

DLCT010114912019



**IN THE COURT OF SH. DEEPAK GARG,  
DISTRICT JUDGE-COMMERCIAL COURT-09  
(CENTRAL DISTRICT), TIS HAZARI COURTS, DELHI.**

**CIVIL SUIT (COMM) NO.:- 1612/2019**

**IN THE MATTER OF :-**

**Cosco India Ltd.  
2/8 Roop Nagar,  
Delhi – 110007**

**....Plaintiff**

**VERSUS**

**M/S B.K. Traders  
Through its Proprietor Sh. Swapan Dey  
3/2, Surendra Lal Pyne Lane,  
Kolkata – 700012**

**....Defendant**

**SUIT FOR PERMANENT INJUNCTION, INFRINGEMENT OF TRADE-  
MARKS AND COPYRIGHT , PASSING OFF, RENDITION OF AC-  
COUNTS AND OTHER RELIEFS**

**Date of institution : 27/08/2019**

**Date on which Judgment was reserved: 24/09/2025**

**Date of Judgment : 29/11/2025**

**::- J U D G M E N T -::**

1. By way of present judgment, this court shall adjudicate upon this suit filed by the plaintiff against the defendant for permanent injunction, infringement of trademarks and copyright, passing off, delivery up and rendition of accounts.

**PLAINTIFF'S CASE**

2. Plaintiff is a company incorporated under the Companies Act, 1956 on 25.01.1980 and has its registered office at 2/8, Roop Nagar, Delhi 110007 and Sh. Amit Jain is the authorised representative of the plaintiff.
3. That the plaintiff is a leading sports goods company and makes available to its customers a large variety of sporting goods, health and fitness equipments of international quality and of renowned world brands as well.
4. It has been further stated that the promoters of the plaintiff company being in Rubber Goods Manufacturing since early sixties developed bladders and bat grips as sports goods accessories. During 1976 they produced Sports Basket Ball and in 1980 they formed the plaintiff company exclusively manufacture all kind of Sports Balls & others related goods and the plaintiff company was a sister concern of Enkay India Rubber Company

Pvt. Ltd. which is also engaged in producing sports products for a number of years.

5. It has been further stated that plaintiff company was a private company until 15.03.1994 after which the company was transformed into a public company and after incorporation it took over the partnership firm coronation sportingball co. which started operating in 1976 and was engaged in the production of Sporting Balls.
6. It is has been further stated that plaintiff's company's shares are issued in India's stock exchanges and plaintiff company is also associated with the World Federation of the Sporting Good Industry, the Sport Goods Export Promotion Council and with the Sports Goods Foundation of India.
7. It has been further stated that plaintiff is a leader in sports goods in India having a very strong image and reputation in the industry and products of the plaintiff company are made to international specifications and standards. The plaintiff uses raw materials of highest quality in its production and has the best testing equipment of renowned makers that are installed in its labs at factory for testing raw materials and finished products such as tensile machine, shooter machine, water absorption machine, wear testing machine, rheometer, tennis ball testing equipments etc.

8. It has been further stated that the promoters of the plaintiff company are highly qualified people who have painstakingly spent decades in promoting the plaintiff company, resultantly the plaintiff company is one of the best sports brands in India.
  
9. It has been further stated that the plaintiff is the registered proprietor of the trademark Cosco, Cosco (Device), Cosco (Word Mark) and the trademarks of Plaintiff Company are registered under the provisions of the Trademarks Act, 1999. The said trademarks and the other trademarks are registered in the trademark registry of India, details of which are mentioned in para 8 of the plaint.
  
10. It has been further stated that the plaintiff has been granted trademark registration in respect of its sports goods in Bangladesh and Sri Lanka also. Plaintiff is also the owner of the artistic work in respect of the COSCO mark/label which bears a unique and fanciful style and amount to original artistic work. The writing of the word COSCO with two balls (footballs/Basketballs) in place of letter 'O' is an original artistic work developed, conceived and owned by the plaintiff and the said work is an original artistic work within the meaning of Section 2 (c) of the Copyright Act, 1957.

11. It has been further stated that plaintiff has also exports to many countries worldwide and also represents many top brands like TRETON (Sweden), STIGA (Sweden), Newgy (USA), JKEXER (Taiwan) for Indian Market. The plaintiff has a vast presence in all the fields of spots and everyone and anyone associated with sports whether professionally or otherwise associates the name COSCO with the finest quality and widest range of spots and fitness goods.
  
12. It has been further stated that the having built a name and reputation for itself, the plaintiff has constantly made efforts to promote and nurture the growing sporting talent in the country. The plaintiff's brand COSCO has become the synonymous with excellence in the sporting circles world over. The plaintiff has received the Export Excellence Award 2011-2012 from the Sports Goods Export Promotion Council and also recipient of the prestigious bronze awards for commendable performance in Export of Sports Goods during the year 2012-13, 2013-14 and 2014-15 by the Sports Goods Export Promotion Council.
  
13. It has been further stated that the plaintiff has spent huge amount of time and money in marketing and popularizing its range of sports and fitness goods under the trademark COSCO and also spent over six crores rupees from the year 2012-2017 on advertisement and promotional activities.

14. It has been stated that around October-November, 2018 the plaintiff started receiving complaints about poor quality of footballs and volleyballs bearing the plaintiff's mark COSCO being sold in the market and it was learnt through market sources that certain balls bearing the mark COSCO identical to the plaintiff's registered trademarks were being manufactured and sold in the market as original branded COSCO balls by some counterfeiters.
15. It has been further stated that on further investigation by the plaintiff it was revealed that defendant Sh. Swapan Dey Proprietor of M/S B.K. Traders, Kolkata was one such party operating in Kolkata through its business from 3/2 Surandra Lal Pyne Lane (Opposite Medical College Hospital Gate no. 3), Kolkata 700012 also at 11/1C Surandra Lal Pyne Lane, Kolkata 700012.
16. It has been further stated that it was found that the defendant was getting the counterfeit Cosco Footballs & Volleyballs manufactured by various parties in Meerut and Jalandhar and was found to be distributing COSCO counterfeit balls to parties Pan India and also keeps fake holograms and MRP stickers to be affixed to the counterfeit balls. Further, the defendant has tie up with major units for manufacture of all types of counterfeit sports goods of different brands with maximum of COSCO balls being supplied to markets all over India and the defendant prices all

the counterfeit balls at almost half of the price of the original COSCO balls.

17. It has been further stated that in the light of the facts so discovered, the plaintiff got an FIR no. 352/2019 lodged with the Muchipara Police Station and Enforcement Branch Kolkata on 11.12.2018 under Section 63 and 65 of Copyright Act for violation of its copyright in the label COSCO and under Section 420 IPC for cheating the public dishonestly. The abovementioned premises /factory of the defendant were raided by the police and a large number of counterfeit footballs and volleyballs of COSCO brand were found and seized.
  
18. It has been further stated that the adoption of mark COSCO by the defendant knowingly and dishonestly for sale of inferior quality products is deliberate and clearly reveals the dishonest and malafide intention of the defendant. It is apparent that the mark COSCO and label used by the defendant is identical to the plaintiff's registered trademark "COSCO" and sale of such counterfeit goods by the defendant is likely to cause utter confusion in the market and not only that it is also diluting the registered trademark "COSCO" of the plaintiff. Such unauthorised use of the plaintiff's registered trademark, and copyright is infringing the statutory and common law rights of the plaintiff.

19. It has been further stated that dishonest conduct of the defendant would lead to misappropriation of hard earned reputation and goodwill of the plaintiff's well known registered trademark COSCO, resulting in tremendous and incalculable loss of sales, damage and injury to the plaintiff's reputation and business, which cannot be compensated.
20. On the application of plaintiff filed under Order 39 Rule 1 and 2 CPC, the interim stay was granted restraining the defendants himself, their distributors, dealers, stockists, retailers, servants, agents etc. are restrained from manufacturing, selling importing, offering for sale, advertising and directly or indirectly dealing in any products bearing a mark which are identical or deceptively similar to the trademark of plaintiff COSCO amounting to infringement of the trademark/label of the plaintiff company till NDOH.

### **COURT PROCEEDINGS**

21. Summons of the suit were issued to the defendant. Service was effected upon the defendant and he appeared through his counsel and filed his written statement.

### **CASE OF DEFENDANT**

22. The defendant in its written statement has taken the plea that present suit of the plaintiff is not maintainable as the defendant is neither infringing the said trademark COSCO of the plaintiff or copyright

involved in the same nor passing off his goods as those of the plaintiff under the said trademark COSCO.

23. It is further averred that defendant is a small scale business and honestly and bonafidely running its trade and business of footballs, volleyballs and other items and he is not aware of the plaintiff or their constitution.

**DECREE OF PERMANENT INJUNCTION**

24. The defendant had clearly averred in the written statement that the defendant is neither infringing the said trademark COSCO of the plaintiff or copyright involved in the same nor passing off his goods as those of the plaintiffs under the said trademark COSCO and hence, in view of the categorical admission, it is clear that plaintiff is entitled to the decree of permanent injunction restraining the defendant and its agents with respect of the relief of infringement of the trademark and passing off.

25. Vide order dated 21.11.2023 the decree of permanent injunction was passed in favour of plaintiff and against the defendant restraining the defendant and its agents, their distributors, dealers, stockists, retailers, servants, agents and all others acting for and on their behalf from manufacturing, selling, importing, offering for sale, advertising, and

directly or indirectly dealing in any products bearing a mark which are identical or deceptively similar to the plaintiff's trademark COSCO amounting to infringement of the trademark and passing off of the defendant's goods as those of plaintiffs.

**ISSUES**

26. On the basis of the pleadings following issues were settled on 21.11.2023 :

i. Whether the plaintiff is entitled to the decree of rendition of accounts of profits earned by the defendant as claimed in the plaint?

OPP

ii. Whether the plaintiff is entitled to the decree of delivery up by the defendant as claimed in the plaint? OPP

iii. Whether the plaintiff is entitled to the decree of damages as claimed in the suit? OPP

iv. Relief

27. Vide order dated 13.03.2024 evidence in this case was directed to be recorded before Ld. Court Commissioner who was appointed by this Court for timely recording of the evidence and disposal of the case.

**PLAINTIFF'S EVIDENCE**

28. In the evidence recorded before the Ld. Court Commissioner, plaintiff examined PW1 Sh. Amit Jain, who tendered his evidence way of affidavit Ex.PW1/A and relied upon the following documents:

- i. Copy of Certificate of incorporation along with is Mark A.
- ii. Extracts of Minutes of meeting of Board Directors is ExPW1/2.
- iii. Extracts of Minutes of meeting of Board Directors authorizing Mr. Pankaj Jain is ExPW1/3.
- iv. Copies of Trademark registration certificate, legal proceedings certificates and their renewals is ExPW1/4 colly.
- v. Trademark of plaintiff registered in Bangladesh and Srilanka is ExPW1/5 colly.
- vi. Copyright certificate is ExPW1/6.
- vii. Copy of brochure in respect of COSCO Sports goods is ExPW1/7 colly.
- viii. Copies of various awards won by COSCO is ExPW1/8 colly.
- ix. Copies of various newspapers, posters etc. covering events sponsored by the plaintiff is ExPW1/9 colly.
- x. Colour printout of original boxes of COSCO balls is mark B.
- xi. Copies of the ITRs of the plaintiff for the FY 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 is ExPW1/10 colly.
- xii. Copy of price list of the COSCO balls highlighting the actual price is ExPW1/11.

- xiii. Copies of the invoices of the plaintiff is ExPW1/12 colly.
- xiv. Letter of authority, first dated 02.04.2018 valid upto 31.03.2019, second date 02.04.2019 valid upto 31.03.2020 is ExPW1/13 colly.
- xv. Copies of the training certificates granted to the officials of BIPL by the plaintiff company, both dated 26.02.2016 is ExPW1/14.
- xvi. Certificate highlighting the identification of original COSCO balls by hologram/sticker/markings signed by Sh. Pankaj Jain is ExPW1/15.
- xvii. Affidavit/certificate under Section 65B of Indian Evidence Act of Sh. Amit Jain is ExPW1/16.
- xviii. Certificate by way of affidavit under Order 11 Rule 6 (3) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 is ExPW1/17.

29. PW2 Sh. Dharendra Singh, who tendered his evidence way of affidavit Ex.PW2/A and relied upon the following documents:

- i. Letter of authority, first dated 02.04.2018 valid upto 31.03.2019, second date 02.04.2019 valid upto 31.03.2020 is already ExPW1/13 colly.
- ii. Copy of the internal authorization by BPIL is ExPW2/1.
- iii. Copies of trademark registration certificates, legal proceedings certificates and their renewal is already ExPW1/4.

- iv. Copyright certificate is already ExPW1/6.
- v. Copies of the training certificates granted to the officials of BPIL by the plaintiff company, both dated 26.02.2016 is already ExPW1/14.
- vi. Copy of the pre-raid report prepared by BPIL is ExPW2/2.
- vii. Copy of the defendant visiting card is Mark A.
- viii. Copy of the photograph of infringing goods during raid is ExPW2/4.
- ix. Copy of the FIR dated 11.12.2018 is ExPW2/5.
- x. Copy of the seizure memo is ExPW2/6.
- xi. Raid report prepared by BPIL is ExPW2/7.

**DEFENDANT'S EVIDENCE**

30. In the evidence recorded before the Ld. Court Commissioner, defendant examined DW1 Sh. Swapan Dey, who tendered his evidence way of affidavit Ex.DW1/A

**ISSUE WISE FINDINGS**

**Issue no. 1**

- i. Whether the plaintiff is entitled to the decree of rendition of accounts of profits earned by the defendant as claimed in the plaint?

OPP

31. The defendant did not produce any ledgers, Books of accounts, Invoices etc. and no evidence has been led by the plaintiff as well in this regard and hence, decree of rendition of accounts of profits made by defendant cannot be granted in favour of the plaintiff. This issue is decided accordingly.

**Issue no. 2**

ii. Whether the plaintiff is entitled to the decree of delivery up by the defendant as claimed in the plaint? OPP

32. In the present case raid was conducted through Enforcement Branch in case no. I(Muchipara PS)/ EB Cases No. 352 dated 11/07/2018 u/s 63/65 Copyright Act and 120B/420 IPC. As per the seizure list filed by Office of Deputy Commissioner of Police, EB Kolakata Police raid was made at Godown, Ground Floor, of Premises No. 3/2, Surender Lal Pyne Lane, Kolakata 700012 styled as B.K. Traders (Sports Goods Seller) seized goods are as under :

| S. No. | Article                         | Quantity |
|--------|---------------------------------|----------|
| 1.     | Cosco branded spurious Football | 205 pcs. |
| 2.     | Nivia branded spurious Football | 243 pcs. |

33. Corresponding Raid Report has also been filed on behalf of Brand Protectors India Pvt Ltd. who is stated to be duly authorized to investigate and file complaint in respect of counterfeit goods of COSCO Brand i.e. the Plaintiff herein.
34. Since the Plaintiff is only concerned with COSCO brand spurious goods for the purpose of delivery up it is only 205 pieces of COSCO named football be delivered up, to the Plaintiff. Since the raid was conducted through Enforcement Branch in case no. I(Muchipara PS)/ EB Cases No. 352 dated 11/07/2018 u/s 63/65 Copyright Act and 120B/420 IPC and the recovery of the counterfeit products took place during the said proceeding, the said material is the case property of the said criminal case and hence, at present no decree for directing to hand over/deliver all the infringing finished/unfinished materials bearing the plaintiff's trademark to plaintiff cannot be passed. This issue is decided accordingly.
35. As far as the relief of damages is concerned, it is relevant to state that during raid 205 pieces of counterfeit/deceptively similar products were found from defendant.
36. No further evidence has been led on behalf of the plaintiff in this regard. In the overall facts and circumstances of the case, it will be difficult to arrive at any calculation of damages suffered by the plaintiff on ac-

count of the acts of the defendant but keeping in view the stock of infringing goods /material recovered from the premises of the defendant and the duration for which the defendant have been running his business, the interest of justice in my considered opinion would be well served if damages to the tune of Rs.1,00,000/- payable by the defendant are awarded in favour of plaintiff. This issue is decided accordingly.

**Issue no. 4**

iv. Relief.

37. I pass a decree for a sum of Rs.1,00,000/- (₹ One lakh only), payable by the defendant to the plaintiff by way of damages. The damages awarded shall be payable, within a period of one month from the date of passing of the judgment failing which, the said amount shall carry interest @ 8% p.a. from the date of the decree, till realization. The plaintiff is also entitled to the costs of the suit.
38. Suit is accordingly decreed in favour of the plaintiff and against the defendant with costs of the suit.
39. Decree sheet be prepared after payment of deficit court fee, if any.

40. File be consigned to Record Room, after due compliance.

**Announced in the open Court on  
this 29<sup>th</sup> Day of November, 2025.**

(Deepak Garg)  
Distt. Judge, (Comm. Court)-09,  
Central District, THC : Delhi