

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 1722 of 2007

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure. (Against Order)

And

IN THE MATTER OF:

M/S Prome Consumer Products (Pvt.) Ltd.

Represented by its Managing Director Md.

Enamul Hasan Khan and others.

---- Defendant-Petitioners.

-versus-

M/S Sajeeb Corporation represented by its

Proprietor Shamima Haider Chowdhury and

others.

---- Plaintiff-Opposite Parties.

No one appears

---- For both the parties.

Date of Judgment: 30.10.2025.

S. M. Saiful Islam, J.

This Rule was issued calling upon the plaintiff-opposite party to show cause as to why the impugned Order No. 12 dated 05/04/2007 passed by the learned Additional District Judge, 8th

Court, Dhaka in Title Suit No. 04/2007 rejecting the petition filed by the defendant-petitioners under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint should not be *set aside* and/or such other or further order or orders passed as this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the plaintiff-opposite party filed Title Suit No. 04 of 2007 in the Court of District Judge, Dhaka for permanent injunction and infringement of trademark along with an application for temporary injunction praying for an order restraining the Defendant-petitioners (Defendant Nos. 3-5 in the suit) from manufacturing, selling, distributing and marketing soft drink powder in the brand name of “Prome Tang” till disposal of the suit. Facts stated in the plaint in brief is that, “TANG” is internationally recognized and registered trademark and also brand name of a popular soft drinks. It is also a registered trademark in Bangladesh. Owner of that trademark is KRAFT General Foods Holdings Inc. (Pro-forma-Defendant No. 7). Plaintiff is the sole distributor of that product in Bangladesh and plaintiff is also the agent of that company to protect the interest of that principal company in Bangladesh. The defendants are infringing the trademark rights by using their brand name “Prome TANG” which is confusingly similar with the trademark of the principal of the plaintiff. Hence, the plaintiff filed the suit and the application for temporary injunction.

The defendant-petitioners (Defendant Nos. 3-5) filed a written objection against the application for temporary injunction and also filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint. In that petition for rejection of plaint, the defendant-petitioners claimed that, the plaintiff, being only a distributor has no cause of action for

infringement of trademark “Tang” and as such has no *locus standi* to file the suit and the application for temporary injunction. They further claimed that, plaintiff being neither a proprietor nor a registered user of the trade mark “Tang” cannot rely on section 21 of the Trademarks Act, 1940 which gives the owner or the registered user of a trademark the right to use the trademark. The defendant-petitioners have valid trade license, BSTI C. M. license and they have applied for trademark registration which is pending before the trademark registry.

The plaintiff filed written objection against the application for rejection of plaint denying all material allegations and contending *inter alia* that the plaintiff was appointed sole distributor by KRAFT Food International for Bangladesh vide their letter of appointment dated 13/08/1995 under several terms and conditions giving the plaintiff franchise for taking marketing strategy and doing all work with the Bangladesh Authority as and while will be needed for their products and brands goodwill. Accordingly, plaintiff has been empowered to take all legal and administrative measures for protecting the interest of their principal thereby raising their relationship of principal and agent or representative with the powers of their principal and the position being so, the grounds for rejection of plaint as taken by the defendants cannot be sustained.

Learned Additional District Judge, 8th Court, Dhaka rejected the application of the defendant-petitioners for rejection of plaint by the impugned order dated 05/04/2007. Being aggrieved by that order the defendant petitioners have filed this application.

At the time of issuance of the Rule, the operation of the impugned order was stayed for a period of six months from date. However, it was not extended further.

None appears to move the Rule or the revisional application at the time hearing. As the Rule is a long pending one, I think, justice will be best served if it is disposed of on merit.

Perused the revisional application, the impugned order along with other annexures. As to the grounds of revision, defendant-petitioners have stated in the application that the learned Additional District Judge, 8th Court, Dhaka has erred in law by not holding that the plaintiff being a mere distributor and not being the proprietor or registered user of the trademark in question, has no cause of action for infringement of trademark “TANG” and as such has no *locus standi* to file the suit and the plaint discloses no cause of action. They further submitted in the application that the learned court below erred in describing the plaintiff as a registered user although the plaint does not say so. That the learned Court below has not addressed the arguments raised by the defendant-petitioners and the impugned order does not disclose the reason for rejection of the application. Upon these grounds defendant-petitioners prayed for making the Rule absolute by *setting aside* the impugned order.

It may be mentioned here that in determining the question that whether a particular plaint is to be rejected or not, the Court has to take only the plaint and the documents filed therewith into consideration and not what has been urged by the defendant in a petition or in the written statement. On plain reading of the plaint it appears that the plaintiff claims that they are not merely the distributor of the KRAFT General Food Inc. but they are the agent of that company in Bangladesh and they have also been entrusted by the principal company with the right to take all legal and administrative measures for protecting the interest of their principal. In the written objection filed by the plaintiff against

the petition for rejection of plaintiff, plaintiff claims that KRAFT Food Holding Inc. vide their letter of appointment dated 13/08/1995 has given the plaintiff franchise for taking marketing strategy and doing all work with the Bangladesh Authority as and while will be needed for their products and brands goodwill. On perusal of the plaintiff, it is also found that the owner of the trademark "TANG" Kraft Food Holdings INC has been included as Pro-forma Defendant No. 5 and that defendant does not deny the right of the plaintiff to file the suit as his agent. Whether the plaintiff is a proper agent or a mere distributor of the owner of the concerned trademark is to be finally decided at the time of trial. On plain reading of the plaintiff it does not seem to be barred by any law. Accordingly, there is no lawful ground to reject the plaintiff under Order 7 Rule 11 of the Code of Civil Procedure.

Considering the facts and circumstances and in the light of above discussions, I am of the opinion that learned trial court has rightly rejected the application for rejection of plaintiff and the impugned order does not call for any interference.

Accordingly, the Rule has no merit and it is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Communicate this Judgment and Order to the concerned Court below at once.