

SUPREME COURT OF INDIA

Godfrey Philips India Limited

Vs.

Girnar Food and Beverages Private Limited

C.A.No.5611 of 2001

(Mrs.Ruma Pal and P. Venkatarama Reddi JJ.)

20.04.2004

JUDGMENT

Ruma Pal, J.

1. The appellant sells tea under what it calls "an umbrella trade mark", namely, "Tea City". According to the appellant there are different kinds of tea which are sold under this umbrella trade mark with specific trade marks in respect of particular kinds of tea. One of the kinds of tea sold in this manner is "SUPER CUP" which pertains to extra strong CTC Tea. The appellant claims that it has been selling such tea under the trade mark "SUPER CUP" since 1987-88 and had not only invested a large amount in advertising this particular product but had effected large sales as a result of which the appellant had built up goodwill and reputation in respect of the name "SUPER CUP" and that the customers had come to associate that mark with the appellant's extra strong CTC Tea.

2. On the allegation that the respondent, also in the tea business, had wrongfully used the words "SUPER CUP" in connection with the sale of its tea, the appellant filed proceedings before the High Court alleging passing on of its trade mark "SUPER CUP" by the respondent and praying for an injunction to restrain the respondent from doing so and for other consequential reliefs.

3. The appellant filed an application in the suit for an interim injunction. This was allowed by the learned Single Judge. The respondent appealed before the Division Bench. The Division Bench allowed the appeal. It upheld the learned Single Judge's view that the appellant's products had displayed the mark "SUPER CUP" prominently and "Tea City" did not occupy a prominent position and rejected the respondent's submission that the trade mark of the appellant was a composite one of "Tea City SUPER CUP". The Division Bench also upheld the Single Judge's opinion that the appellant's trade mark was "SUPER CUP". However, the Division Bench held that the words "SUPER" referred to the character or quality of the tea and was merely a laudatory word and the word "CUP" referred to a cup of tea. Accordingly, the conclusion of the Division Bench was that the phrase "SUPER CUP" was descriptive and

laudatory of the goods of the appellant and, therefore, the appellant was not entitled to any order of injunction.

4. Without going into the question whether the conclusion arrived at by the Division Bench that the trade mark is descriptive is correct or not, it appears to us, and as is conceded by both parties before us, that the enunciation of the principle of law with regard to the protection available even in respect of the descriptive trade mark was wrong. A descriptive trade mark may be entitled to protection if it has assumed a secondary meaning which identifies it with a particular product or as being from a particular source. We, therefore, remand the matter back to the Division Bench of the High Court so that it may address its mind to this question without disturbing the other conclusions arrived at at this stage. In the event the Division Bench answers the additional issue formulated by us against the appellant, it will be open to the appellant to raise all the issues which have already been concluded and which are the subject-matter of this appeal in any further appeal as it may be entitled to prefer from the final decision of the Division Bench. The Division Bench is directed to dispose of the appeal as expeditiously as is conveniently possible. It is made clear that the trial of the suit may also be proceeded with and concluded expeditiously without being inhibited either by the pendency of the appeal or by any observation in the orders of the High Court on the interlocutory application.

5. The appeal is disposed of but without any order as to costs.