discharge of onus to prove that seized material were genuine materials of the plaintiff and substantial huge quantity was purchased by him for R&D purpose. He also failed to prove that he was at all having facility for R&D and that such practice was prevalent in his trade and industry. The necessary consequential inference from defendant's failure to prove that purchased plaintiff's material from plaintiff or from any of plaintiff's authorised seller, is that he was indulging or intended to indulge in infringing trademark of the plaintiff and was selling or intending to sell counterfeit products of the plaintiff thereby riding on the goodwill of the plaintiff to earn profit.
- 51) In view of above discussion and reasoning issue No.2 is partly decided in favour of the plaintiff that is to say so far as defendant No.1 is concerned issue No.2 is decided against plaintiff and so far as defendant No.2 is concerned issue No.2 is decided in favor of plaintiff and against defendant No. 2.

ISSUE No. 3:- Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

- 52) Onus to prove this issue is upon the plaintiff. However, in view of the finding recorded on issue No. 2 and for there reason recorded therein, plaintiff is certainly entitle to relief of permanent injunction against the defendant No. 2. Accordingly issue No.3 is partly decided in favour of the plaintiff that is to say so far as defendant No.2 is concerned issue No.3 is decided against plaintiff and so far as defendant No.2 is concerned issue No.3 is decided in favor of plaintiff and against defendant No. 2.

ISSUE No. 4:- Whether defendants are liable to render true accounts and account for profit, if any, to the plaintiff? OPP

- 53) Onus to prove this issue is upon the plaintiff. As has been found above plaintiff was able to prove that defendant No.2 was in possession of counterfeit/infringing product of the plaintiff. Nevertheless, plaintiff could not bring a iota of evidence that its counterfeit products originating from defendant No.2 or from such other fake seller was out on sale over the counters of PAN shop located in the Patel Nagar, Karol Bagh, Connaught Place and South Delhi area at Delhi. No records of sale from defendant No.2 was either asked in his cross examination nor his record of his sales was called for in the court. Plaintiff on its own also not examined any witness to prove that counterfeit products

originating from defendant No.2 was being sold at so-n-so place, though it claims to have seen such product being sold at Pan shops of various places in Delhi. Moreover defendant No.2 in his testimony in cross examination had volunteered that due to low turnover he had surrendered GST registration in the year 2022. said volunteered testimony of the defendant No.2 was not disputed by questioning or at least by giving contrary suggestion. Thus, from the overall discussion it is clear that plaintiff has not been able to make out case for rendition of account by the defendant No.2 and therefore, issue No.4 is decided against the plaintiff and in favour of the defendants.

ISSUE No. 5:- Whether plaintiff is entitled to damages, if so, for what amount? OPP

- 54) Onus to prove this issue is upon plaintiff. Plaintiff has claimed damages of Rs. 5,00,000/- and the said calculation is based on their assumption that on rendition of account by defendant, plaintiff would be found entitled to damages of more than Rs. 5,00,000/-.
- 55) It has been noted above that plaintiff could not examine any witness to prove that counterfeit products were actually being sold over the counter of Pan shop at various places. Seizure of counterfeit/infringing material from the possession of defendant No.2 does indicate preparation of the defendant No.2 for selling

the counterfeit/infringing trademark product of the plaintiff but it does not absolve the plaintiff of its responsibility to prove the extent of damages it had suffered. Admittedly plaintiff did not examine any witness to prove sell of counterfeits product at various places and hence it could not prove extent of sell of counterfeit product in market nor could it prove extent of damages it suffered. Both in case of stipulated and non-stipulated cases of damages, claimant under the law is required to prove the extent of damages one had suffered to succeed in the claim for damages. In the present case plaintiff has failed to prove the same. Hence, issue No.5 is decided against the plaintiff and in favour of the defendants.

Relief

- 56) In view of the above findings on all issue particularly issue No.2, suit of the plaintiff is hereby allowed partly only against the defendant No. 2 and a decree of permanent injunction is hereby passed in favour of plaintiff against defendant No.2 thereby restraining him, his associates, agents, assignee etc. or any one working on his behalf, from using plaintiff's trademark "Bongchie" and "Perfect Roll" or any mark identical or deceptively similar thereto, in any manner whatsoever amounting to infringement plaintiff's registered trademark Nos. 2811914 and 2811915 or amounting to passing off plaintiff's aforesaid trademarks.

57) Decree sheet be prepared accordingly.

58) File be consigned to Record Room after necessary compliance.

Announced in the open court
(Judgment contains 28 pages)

(Harish Kumar)
District Judge (Commercial)-04
District West, Tis Hazari Courts
Delhi/05.01.2026