2024:BHC-OS:13228

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

CONTEMPT PETITION (L) NO.28560 OF 2021
IN
COM SUIT NO.520 OF 2017

Pidilite Industries Ltd. …Petitioner

Versus

Premier Stationery Industries Pvt. Ltd. & Ors. …Respondents

Hiren Kamod, Nishad Nadkarni, Aasif Navodia, Khushboo Jhunjhunwala, Jaanvi Chopra and Rakshita Singh i/b. Khaitan and Co. for the Petitioner.

Aseem Naphade, Pooja Yadav, Sonali Bhosale, J.V. Bhosale and Akshay Dunde for Respondent Nos.1 to 4.

CORAM : R.I. CHAGLA J.
DATE : 13TH AUGUST, 2024.

ORDER :

1. The present Contempt Petition has been filed by the Petitioner against Respondent Nos. 1 and 2 (original Defendants in Commercial Suit No. 520 of 2017) as well as Respondent Nos. 3 and 4, for wilful and deliberate disregard, disobedience, disrespect, non-compliance and violation of the order dated 13 July 2017 passed in the above matter by this Hon'ble Court in the above Suit ("**Final Order**") in terms of consent terms dated 13 July 2017 ("**Consent**

Terms") and undertakings contained therein (which were accepted as undertakings to the Hon'ble Court). The Petitioner claims that the Respondents, in blatant breach of the Final Order and Consent Terms, are using the impugned label/trade dress including impugned bottles and glue pens (*as set out at Exhibit D-1, page 295 of the Petition*), that continue to be in violation of the rights of the Petitioner including its rights in the FEVICOL MR Artistic Work, Distinctive FEVICOL MR Bottle and the FEVICOL MR Glue Pens, as more particularly set out in the Contempt Petition.

2. The Petitioner claims to be a world-renowned company in the field of adhesives and sealants, construction and paint chemicals, automotive chemicals, art materials, industrial adhesives, industrial and textile resins and organic pigments and preparations since atleast 1969. The Petitioner's aforesaid products are sold under well known trademarks including FEVICOL, FEVICRYL, FEVISTIK, FEVI KWIK, M-SEAL, DR. FIXIT, FEVI BOND, FEVIGUM, FEVITITE, etc. Most of the Petitioner's products have been developed through strong in-house research and development. The products emanating from the Petitioner and sold under its well-known and famous brands are internationally known for their superior and high quality and

technical excellence.

3. On 21 April 2017, the Petitioner had filed the above Suit against Respondent Nos. 1 and 2 to claim reliefs in respect of infringement of the Petitioner's well known FEVICOL MR Artistic Works (as defined therein) and the Petitioner's copyrights in the FEVICOL MR Artistic Work (as defined therein), violation of the Petitioner's design in the Distinctive FEVICOL MR Bottle (as defined therein), violation of the Petitioner's rights in the Distinctive FEVICOL MR Glue Pens (as defined therein) and the tort of passing off in the circumstances explained in the plaint, which has been annexed to the petition at Exhibit A (Pages 44-274 of the Petition). (Paragraph 1, page 3 of the Petition)

4. Simultaneously along with the Suit, the Petitioner had also filed a Notice of Motion bearing no. 439 of 2017 in the Suit, seeking ad-interim and interim reliefs, as set out therein. Vide an *ex-parte* ad-interim order dated 28 April 2017 passed by this Hon'ble Court, Respondent Nos. 1 and 2 had been injuncted in terms of prayer clauses (a), (b) and (f) of the Notice of Motion. A copy of order dated 28 April 2017 is annexed at Exhibit B to the Petition at

pages 275 to 281. The above suit was disposed off by an order dated 13 July 2017 passed in the above matter in terms of consent terms dated 13 July 2017. Respondent Nos. 1 and 2 had submitted to a decree in terms of prayer clauses *(a), (b), (c), (d) and (e)* to the plaint and had provided undertakings in the said Consent Terms which were accepted as undertakings to the Hon'ble Court. A copy of the Final Order and Consent Terms dated 13 July 2017 are annexed to the Petition at Exhibit C, pages 282-294. *(Paragraphs 1 and 2, pages 3-4 of the Petition)*

5. The above Suit was decreed in terms of prayer clauses *(a), (b), (c), (d) and (e)* which are being reproduced below for ease of reference:

> ***(a) the Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing the Plaintiff's registered mark bearing registration no. 2614770 in any manner and from using in relation to Impugned Goods or any other goods for which the FEVICOL MR Artistic Work is registered or any goods similar to the goods for which FEVICOL MR Artistic Work is registered, the Impugned Label or any other mark which is identical or similar to FEVICOL MR Artistic Work or any***

essential feature thereof or any other marks similar thereto and from manufacturing, selling, offering for sale, advertising or dealing in Impugned Goods under the said marks and from manufacturing, selling offering for sale, advertising or dealing in any goods (for which FEVICOL MR Artistic Work is registered or which are similar to the goods for which FEVICOL MR Artistic Work is registered) bearing the Impugned Label or any other mark which is identical or similar to FEVICOL MR Artistic Work or any essential feature thereof or any other marks similar thereto;

(b) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyright in the artistic work comprised in/reproduced on the FEVICOL MR Artistic Work and from using the Impugned Label and/or reproducing/copying the said artistic work or any substantial part of the said artistic work (including in particular any of the features thereof) on the Impugned Goods or the Impugned Labels (including those depicted at Exhibit I to the Plaint) or any bottles, cartons, packaging material or advertising material, literature or any other substance and from manufacturing and selling or offering for sale products upon or in relation to which the said artistic work has been reproduced or substantially reproduced or by issuing copies of such works to the public;

(c) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from committing the tort of passing off in any manner

and from dealing in, manufacturing, marketing, selling, advertising, offering to sell of dealing in the Impugned Goods or any other similar or cognate goods or any other goods in the Impugned Bottle or any other bottle resembling the Distinctive FEVICOL MR Bottle or in the Impugned Glue Pens or any other containers resembling the Distinctive FEVICOL MR Glue Pens under or bearing the Impugned Label or any other label or mark identical or similar to any of the Plaintiff's FEVICOL MR Marks or comprising of the FEVICOL MR ARTISTIC WORK or any features thereof;

(d) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing the design of the Distinctive FEVICOL MR Bottle bearing registration No.246907 in class 09-03 by using the Impugned Bottle or any other bottle resembling the Distinctive FEVICOL MR Bottle;

(e) The Defendant No. 2 be ordered and directed to withdraw her trade mark application bearing no. 3386019 in class 16 for the trade mark 

filed on 10 October 2016 with the Trade Marks Registry, Delhi or any other trade mark application either for the trade mark 

and/or for any other trade mark which is identical with or similar to the Plaintiff's FEVICOL MR Artistic Work or any feature thereof, under intimation to Plaintiff.

6. The Petitioner states that in or about August 2020, the Petitioner was made aware that despite submitting to the decree of injunction and providing undertakings to the Hon'ble Court, Respondent Nos. 1 and 2 had, in flagrant violation of the Final Order, Consent Terms and undertakings contained therein, re-commenced use of an impugned label/trade dress and colour scheme which continued to be an imitation of and a substantial reproduction of the essential features of the Petitioner's FEVICOL MR Artistic Work including its trade dress, colour scheme, layout as well as bottles and glue pens which also continued to be identical to the Distinctive FEVICOL MR Bottle and the FEVICOL MR Glue Pens respectively.

7. The Petitioner states that instead of complying with the undertakings given by Respondent Nos. 1 and 2 and using the label and bottle as agreed to between the parties (*depicted at Annexures A and B of the Consent Terms at pages 290 & 291 of the Petition*), the Respondents have deliberately continued to use labels and bottles and glue pens that violate the rights of the Petitioner. Photographs of the impugned products of the Respondents that continue to be in violation of the Petitioner's FEVICOL MR Artistic Works, Distinctive FEVICOL MR Bottles and Distinctive FEVICOL MR Glue Pens have

been annexed to the Petition (*at Exhibit D-1 at page 295*). The Petitioner further states that a bare perusal of the said products in comparison to the Plaintiff's products, as well as the material on record makes it evident that the actions of the Respondents are deliberate, systematic, dishonest and in willful disregard, disobedience, disrespect, non-compliance and violation of the Final Order of the Hon'ble Court, the Consent Terms and undertakings therein.

8. The Petitioner states that it was also made aware of another range of products, being synthetic glue, manufactured and sold by the Respondents which were *inter alia* being sold in bottles which are also an imitation of and similar to the Distinctive FEVICOL MR Bottles of the Petitioner. The said synthetic glue product and its variants manufactured and sold by the Respondents also bear a label/trade dress which is an imitation of and a substantial reproduction of the essential features of Petitioner's FEVI GUM products and their artistic works / labels. Copies of images of the impugned synthetic glue products of the Respondents in this regard are annexed at *Exhibit D-2 to the Petition at page 296*.

9. The Petitioner states that upon coming across the contemptuous actions of Respondent Nos. 1 and 2, the Petitioner through its advocates issued a letter dated 5 August 2020 to Respondent Nos. 1 and 2 and called upon them to cease and desist from *inter alia* violating the Final Order of the Hon'ble Court, Consent Terms and undertakings contained therein and from violating the Petitioner's rights in its FEVICOL MR Artistic Works, Distinctive FEVICOL MR Bottles and Distinctive FEVICOL MR Glue Pens. (*Exhibit E to the Petition at pages 297-323*)

10. The Petitioner states that by letter dated 31 August 2020, the Respondent Nos. 1 and 2, through its advocates, replied to the Petitioner's letter dated 5 August 2020 *inter alia* setting up a false and frivolous stand and refusing to comply with the Petitioner's requisitions and falsely contending that they were not in violation of the Final Order of the Hon'ble Court and the Consent Terms. Respondent Nos. 1 and 2 also sought to allege that the listings of the impugned products on their website (which website bears the name of Respondent No. 3 as can be evinced from page 321 of the Petition) were inadvertent and that appropriate steps would be taken for removal of such listings and images. It is also pertinent to note that

by way of the said reply dated 31 August 2020, Respondent Nos. 1 and 2 have expressly admitted to using the impugned labels/trade dress and impugned bottles and glue pens as set out in the Petition. The Petitioner also learnt that the Respondents were using the impugned glue pens for their synthetic glue products as well (in addition to the white glue products), which use the Plaintiff claims was in contravention of the Final Order, Consent Terms and the undertakings contained therein.

11. Thereafter, it is stated that the Petitioner, through its advocate's letter and email dated 5 January 2021, responded to Respondent Nos. 1 and 2's letter dated 31 August 2020 and *inter alia* reiterated the wrongful nature of the Respondents' activities and once again called upon the Respondents to comply with the Final Order of the Hon'ble Court, the Consent Terms and undertakings contained therein. The Petitioner did not receive any response to the said letter.

12. Further, the Petitioner claims to have also noticed that the Respondents are making the impugned products bearing the impugned labels/trade dress and impugned bottles/glues pens available for sale on the internet through their website, their

accounts on social media platforms as well as their listings on various third party websites.

13. Pursuant to the above Contempt Petition being filed by the Petitioner against Respondent Nos. 1 and 2, the Respondent Nos. 1 and 2 filed their Affidavit in Reply to the same *inter alia* stating that in the year 2017, they had sold their business and their assets, machineries, raw material, products & any other goods to M/s Select Stationery Industries (India) which had later renamed itself to M/s Premier Stationery Industries (India) (Respondent No. 3) which is a sole proprietorship firm owned by Mr Rajinder Puri Goswami (Respondent No.4 husband of Respondent No. 2). Accordingly, after being made aware of the aforesaid, the Petitioner sought leave of this Court and amended the Contempt Petition and impleaded Respondent Nos. 3 and 4 to the Petition.

14. A table of comparison between the rival products is hereto annexed at **Annexure "A"** to the Written Submission on behalf of the Petitioner and for convenience reproduced herein below:-

PIDILITE INDUSTRIES LIMITED VS PREMIER STATIONERY & ANR. (CONTEMPT)

Plaintiff's Products	Impugned in the Suit	What was agreed to be used by Respondents	What the Respondents are using
 Page 100 of Petition	 Page 265 of Petition	 Page 290 of Petition	 Page 295 of Petition
 Page 109 of Petition	 Page 262 of Petition	 Page 291 of Petition	 Page 295 of Petition
 Page 117 of Petition	 Page 262 of Petition		

15. The above comparison is between: i) the Plaintiff's products bearing the Petitioner's FEVICOL MR Artistic Works, Distinctive FEVICOL MR Bottles and Distinctive FEVICOL MR Glue Pens, ii) the Respondents' product label/packaging and bottles/glue pens injuncted in the Final Order and Consent Terms; iii) the Respondents' product label/packaging and containers provided for use in the Consent Terms; and iv) the Respondents' impugned products bearing the impugned label/trade dress and bottles/glue pens being used by them in violation of this Hon'ble Court's Order as well as in violation of the rights of the Plaintiff.

16. Mr. Kamod the learned Counsel for the Petitioner has submitted that the Respondents are jointly and severally liable for contempt of this Court's Final Order dated 13th July, 2017 which was passed in terms of Consent Terms and by which the above Suit had been decreed and disposed of. He has submitted that the Respondent Nos.1 and 2 were parties to the Suit, whereas Respondent Nos.3 and 4 though not parties to the Suit are aiding and abetting Respondent Nos.1 and 2 in committing contempt of Court. He has submitted that the Affidavit in Reply which has been filed by Respondent Nos.1and 2 makes false, frivolous and vague statements of alleged sale of the

business of Respondent Nos.1 and 2 in 2017 and / or non involvement of Respondent Nos.1 and 2 in the wrongful acts after such alleged sale. He has submitted that the same is evidently an after thought and that the Respondents are falsely contending that they are no longer involved in the manufacture or sale of the impugned products with a view to escape liability and punishment for contempt.

17. Mr. Kamod has submitted that the Respondents are attempting to circumvent the Final Order of this Court and continue the wrongful activities in violation of this Court's orders, including through the involvement of Respondent Nos. 3 and 4. He has submitted that there is no document or material particularly placed on record either in the Affidavit in Reply or at the time of hearing to substantiate or demonstrate the factum of such alleged sale. He has submitted that even if such alleged sale took place the same is merely a sham created by the Respondents in an attempt to escape the rigours and liability of contempt proceedings and to continue with their wrongful acts through the husband of Respondent No. 2 i.e., Respondent No. 4. The Respondents are all hand in glove and are acting together in wilful default, disobedience and violation of this

Court's Order.

18. Mr. Kamod has submitted that upon the Petitioner being made aware of the involvement of the Respondent Nos.3 and 4, the Petitioner conducted enquiries and came to understand that Respondent No.4 (Proprietor of Respondent No.3) is the husband of Respondent No.2; and that all Respondents have been / are operating from the same address. He has submitted that the same has been deliberately and dishonestly suppressed by the Respondents with a view to mislead this Court and obstruct the administration of justice. There is no whisper about their relationship in the Affidavit in Reply filed by the Respondents. He has referred to the material on record i.e. board resolution filed by Respondent No.1 along with Consent Terms dated 13th July, 2017 before this Court as well as Power of Attorney filed by Respondent No.2 in respect of Trade Mark Application No.3386104 in Class I which mark was withdrawn by the Respondents pursuant to the Consent Terms. He has submitted that it is borne out from the board resolution of Respondent No.1 that the Respondent No.2 is the wife of Respondent No.4 and authority is given to Respondent No.2 to inter alia execute the Consent Terms. He has submitted that it is now absurd for Respondent No.2 to contend

that she has sold her business to her husband i.e. Respondent No.4 who is now responsible for the impugned products which are being sold in contempt of this Court's orders and Respondent No.2 cannot be held liable for the same. He has submitted that all the Respondents are connected, associated and related and are aiding and abetting each other in the wrongful acts. This is a fit case to apply doctrine of lifting of the corporate veil. He has submitted that all the Respondents are jointly and severally liable for contempt of this Court's Orders and for obstructing the administration of justice.

19. Mr. Kamod has referred to the cease and desist notice dated 5th August, 2020 and in particular the response of the Respondents thereto on 31st August, 2020, wherein a contrary and self-destructive stand has been taken by Respondent Nos.1 and 2. He has submitted that the Respondent Nos.1 and 2 have admitted to being responsible for the manufacutre / sale of the impugned products bearing the impugned labels / trade dress and bottles / glue pens. Further, in the response to the cease and desist notice, there is no mention about the existence or involvement of Respondent Nos.3 and 4 or the alleged sale of business which allegedly took place in 2017. The response only proceeds on the premise that Respondent

Nos.1 and 2 continue to manufacture and sell the impugned products bearing the impugned mark. Further, that the online listing / images of impugned products inadvertently remained present on their website. However, a perusal of the screenshots makes it evident that, the said website, as referred to by Respondent Nos.1 and 2 as their own website, bears the name of Respondent Nos.3 and 4.

20. Mr Kamod has submitted that the stand taken by the Respondent in the response to the cease and desist notice is self destructive and blatantly contrary to the stand taken by them before this Court, which is false and fraudulent and the Respondents ought to be strictly penalized for their acts and conduct. The Respondents have during the oral arguments at the final hearing of contempt Petition admitted to having no answer for the contrary stands taken by them in their response to the cease and desist notice and the Affidavit in Reply filed before this Court, thereby admitting to having made false statements on oath.

21. Mr. Kamod has referred to the trade mark applications for marks comprising of PREMIER in the name of Respondent Nos.2 and 4. He has submitted that Respondent Nos.2 and 4 have in their

own individual names at various points in time applied for registration of marks, comprising of PREMIER (which is brand being used on the impugned products). Such applications have been made even by Respondent No.4 (who claims to have not been involved in or concerned with the business of Respondent Nos.1 and 2) and that too prior to the date of the Final Order and the Consent Terms or the alleged sale of business. Infact, the first trademark application for the mark PREMIER was made in the name of Respondent No.4 with a user claim of 1st April, 1991 (application No.645088 in Class I.) Further, Respondent No.2 continues to hold in her name, various subsisting registrations for marks comprising of PREMIER in Class I for stationery products. He has submitted that therefore it is absurd for Respondent No.2 to state that she or her firm Respondent No.1 is not involved in the said business after the same has been allegedly sold to Respondent Nos.3 and 4. Likewise, it does not lie in the mouth of Respondent No.4, proprietor of Respondent No.3 to contend that he was not aware of the Final Order or was not involved in the said business at the time of the Final Order being passed or that he is not liable for acts of Respondent Nos.1 and 2. He has submitted that the Respondents are jointly and severally liable for manufacturing / selling the impugned products bearing the

impugned label / trade dress in contempt of this Court's Order and Consent Terms. He has submitted that the Respondents have not even attempted to justify the Petitioner's aforesaid contentions and evidently have no defense to the same.

22. Mr. Kamod has submitted that the Respondent Nos.3 and 4 cannot feign ignorance of this Court's Order and cannot contend that they are not bound by it. He has submitted that the scope of Execution Proceedings is irrelevant to the present Contempt Petition. The scope of the Final Order taking on record the Consent Terms and the prayers decreed therein are broad enough to cover Respondent Nos. 3 and 4 as well, as the same include Respondent Nos.1 and 2 as well as their "directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming under them". The Respondent Nos.3 and 4 cannot be heard to say that the Final Order, Consent Terms or the undertakings therein provided by Respondent Nos.1 and 2 do not bind them or cannot be enforced against them. The nexus and connection between the Respondents is also made out, as stated above, given their marital relationship with each other as well as their admittedly common address.

23. Mr. Kamod has submitted that the Court's power to punish for its contempt under Article 215 of the Constitution of India read with Contempt of Court's Act read with Section 151 of the Code of Civil Procedure ("CPC"), 1908, is not only wider than, but is also independent of any rights of parties inter-se in any execution proceeding. He has placed reliance upon a judgment of the Karnataka High Court in ***K. Somnath Vs. D. Veerendra Heggade***[1], in the context of powers of the Court exercising contempt jurisdiction which is extremely wide and would include exercising inherent powers of the Court under Section 151 of CPC.

24. Mr. Kamod has also placed reliance upon the decision of the Supreme Court in ***Urban Infrastructure Real Estate Fund Vs. Dharmesh S. Jain and Anr.***[2] and in particular paragraphs 13.2 and 13.3 of the said decision. It has been held by the Supreme Court that Contempt Jurisdiction could be invoked in every case where the conduct of a contemnor is such as would interfere with the due course of justice. Contempt is a matter which is between the Court passing the Order of which contempt is alleged and the contemnor,

1 (MANU/KA/2073/2022).

2 Contempt Petition (C).No.940 of 2021 in Miscellaneous Application No.1668 of 2021 in Special Leave Petition (C) No.14724 of 2021.

whereas questions as to executability of such Order is a question which concerns the parties inter se. The power of the court to invoke contempt jurisdiction, is not, in any way, altered by the rights of the parties inter se.

25. Mr. Kamod has submitted that the conduct of the Respondents possess a dual character of contempt of Court. He has submitted that in the present case, the conduct of the Respondents, especially Respondent Nos.3 and 4 demonstrates that they are guilty of contempt of court in dual character (i) by aiding and abetting each other and especially Respondent Nos.1 and 2 (original Defendants in the Suit) in violation of the Court's Order; and (ii) by directly being responsible for violating the Court's Order and knowingly interfering and obstructing in the administration of justice. He has submitted that it is settled law that a third party will also be liable for contempt if he knowingly assists in the breach of an Order, or willfully assists the person to whom it was directed towards, in disobeying the Order. He has placed reliance upon the decision of the Supreme Court in ***Sita Ram Vs. Balbir***[3]***,*** wherein the Supreme Court recognized the dual character of contempt of Court by a third party. He has also placed

3 (MANU/SC/1611/2016)

reliance upon the decision of this Court in ***Pidilite Industries Ltd. Vs. Raghunath Chemicals & Ors.***[4]***,*** wherein this Court has in almost identical factual conspectus, after considering the law laid down by the Supreme Court in ***Sita Ram (Supra)*** as well as the decision of the Andhra Pradesh High Court in ***Mohd. Sharfuddin Vs. Mohd. Jamal***[5] held that merely because certain Respondents were not parties to the original Suit, it cannot be accepted that they cannot be held liable for contempt and that a party who assists and abets the violation of the Order is also liable for Contempt of Court. He has in particular placed reliance upon paragraph 18 of the said decision in this context.

26. Mr. Kamod has made submissions with regard to the safe distance rule i.e. minor variations to the label / trade dress are not sufficient as held by this Court in ***Pidilite Industries Ltd. Vs. Raghunath Chemicals & Ors. (Supra).*** It has been held by this Court that the confusion sowed 'is not magically remedied' by de minimis fixes. Considering that the contention that the impugned bottles / glue pens are allegedly dissimilar to / different from the injuncted labels / trade dress and bottles / glue pens and / or artistic work thereof were not pressed on behalf of the Respondents either in the

4 Contempt Petition (L) No.30589 of 2021 in Suit No.729 of 2015.

5 (MANU/AP/0213/2003)

written submissions filed or in the oral arguments, although pleaded in the Affidavit in Reply, the same is not required to be dealt with.

27. Mr. Kamod has submitted that in the present case since the Respondents are unapologetic for their willful, deliberate contemptuous actions, dishonesty and malafide conduct of the Respondents and the damage caused to the Petitioner's rights, makes this a fit case for imposing stringent costs and penalties upon the Respondents. He has submitted that apart from there being no unconditional apology, there is no apology at all and thus there is neither remorse nor regret on the part of the Respondents for their wrongful acts.

28. Mr. Kamod has submitted that this Court from time to time has held that, the Court ought not to allow its processes to be set at naught and / or breach of its Orders by parties such as the Respondents and strict action ought to be taken against the Respondents for their malafide conduct. He has placed reliance upon the decision of this Court in ***Cargil India Pvt Ltd. Vs. M.M. Oil Enterprises***[6] and in particular paragraphs 31 and 32 of the said

6 MANU/MH/117/2019.

decision. He has also placed reliance upon the decision of this bench in ***Mangalam Organics Ltd. Vs. Patanjali Ayurved Ltd. and Ors.***[7] , which has followed ***Pfizer INC and Ors. Vs. Triveni Interchem Private Ltd. & Ors.***[8]**.** He has submitted that conduct of the Respondents in seeking to justify their contumacious acts without even offering any apology let alone an unconditional apology calls for strict deterrent action to set an example that Court's orders are not to be taken lightly. He has accordingly submitted that the Contempt Petition be made absolute in terms of prayer Clauses (a), (b), (c) (i) to (iii), (c), (v) and (d) thereof.

29. Mr. Aseem Naphade the learned Counsel appearing for the Respondents has submitted that the Respondent Nos.1 and 2 have post 2017 sold all the assets, machineries, products to a proprietary concern by the name of Premier Stationery Industries which has been arrayed as Respondent No.3. Respondent Nos.1 and 2 have filed on record their income tax returns for Assessment Year 2019-2020 and 2020-2021 which clearly shows that the total income of Respondent No.1 was zero. The existence or validity of these income tax returns has not been disputed by the Petitioner. He has

7 Interim Application (L) No.4586 of 2024 dated 29th July, 2024.
8 2023 SCC OnLine Del 363.

submitted that the Respondent Nos.1 and 2 have not committed any breach of the Consent Terms and / or the said Final Order of which the Consent Terms forms part thereof.

30. Mr. Naphade has submitted that the Respondent Nos.3 and 4 in their Affidavit in Reply have confirmed the fact that post 2017 Respondent Nos.1 and 2 have sold all their assets, machineries, products to Respondent No.3 of which Respondent No.4 is the sole Proprietor. He has submitted that it is the case of the Respondent Nos.3 and 4 that they were not aware of the Consent Terms between the Petitioner and Respondent Nos.1 and 2 and in any case Respondent Nos.3 and 4 are not parties to the Consent Terms and not therefore bound by the same or the said Final Order by which they were taken on record.

31. Mr. Naphade has submitted that it is settled law that the parties to the Consent Terms in terms of which the decree is passed are bound by the same. A third party who is not a party to the Consent Terms is not bound by the same. He has in this regard placed reliance upon the definitions “decree”, “decree holder” and “judgment debtor” in Section 2(2), 2(3) and 2(10) respectively of the

Code of Civil Procedure, 1908. He has submitted that these definitions do not contemplate a third party who is neither a party to the decree nor a decree holder nor a judgment debtor.

32. Mr. Naphade has placed reliance upon the decision of the Supreme Court in ***Sneh Gupta V/s. Devi Sarup***[9] where the Supreme Court held that Consent Terms is merely an agreement between the parties with the seal of the Court.

33. Mr. Naphade has placed reliance upon the decision of the Madhya Pradesh High Court in ***Bondar Vs. Mishribai***[10] where the Madhya Pradesh High Court held that a third party shall not be bound by the Consent Terms. He has placed reliance upon paragraphs 11 and 15 in this context.

34. Mr. Naphade has distinguished the decision of the Supreme Court in ***Sita Ram V/s. Balbir***[11] which was pressed into service by Mr. Kamod for the Petitioner. He has submitted that the Supreme Court has held that only if the third party aids and assists

9 (2009) 6 SCC 194.
10 2019 SCC OnLine MP 6124.
11 (2017) 2 SCC 456.

the party bound by the Order to commit a breach thereof, will the third party be liable. In the present case the Respondent Nos.3 and 4 are not bound by the Consent Terms being third parties and they have not aided or assisted Respondent Nos.1 and 2 to commit breach of the Consent Terms.

35. Mr. Naphade has also distinguished the decision of this Court in ***Pidilite V/s. Raghunath Chemicals Ltd. (Supra)*** since in that case Respondent Nos.3 and 4 had admitted that they were aware of the Consent Decree, whereas, Respondent Nos.3 and 4 in the present case have stated that they were not aware of the Consent Terms.

36. Mr. Naphade has, when this Court indicated that it was of the view that the Respondents have committed contempt of this Court's Orders, sought to address the issue of punishment under contempt jurisdiction. He has relied upon Section 12 of the Contempt of Courts Act, 1971, which provides for punishment for contempt of Courts and wherein it is provided that the Contempnor is liable to be punished with a simple imprisonment for a term which may extend to six months, or with a fine which may extend to two thousand rupees. He has also referred to the decision of the Supreme Court in

Pushpaben and Anr. Vs. Narandas V. Badiani and Anr.[12]**,** wherein the Supreme Court has considered punishment for Contempt of Court and has held that the statute confers the special power on the Court to pass a sentence of imprisonment if it think that ends of justice so require. However, before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus the sentence of imprisonment is an exception while sentence of fine is the rule.

37. Mr. Naphade has submitted that given the fact that the Respondent Nos.3 and 4 have stated that they were not aware of the Final Order and / or Consent terms forming part thereof and that Respondent Nos.1 and 2 have sold their business to Respondent Nos.3 and 4, there can be no contempt of this Court's order. He has accordingly submitted that the Contempt Petition ought to be dismissed.

38. Having considered the submissions, it is noted that initially an ex-parte ad-interim Order was passed by this

12 AIR 1979 Supreme Court 1536.

Court granting reliefs in terms of prayer Clauses (a), (b) and (f) of the Interim Application. Thereafter the Final Order was passed disposing off the Suit in terms of prayer Clauses (a), (b), (c), (d) and (e) in accordance with the Consent Terms executed between the parties. The Final Order is an extremely wide order and would in my view govern not only the Respondent Nos.1 and 2 but also govern all other parties claiming under them and this would necessarily include Respondent Nos.3 and 4. The Respondents are inter-related as the Respondent No.2 is the wife of Respondent No.4 and Respondent No.4 is the proprietor of Respondent No.3. Further, the addresses of the Respondents are one and the same. This has not been disputed by the Respondents. The inter se relationship between the Respondents can also be seen from the applications made for registration of the same trade mark PREMIER. The first application for registration of trade mark having been made by Respondent No.4, the proprietor of Respondent No.3, on 9th November, 1994 i.e. prior to the application for registration of the very same trade mark 'PREMIER' having been made by Respondent No.2. Thus, the contention that Respondent Nos.3 and 4 were not aware of the Consent terms and / or the Final Order of this Court cannot be accepted. Thus, in my view, the Respondent Nos.3 and 4 have made a false statement on oath and

engaged in willful and deliberate disobedience of this Court's Order.

39. I find much merit in the submissions on behalf of the Petitioner that the conduct of the Respondent Nos.3 and 4 possesses a dual character of contempt of Court. In ***Sita Ram (Supra)*** the Supreme Court has held that third parties to the Suit would be liable for Contempt of Court as they have dual character of Contempt of Court viz. (i) aiding and abetting the contempt by another and (ii) directly being responsible for violating the Court's Order as well as knowingly interfering with the administration of justice by causing the order of the Court to be thwarted.

40. Further, the contention of Respondent Nos.1 and 2 in the Affidavit in Reply to the Contempt Petition that it had sold its business of manufacturing or sale of the impugned product is belied from the fact that in the response to the cease and desist notice addressed on 31st August, 2020 the Respondent Nos.1 and 2 have admitted that they were manufacturing / selling the impugned products bearing the impugned labels / trade dress / bottles / blue pens. There is no whisper in the said response issued in 2020, about the existence or involvement of the Respondent Nos.3 and 4 or

alleged sale of business which allegedly took place in 2017. Thus, positive representations were given by the Respondent Nos.1 and 2 in the said response that the impugned products continued to be manufactured and sold by Respondent Nos.1 and 2. The said response also submitted that online listings / images of the impugned products inadvertently remained present on their website, but if one takes a closer look at the screenshots, it is evident on that the said website, referred to by Respondent Nos.1 and 2 as their own website, the name of Respondent Nos.3 and 4 appears alongside the impugned products.

41. I find that Respondent Nos.1 and 2 have made false statements in their Affidavit that they have ceased their business of manufacturing and / or sale of the impugned product as this is contrary to the material on record, including the said response to the cease and desist notice. The Respondent Nos.1 and 2 may have produced their income tax returns which show 'NIL', however, that does not detract from the fact that the business was being carried out by Respondent Nos.1 and 2 through Respondent Nos.3 and 4 who are all inter related.

42. Mr. Naphade for the Respondents has contended that a third party is not a party to the Consent Terms and cannot be bound by the same. He has relied upon decisions of Courts which are in context of execution of a decree and has also placed reliance upon the definitions of decree, decree holder and judgment debtor in context of execution. However, in my view the scope of execution proceedings are irrelevant for contempt jurisdiction of this Court. The Court's power to punish for contempt under Article 215 of the Constitution of India r/w Contempt of Courts Act r/w Section 151 of the CPC, is not only wider than, but is also independent of any rights of parties *inter se* in any execution proceeding. Further, the scope of execution proceedings is in any way irrelevant to the present Contempt Petition. It is immaterial whether Respondent Nos.3 and 4 can be proceeded against in execution proceedings, and certainly not relevant for a court punishing the Respondent Nos.3 and 4 for Contempt of Court.

43. The decisions which have been relied upon by Mr. Kamod for the Petitioner on the Court's powers of exercising contempt jurisdiction are apposite. The Courts have consistently held that the said powers of the Court are wide and not subject to any

limitation. The Supreme Court in ***Urban Infrastructure Real Estate Fund (Supra)*** has held that the contempt jurisdiction could be invoked in every case where the conduct of a contemnor is such as would interfere with the due course of justice. Further, the Karanataka High Court in ***K. Somnath (Supra)*** has held that inherent powers of the court is available under Section 151 of the CPC when the Court exercises contempt jurisdiction and the Court is bound to exercise such inherent jurisdiction to guard against itself being stultified and / or holding that it is powerless to undo a wrong done in disobedience of the Court's Orders.

44. In ***Pidilite V/s. Raghunath Chemicals Ltd. (Supra),*** this Bench has been held in an almost identical factual conspectus after considering the law laid down by the Supreme Court in ***Sita Ram (Supra)*** and ***Mohd. Sharfuddin (Supra)*** that merely because the Respondents were not parties to the original Suit, it cannot be accepted that they cannot be held liable for contempt, particularly when they have assisted and abetted in the violation of the Order and thus would also be liable to contempt.

45. The Respondents have attempted to distinguish these

decisions by contending that the facts in ***Pidilite V/s. Raghunath Chemicals Ltd. (Supra)*** and the present matter are different. However, this is of no assistance to the Respondents since the principles sought to be relied upon by the Petitioner have been applied in an almost identical and principally similar factual conspectus as the present matter.

46. I am of the considered view that the Respondent Nos.3 and 4 did have knowledge of the Final Order and Consent Terms forming part thereof on account of their integral connection with each other and particularly as Respondent Nos.2 and 4 are in martial relationship.

47. The Respondents have failed to offer any apology let alone an unconditional apology and which is evident from their lack of remorse or regret on their part for their wrongful acts and / or wilful disobedience of the Courts Orders. It is well settled that the Court ought not to allow its processes to be set at naught and / or breach of its Orders by parties such as the Respondents and strict action ought to be taken against the Respondents for their malafide conduct.

48. In a similar decision passed by this bench in ***Mangalam Organics Ltd. Vs. Patanjali Ayurved Ltd. (Supra),*** following the decision of the Delhi High Court in ***Pfizer Inks (Supra)***, this Court has in paragraphs 71 to 73 held as under:-

> *71. I am of the considered view that the Respondents have committed willful contumacious contempt of this Court within the meaning of Order XXXIX Rule 2A of the CPC. It will serve no purpose to merely detain the Respondent No. 10 in civil prison for false statements made on Affidavit. It is not his brain child for making these false statements as the other Respondents are clearly behind it. Civil imprisonment compromises the liberty of the contemnor and is an extreme step, when there is no other manner in which the contempt could be purged. Thus, it would be more appropriate to penalize the Respondents.*
>
> *72. In view thereof, the Respondents shall jointly and / or severally pay to the Plaintiff an amount of Rs. 4,00,00,000/- (Rupees Four Crores only) within a period of two weeks from uploading of this order. The Prothonotary and Senior Master is directed to remit the sum of Rs.50,00,000/- deposited by the Respondents in favour of the Plaintiff within the period of two weeks from uploading of this Order.*
>
> *73. Failure on the part of Respondent Nos.2 to 10 to comply with this Order will result in the Respondents being taken into custody and detained for a period of two weeks in Civil prison viz. Arthur Road Jail, Mumbai.*

49. Considering that this Court has also in the present case

held that the Respondents have committed willful contumacious contempt of this Court, it would be necessary for the Respondents to purge their contempt by penalizing them rather than their being punished by civil imprisonment. Accordingly, I consider this to be a fit case to impose a penalty / costs on the Respondents.

50. Hence, the following Order is passed:-

(i) The Respondents shall jointly and / or severally pay to the Petitioner an amount of Rs.50,00,000/- (Rupees Fifty lakh only) within a period of four weeks from the uploading of this Order.

(ii) Failure on the part of the Respondent Nos.2 and 4 to comply with this Order would result in the Respondents being taken into custody and detained for a period of two weeks in Civil Prison namely, Arthur Road Jail, Mumbai.

(iii) In addition, I consider it fit to grant prayer Clause c(i) to (iii) and c(v) of the Contempt Petition which read thus:-

> ***c(i). the Respondents be restrained by a perpetual order and injunction of this Hon'ble Court from infringing in any manner the Petitioner's registered mark bearing registration no.2614770 in any manner and from using in relation to the impugned products***

or any other goods for which the FEVICOL MR Artistic Work is registered or any goods similar to the goods for which FEVICOL MR Artistic Work is registered, the impugned label (depicted at Exhibit D to the petition) or any other mark which is identical or similar to FEVICOL MR Artistic Work or any essential feature thereof or any other marks similar thereto and from manufacturing, selling, offering for sale, advertising or dealing in impugned products under the said marks and from manufacturing, selling offering for sale, advertising or dealing in any goods (for which FEVICOL MR Artistic Work is registered or which are similar to the goods for which FEVICOL MR Artistic Work is registered) bearing the impugned label or any other mark which is identical or similar to FEVICOL MR Artistic Work or any essential feature thereof or any other marks similar thereto;

c(ii). the Respondents be restrained by a perpetual order and injunction of this Hon'ble Court from infringing in any manner the Petitioner's copyright in the artistic work comprised in/reproduced on the FEVICOL MR Artistic Work and from using the impugned label (depicted at Exhibit D to the petition) and/or reproducing/copying the said artistic work or any substantial part of the said artistic work (including in particular any of the features thereof) on the impugned products or the impugned labels (including those depicted at Exhibit I to the Plaint) or any bottles, cartons, packaging material or advertising material, literature or any other substance and from manufacturing and selling or offering for sale products upon or in relation to which the said artistic work has been reproduced or substantially reproduced or by issuing copies of such works to the public;

c(iii). the Respondents be restrained by a perpetual order and injunction of this Hon'ble Court from committing the tort of passing off in any manner and

from dealing in, manufacturing, marketing, selling, advertising, offering to sell or dealing in the impugned products or any other similar or cognate goods or any other goods in the impugned bottles (depicted at Exhibits D-1, D-2, and G to the petition) or any other bottle resembling the Distinctive FEVICOL MR Bottle or in the impugned glue pens (depicted at Exhibits D and G to the petition) or any other containers resembling the Distinctive FEVICOL MR Glue Pens under or bearing the impugned label / trade dress (depicted at Exhibits D and G to the petition) or any other label or mark identical or similar to any of the Petitioner's FEVICOL MR Marks or comprising of the FEVICOL MR ARTISTIC WORK or any features thereof;

c(v). the Respondents be ordered and directed to deliver up to the Petitioner for destruction all of Respondents' impugned products and goods, dies, articles, bottles, packets, labels, cartons, packaging material, plates, ink, product literature, advertising material paper and all other things used in connection with the manufacture, marketing or sale of the impugned products or any goods bearing the impugned labels / trade dress or the impugned bottles or glue pens or any other label/trade dress/bottles/glue pens identical with or similar to or comprising of the of the Petitioner's FEVICOL MR Marks or the FEVICOL MR Artistic Works or the Distinctive FEVICOL MR Bottle or the Distinctive FEVICOL MR Glue Pen respectively;

(iv) The Contempt Petition is accordingly disposed of.

[R.I. CHAGLA J.]