Can a stay order be passed for using Trademark which may cause SUBSTANTIAL LOSS to the Owner of the Trademark?

Girnar Food & Beverages Pvt Ltd "Appellant"	**Godfrey Phillips India Ltd. "Respondent"**

- The Respondent had applied for the registration of their label as Trade Mark. The label comprises of a cup and a saucer within a circle. Over the circle were written the words "Super Cup." Below the illustration of cup and saucer "extra strong CTC tea" and below it "TEA CITY" was written. Below the word "CITY" was green and yellow band.

- An objection was being taken by the Registrar; the actual mark which is registered is only "TEA CITY". It is by constant use of the disclaimed part of the label, they can restrain others from using "Super Cup" on packaging of their tea.

- The Appellant also a **reputed manufacturer** of tea and it had been manufacturing and selling its Girnar Tea. It also appeared to have decided to market one of its brands under the name "GIRNAR Super Cup TEA", and advertised and offered the same for sale in packages with the mark "Girnar Super Cup Tea" printed on a device of cup and saucer.

- The Respondent found an infringement of its trade mark "Super Cup" and gave a notice to the Appellant to stop marketing tea under the brand name "Super Cup Tea"

- Appellant on refusing to agree, the Respondent filed suit against the Appellant for an injunction alleging that by using the mark "Super Cup Tea" *the Appellant was trying to trade upon the Respondent's goodwilland its popularity of tea sold under the same trade mark* and to pass off their goods as those of the Respondent.

- Hon'ble High Court *allowed the interim application of the Respondent and restrained the Appellant from manufacturing, selling or distributing goods in relation to the Trade Mark "Super Cup" till the disposal of the suit*.

- Aggrieved by the order, Appellant preferred an Appeal.

- Respondent states that it had been marketing its "Tea City" brand of tea with the brand name "Super Cup" since 1988 and the Appellant had allegedly started manufacturing and marketing its Girnar brand of tea under the brand name "Girnar Super Cup Tea" only since 1995.

- The Courts held that for stay of decree the Appellant must disclose the nature and details of substantial loss so as to enable the Court to be satisfied whether substantial loss would be caused.

- The mark "Super Cup" is not registered trade mark of the Respondent. When the Respondent had applied for registration of trade mark "Tea City", it had disclaimed the exclusive right to use the mark "Super Cup" and the device of cup and saucer.

- When the label of the Respondent was advertised for registration as a Trade Mark in Trademark Journal, it was mentioned that the "Registration of this Trade Mark shall give no right to the exclusive use of the words "Super Cup".

- In view of the mark which is now registered, the words "Super Cup" having been disclaimed, the only effective part of the registered mark of the Plaintiff is "Tea City". The Respondent therefore cannot claim exclusive right to use the words ***Super Cup by virtue of any alleged user***.

- The Appellant has export contracts for export of tea under the Trade Mark "Girnar Super Cup Tea" with the device of cup and saucer in the name of Girnar Exports.

- If the impugned order is not stayed as the same would ***not only the Appellant would suffer monetary loss and loss of foreign exchange but it may also result in loss of business, reputation and goodwill of the Appellant which cannot be compensated in terms of money.***

- The Appellant suffer substantial loss in case the impugned order is not stayed.

- Appeal having already been admitted, as the same in our view needed consideration, we feel the impugned order should not be allowed to continue. We, therefore, stay the impugned order till the disposal of the appeal.
- Application stands disposed of.

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