



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 9<sup>TH</sup> DAY OF JUNE, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**  
**WRIT PETITION NO.15333/2020 (GM-CPC)**

**BETWEEN:**

SOM DISTILLERIES AND BREWERIES LTD.  
A COMPANY UNDER COMPANIES ACT, 1956  
REGISTERED OFFICE: I-A, ZEE PLAZA  
ARJUN ANGAR, SAFDARJUNG ENCLAVE  
KAMAL CINEMA ROAD  
NEW DELHI-110029.

REPRESENTED BY MR. RAJAT BATRA  
AUTHORISED REPRESENTATIVE.

...PETITIONER

(BY SRI. MURTHY DAYANAND NAIK, SR. COUNSEL FOR  
SRI. AKASH V.T. ADV.,)

**AND:**

UNITED BREWERIES LTD.  
A COMPANY UNDER COMPANIES ACT, 1956  
UB TOWER, UB CITY  
LEVEL-3,4,5, NO.24  
VITTAL MALLYA ROAD  
BANGALORE-560001.

...RESPONDENT

(BY SRI. PRADEEP NAYAK, ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE  
RECORDS FROM THE LXXIV ADDITIONAL CITY CIVIL COURT,  
BANGALORE AND SET ASIDE THE ORDER DATED 05.10.2020  
PASSED ON ANNEXURE-A ON IA 1/19 IN O.S.25327/2015, ON





THE FILE OF THE HON'BLE LXXIV CITY CIVIL JUDGE (CCH-75) AT BANGALORE AND POSTING THE MATTER TO THE STAGE OF DEFENDANT EVIDENCE AS FINAL LAST CHANCE & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 04.06.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

**CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**CAV ORDER**

This writ petition is filed challenging the order dated 05.10.2020 passed on I.A.No.1/2019 in O.S.No.25327/2015 pending on the file of the LXXIV Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru (CCH-75) (for short, 'the Trial Court').

2. The brief facts leading to the filing of this petition are that the respondent filed a suit in O.S.No.25327/2015 seeking perpetual injunction and other reliefs. In the said suit, the petitioner filed an application under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (for short, 'the CPC') for framing of the additional issues. The Trial Court considered the said



application and passed the impugned order dismissing the same. Hence, the petitioner has filed this appeal.

3. Sri.Murthy Dayanand Naik, learned Senior counsel appearing for the petitioner submits that the Trial Court has passed the impugned order without considering the material on record in its proper perspective. It is submitted that the Trial Court has erroneously framed the issues and placed the entire burden of proof on the defendant, which is impermissible. It is further submitted that the Trial Court ought to have considered the fact that the plaintiff is required to prove his case first before the burden is shifted on the defendant. In support of his contentions, he places reliance on the decision of this Court in the case of **Mr.DEENANATH Vs. CHANDRAHAS AND OTHERS**<sup>1</sup>, the decision of the Bombay High Court in the case of **BHAGIRATH SHANKAR SOMANI AND ANOTHER Vs. RAMESHCHANDRA DAULAL SONI AND**

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<sup>1</sup> W,P.No.796/2022 dt. 23.10.2025



***ANOTHER***<sup>2</sup> and the decision of the Madras High Court in the case of ***BAJAJ AUTO LIMITED Vs. TVS MOTOR COMPANY LIMITED***<sup>3</sup>. It is also submitted that the respondent-plaintiff has alleged the infringement of trademark by the petitioner-defendant which has been specifically denied by the petitioner-defendant in their written statement. However, no burden is casted on the respondent-plaintiff to prove the same. It is contended that the petitioner-defendant filed an application for re-casting of issues which came to be rejected erroneously on the ground that the petitioner-defendant has admitted certain facts and such alleged admission is not an admission. Therefore, the burden should be on the plaintiff to prove his case before the Trial Court. Hence, he seeks to allow the petition.

4. *Per contra*, Sri.Pradeep Nayak, learned counsel appearing for the respondent supports the impugned order

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<sup>2</sup> 2007 (5) Mh.L.J 508

<sup>3</sup> 2010 (6) CTC 225



of the Trial Court and submits that the Trial Court has rightly considered the material on record and dismissed the application. It is submitted that the petitioner-defendant has clearly admitted that the petitioner is re-using the bottles of the respondent-plaintiff and claims that the same is a trade practice. Hence, the admitted facts are not required to be proved by the respondent-plaintiff in the suit. It is further submitted that the judgments relied on by the petitioner has no application to the facts of the case as in the said case, the burden was casted on the plaintiff to prove the case and the Trial Court has erred and directed the defendant to adduce the evidence. However, in the case on hand, the burden is on the defendant to prove what is stated in the written statement. Therefore, it is required to adduce evidence first and thereafter, the plaintiff would lead the evidence. Hence, he seeks to dismiss the petition.



5. I have heard the arguments of the learned Senior counsel for the petitioner, learned counsel for the respondent and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

6. The respondent has filed a suit in O.S.No.25327/2015 seeking perpetual injunction and other reliefs against the petitioner. In the said suit, the petitioner filed an application under Order XIV Rule 5 of the CPC, seeking to frame the additional issues. In the said application, the petitioner sought to frame the following additional issues:

- (1) Whether plaintiff proves that, it is registered proprietor of trade mark UB & Kingfisher?*
- (2) Whether plaintiff proves that, the defendant is making use of trade mark, labels or advertisement materials belonging to the plaintiff?*



- (3) *Whether plaintiff proves that, the defendant has used the plaintiff's trademark in selling or marketing its beer?*
- (4) *Whether the plaintiff proves that the defendant is selling beer in bottles identical to the plaintiff's bottle which amounts to infringement of plaintiff's registered trademark?*
- (5) *Whether plaintiff proves that, defendant is committing fraud on the trade and public by using plaintiff's trade mark?*
- (6) *Whether plaintiff proves that, defendant has gained illegal profit by using trademark belonging to plaintiff?*
- (7) *Whether the defendant proves that, the suit is bad for non-joinder of necessary and proper party?*
- (8) *Whether the plaintiff is precluded from bringing a suit for trademark infringement when it has made a disclaimer in the design registration that "No claim is made by virtue of this registration to any right to exclusive use of words, letters, numbers or trademark.*



7. The Trial Court, on considering the application proceeded to dismiss the same on the ground that the petitioner has admitted the case of the petitioner in its written statement by stating that there is an industrial / trade practice to re-use the beer bottles. The Trial Court, considering the statements contained in paragraphs 3, 5, 7, 9, 10, 14 and 16 of the written statement has come to the conclusion that the burden is on the defendant to prove the assertion made in the written statement.

8. The Trial Court originally framed the following issues:

*"(1) Whether the defendant proves that as per the trade/industry practice it can re-use the bottles of beer having the trade mark "KINGFISHER" with device of flying Horse to fill and sell its beer even after the contract between it and plaintiff came to an end on 31.03.2013 by efflux of time?"*

*(2) Whether the defendant proves that the suit is barred by the principles of acquiescence, laches and delay?"*



*(3) Whether the plaintiff is entitled for the relief of injunction as prayed for?*

*(4) What order or decree?"*

9. The case of the respondent-plaintiff before the Trial Court is that the defendant is using beer bottles bearing the Kingfisher trademark after expiry of the manufacturing agreement between the plaintiff and the defendant which ended on 31.03.2013 and the dispute is with regard to whether the defendant's use of the bottle with the Kingfisher mark constitutes trademark infringement or it is a protected industrial / trade practice. The defendant, in their defence has stated that re-using of beer bottles is an industrial practice in India. It is to be noticed that the respondent-plaintiff is seeking the relief of perpetual injunction against the defendant from in any manner infringing the plaintiff's registered trademark 'KINGFISHER' having its registration No.1629788 and also the 'UB' 'device of flying horse' having its registration No.1466507 and other prayers. In my considered view,



the alleged infringement by the defendant is required to be proved by the respondent-plaintiff in the suit. Though the petitioner-defendant has taken a defence that re-using of beer bottles is a trade practice, such a statement cannot be termed as a clear admission on the part of the petitioner-defendant. Hence, there should be a primary burden on the respondent-plaintiff to prove whether the petitioner-defendant is using the trademark of the respondent-plaintiff and making illegal profit.

10. It is further noticed that the Trial Court, while dismissing I.A.No.1/2019 filed by the petitioner-defendant under Order XIV Rule 5 of the CPC has framed the additional issue which reads as under:

*"Whether defendant proves that, in view of disclaimer made by plaintiff in the design registration that, "No claim is made by virtue of this registration to any right to exclusive use of words, letters, numbers, or trademarks", plaintiff is not entitled for the relief of injunction?"*



11. Considering the rival contentions and the decisions placed by the learned Senior counsel for the petitioner-defendant, I am of the considered view that the respondent-plaintiff who has approached the Court is required to primarily discharge his burden of proving that there is infringement of trademark as alleged. Similarly, the defendant who has set up a defence that re-using of beer bottles is a trade-industry practice and there is no infringement, is required to be proved by the petitioner-defendant. Hence, I am of the considered view that the following issues are required to be framed in the aforesaid suit:

- (1) *Whether the plaintiff proves that the defendant is making use of trademark, labels or advertisement material belonging to the plaintiff on beer bottles by infringing his trademark and making illegal profit?*
- (2) *Whether the defendant proves that as per the trade/industry practice it can re-use the bottles of beer having the trade mark "KINGFISHER" with device of flying Horse to*



*fill and sell its beer even after the contract between it and plaintiff came to an end on 31.03.2013 by efflux of time?*

- (3) *Whether the defendant proves that the suit is barred by the principles of acquiescence, laches and delay?*
- (4) *Whether defendant proves that, in view of disclaimer made by plaintiff in the design registration that, "No claim is made by virtue of this registration to any right to exclusive use of words, letters, numbers, or trademarks", plaintiff is not entitled for the relief of injunction?*
- (5) *Whether the plaintiff is entitled for the relief of injunction as prayed for?*
- (6) *What order or decree?*

12. For the aforementioned reasons, I proceed to pass the following:

**ORDER**

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 05.10.2020 passed on I.A.No.1/2019 filed under Order XIV Rule 5



of the CPC in O.S.No.25327/2015, is partly modified. Consequently, the application in I.A.No.1/2019 is allowed-in-part.

No order as to costs.

**Sd/-**  
**(VIJAYKUMAR A. PATIL)**  
**JUDGE**

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List No.: 2 Sl No.: 1