

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 31110 of 2023

***MOUNT EVEREST BREWERIES LIMITED THROUGH ITS DIRECTOR
SHRI RANJAN TIBREWAL***

Versus

EXCISE COMMISSIONER MADHYA PRADESH AND OTHERS

Appearance:

Shri Piyush Mathur, Senior Advocate along with Shri Ibrahim Kannodwala, Advocate for the petitioner.

Shri Satish Chandra Bagadiya, Senior Advocate along with Shri Karpe Prakhari Mohan and Shri Pankaj Chandra Bagadiya, Advocates for respondent No.3.

Shri Tarun Kushwah, Government Advocate for the State.

Reserved on :- 18.07.2024

Pronounced on :- 12.08.2024

ORDER

This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by orders dated 26.10.2023 and 03.10.2023 passed by respondent No.1, whereby the label of respondent No.3 namely "VASCO 60000 EXTRA STRONG BEER" has been registered.

02. As per the petitioner, it is a manufacturer of beer and is having a brewery license B-3 and is having its manufacturing unit at Mhow, District Indore. Respondent No.2 issued a public notice on 24.05.2023 stating that respondent No.3 has applied for registration of label "VASCO 60000 EXTRA STRONG BEER".

Objections were invited to registration of the label. The petitioner submitted its objection on 25.05.2023 to the registration of label submitting that the same is extremely similar and based on artistic label of petitioner's "MOUNT'S 6000 SUPER STRONG BEER" which is already registered with respondent No.1. It was submitted that respondent No.3 has dishonestly copied the entire label, numeral 6000, artistic features, background, style, colour scheme, get-up and meaning conveyed making the label highly similar to petitioner's label. However, by order dated 03.10.2023, respondent No.1 has registered the label of respondent No.3.

03. Learned senior counsel for the petitioner has submitted that since an objection had been raised by petitioner to registration of label of respondent No.3, the same could not have been registered. The label of respondent No.3 bears similarity and resemblance to the label of the petitioner. Respondent No.1 has failed to appreciate the same. Respondent No.3 has copied the entire label, numeral 6000, artistic features, background, style, colour scheme, get-up and the meaning conveyed. The finding as has been given by respondent No.1 that there is no deceptive similarity between the labels of petitioner and respondent No.3 is highly erroneous and illegal. Respondent No.3 had given an undertaking before the Delhi High Court for not using "VASCO 60000 super strong label" but has later on attempted to use the same, which is legally impermissible. It is hence submitted that the impugned order be quashed.

04. Per contra, learned senior counsel for respondent No.3 has submitted that from a bare perusal of the labels of the petitioner as well as respondent No.3, it is evident that there is no similarity between both of them. The colour scheme, words, style, combination and all the artistic features in both of them are entirely distinct in view of which there is no possibility for any consumer to be deceived. Respondent No.1 has duly considered the said aspect of the matter and has arrived at a cogent finding in which no interference is called for. Merely because an objection had been preferred by the petitioner, it cannot be said that the label of

respondent No.3 could not at all have been registered. The undertaking which had been given by respondent No.3 before the Delhi High Court was in personam and not in rem and cannot be pressed into service by the petitioner in these proceedings. The impugned order has taken a cogent and plausible view which is not required to be interfered with in a writ petition under Article 226 of the Constitution of India. Since there are various disputed question of facts required to be adjudicated upon, the remedy for the petitioner is to institute a civil suit before the competent Court under the provisions of the Trade Marks Act, 1999. It is hence submitted that the petition deserves to be dismissed.

05. Learned counsel for respondents No.1 and 2 has also supported the impugned order and has more or less advanced the same arguments as advanced by respondent No.3.

06. I have considered the rival submissions of the parties and have perused the record.

07. As per Rule 9 (1) of M.P. Foreign Liquor Rules, 1996, no foreign liquor shall be transported, imported, exported or sold within Madhya Pradesh unless the legends and details as stated therein are printed on the label pasted on the bottle. The proviso to Sub-Rule (2) states that no label shall be used by any manufacturer unless it has been duly registered. Sub-Rule (3) gives the procedure for registration of the label and Sub-Rule (4) gives the power of the Excise Commissioner to register the label. For ready reference, Sub-Rule (3) and (4) are reproduced below:-

“3) Licensee shall make an application to the Excise Commissioner for registration/ renewal or label/labels alongwith the fee as prescribed for each kind of label. Three printed copies of the label to be registered and a Challan in proof of payment of the prescribed registration fee, deposited in the treasury of the district shall be enclosed alongwith the application. The format of the label shall contain the details mentioned in sub-rule (1). An application for renewal of label/labels shall be filed along with the challan of prescribed fee before the end of current year mentioning details of prior registration and renewal.]

4) On receipt of application for Registration of label/labels, the Excise Commissioner, may make such enquiry as he deems proper, if he is satisfied that the pre-requisites specified in sub-rule (3) have been complied with and there is no objection to such registration, he may register it. No such label/labels shall be

registered which bears similarity or resemblance to any prevalent label of any other manufac-tory.”

08. The contention of learned senior counsel for the petitioner that since there was an objection to registration of the label of respondent No.3, the same could not have been registered is in view of language of Sub-Rule (4) of Rule 9 of the Rules, 1996, wherein it is stated that if there is no objection to such registration, the label may be registered. The words “ and there is no objection to such registration” cannot be read in isolation and have to be read along with the entire rule which provides that the Excise Commissioner may make enquiry and if he is satisfied that the pre requisites for registration have been complied with he may register it. The additional condition is that if there is no objection to the same. Objection as occurring in this rule has to be necessarily construed to be a legal objection in the mind of the Excise Commissioner to registration of the label and not an objection to registration submitted by a third party. There has to be satisfaction of the pre requisites for registration coupled with absence of any legal objection to the same. It cannot be stretched to mean that if any objection is made by a third party then merely for the fact of such objection having been made, the label cannot be registered. Giving such a meaning to the word “Objection” as occurring in Sub-Rule (4) would be too far fetched and would violate the very object of the Rule. Thus, the contention of the petitioner in this regard cannot be accepted.

09. Before the Delhi High Court, a civil suit had been instituted by Anheuser-Busch Inbev India Ltd. against present respondent No.3. The dispute therein was also as regards registration of label of respondent No.3 and plaintiff therein had sought for restraining it from using a label which was contended to be similar to the label of the plaintiff. In the suit, an undertaking was furnished by respondent No.3 which is being contended by the petitioner to be an undertaking in rem and not just in personam. When the said undertaking is perused, it is observed

that respondent No.3 had undertaken that it shall never use objected “VASCO 60000 SUPER STRONG” label for filling of its beer in the future. However, this was qualified by the statement that the undertaking submitted was without any prejudice, exclusively to be used for settlement and closure of subject suit CS (Comm) 188/2020 without any damage. Thus, this was not an unqualified undertaking and was solely aimed to bring the aforesaid civil suit to an end by way of settlement. Though, undertaking was given but it was specifically without prejudice and for the purpose of closure of the suit and particularly such closure without any damages. Thus, it cannot be held that only on the basis of the aforesaid undertaking, respondent No.3 can be precluded in these proceedings from seeking registration of its objected label.

10. In the impugned order dated 03.10.2023, respondent No.1 has considered the objection of the petitioner and the reply of respondent No.3 to the same and has thereafter held that between the label of the petitioner and respondent No.3, prima facie there does not appear to be any similarity because the label of petitioner is “MOUNT’S 6000” whereas that of respondent No.3 is “VASCO 60000”. There is a difference in the numericals and wordings of both of them. Earlier, the label of respondent No.3 was registered as “VASCO 60000 SUPER STRONG BEER”, whereas for the present year, it is being sought to be registered as “VASCO 60000 EXTRA STRONG BEER”.

11. Respondent No.1 has given cogent reasons for his findings. The order passed by him is within the exercise of its authority and jurisdiction and it cannot be said that there has been any illegality or perversity in the same which may be required to be interfered with in exercise of power under Article 226 of the Constitution of India. Respondent No.1 has afforded due opportunity of hearing to the petitioner and has considered its submissions and has thereafter rendered his finding.

12. The dispute between the parties is as regards the similarity and resemblance of the labels of both of them and as to whether respondent No.3 is entitled for registration of its label in view of prior registration of label of the petitioner. There are various disputed questions of facts which can be decided only by way of a duly constituted civil suit and after recording of evidence. In such proceedings, all the contentions which have been raised by the parties in this petition would be available to be raised by them.

13. Thus in view of the aforesaid discussion, I do not see any ground to interfere with the impugned order passed by respondent No.1 which is accordingly affirmed as a result of which the petition is dismissed however granting liberty to the petitioner to institute a civil suit in respect of the grievances as raised by it in this petition. If the same is done, any finding given in this petition would not come in the way of the petitioner.

(PRANAY VERMA)
JUDGE

Shilpa