

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2020
IN
COMMERCIAL APPEAL (L) NO. 31 OF 2020
IN
NOTICE OF MOTION NO. 1094 OF 2019
IN
COMIP NO. 596 OF 2019

Abhijeet Bhansali]
An Indian Inhabitant, having his]
address at A-1003/1004,]
Lake Florence, Lake Homes,]
P-I, A.S. Marg, Powari,] .. Applicant/
Mumbai-400 076] Appellant
[Ori. Defendant]

Vs.

Marico Limited]
A company incorporated under]
Indian Law, having its registered]
office at 7th floor, Grande Palladium,]
175, GST Road, Kalina, Santacruz (East)]
Mumbai-400098] .. Respondent
[Ori. Plaintiff]

....

Dr. Abhinav Chandrachud a/w Nainesh Amin & Ms. Sumedha Sawant
i/b N.N. Amin & Co. for Appellant / Applicant

Mr. Ravi Kadam Senior Advocate a/w Mr. Hiren Kamod, Mr. Nishad
Nadkarni & Ms. Khushboo Jhunjunwala i/b Khaitan & Co. for
Respondent.

....

CORAM: PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

RESERVED ON : FEBRUARY 10, 2020

PRONOUNCED ON : FEBRUARY 14, 2020

ORDER [PER PRADEEP NANDRAJOG, C.J.] :

1. Since an important question of law concerning freedom of expression arises for consideration in the Appeal we had admitted the same on 28th January 2020. By the present order we decide the Interim Application No. 1 of 2020 in which the prayer is made to stay the operation of the impugned judgment dated 15th January 2020.

2. Knowing that they can sway the opinion of a large number of individuals, social media influencers express opinions as a commercial venture is the opinion formed by the learned Single Judge to hold that they are liable to be subjected to a stricter scrutiny test vis-a-vis opinions expressed by others in non-commercial ventures.

3. This has been held by the learned Single Judge in paragraph 15 of the impugned order. The learned Single Judge has held that power comes with responsibility and that social media influencers cannot deliver statements with the same impunity as is available to an ordinary person

and must bear a higher burden to ensure there is a degree of truthfulness in their statements.

4. Meaning thereby, the freedom of speech and dissemination of information when granted to the press was in recognition of the fact that the press was an organ of thought, of character and refinement and thus not to be made liable for errors of opinion, but where the disseminator of the information allows commerce to piggy back on the opinion, the level of accountability would be more. This question of law would be decided in the Appeal.

5. The learned Single Judge had to express his opinion on a Video uploaded by the Appellant giving information concerning the coconut oil marketed by the respondent under the Trademark Parachute.

6. After noting the contents of the Video uploaded by the appellant, the learned Single Judge has discussed the law on disparagement vis-a-vis defamation and has culled out the trinity on which disparagement / slander is tested:

- (a) that the contents of statements are false;
- (b) that the said statements were made and published maliciously/
recklessly; and

(c) that the statements caused special damages to the plaintiff.

7. In the various sub-paras of paragraph 19, the learned Single Judge has listed four instances of falsehood:

(a) No proper analysis;

(b) Not showing what kind of organic coconut oil was used for comparing;

(c) Using virgin coconut oil to compare the same with the coconut oil marketed by the respondent; and

(d) Giving the viewer a representation that the exemplar oil used was an organic coconut oil as against the true fact that the exemplar oil used was virgin coconut oil.

8. In paragraph 20 of the impugned order, the learned Single Judge has extracted 12 offending statements from the Video as under:-

“a) *On the landing screen: “IT’S NOT AS GOOD AS YOU THINK!! I’WILL PROVE IT !!!! #BEAREDED CHOKRA”;*

b) *“... it smells similar to a dried or rotten coconut.”*

c) *“... toh who ek yellowish tint de raha hai”*

d) *“But who glass jiske andhar maine parachute coconut oil dalaa huva hai, uske andhar aap dekh sakte hai thode impurities hain. It is of a darker greyer shade than the organic coconut oil and*

kaafi clearly aapko impurities oos glass ke andhar dikhne waali hein.”

- e) *“Wo solidify bhi barabar se nahi hua hai”*
- f) *“... parachute oil is of an inferior quality to other organic cold pressed coconut oils.”*
- g) *“Jo yellow colour tha, it shows that it was heated to a higher temperature. Jo strong coconut flavour hai, jo strong coconut fragrance hai, proves that it is made from poor quality coconuts or it is heated to a very high temperature.”*
- h) In the background of a few slides *“Is Parachute coconut oil BAD?
1. For Skin/Hair – YES 2. For raw consumption – YES
3. For cooking – NOT REALLY”*
- i) *“agar aap aise insaan hai jo coconut oil skin ya hair ke liye use karne wale hain, then yes parachute coconut oil might not be the correct choice because uske andhar wo jo essential fatty acids hain which are actually going to help your hair or your skin in their anti-bacterial or anti-fungal properties, all those properties are going to be very less in parachute coconut oil because of its processing.”*
- j) *“If you are someone who is going to do that, then again parachute coconut oil is not the right choice because aapko bahaut saare usmein nutrients nahi milne wale hain, aapko sirf saturated fats milne wale hein.”*
- k) *“It is only good for cooking, nothing else.”*

- l) *“So guys, this was an extensive review of the parachute coconut oil with the tests and proof proving that is it of an inferior quality than an organic cold pressed coconut oil.”*

9. The learned Single Judge has highlighted forceful and decisive statements and phrases used in the Video such as:

- (a) I will prove it;
(b) Bring the truth to use; and
(c) Verdict.

10. The learned Single Judge has concluded that the Video conveys to the viewer that the coconut oil marketed by the respondent is of inferior quality; and being a result of reckless statements, reeks of malice.

11. Holding that the reputation of the respondent was being tarnished by the offending Video, the learned Single Judge has directed that the Video be taken down/removed or blocked from the site <https://www.youtube.com/watch?v=CveF0161CU>.

12. In arriving at the conclusions, the learned Single Judge has transcribed what the appellant spoke in the Video presentation and we reproduce the same from the impugned judgment.

13. The Video commences with a display of the Parachute coconut oil bottle, obviously to show to the viewer that on the bottle, the appellant has displayed a fresh coconut split into two parts with fresh coconut water spilling. Adjacent to the same is the Caption:

IT'S NOT AS
GOOD AS
YOU THINK !!
I'LL PROVE IT !!!!
#BEARDEDCHOKRA

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14. The story board i.e. the transcript of what the appellant spoke and can be heard when the Video is played are as under:

(i) Aaj ke iss video mein we are going to talk about one of the most reputable companies and one of the most reputable products in the Indian market, the parachute coconut oil. Agar aap isko use karte ho, kisiko jaante ho jo is product ko use karte ho apne ghar ke andar bhi ho sakte hein, toh please is video ko pura end tak dekhiyein. With that said, let's roll the intro.

(ii) Hey guys, welcome back to the Bearded Chokra. Jaise aapne intro mein dekha, we are going to talk about the Parachute coconut oil. Toh sabse pehle, bina koi time waste kiye product ke thore details jaan lete hein.

(iii) So the price is going to be Rs.40/- for the quantity of 100 ml. Agar mein iski packaging ki baat karu, then I am going to give 3 to 3 ½ out of 5. It's been the same for a very very long time **and the cap is too flimsy. Aadhi se jyaada baar toh who toot jaati hein.** Apart from this, if I talk about the fragrance, then the fragrance is very very strong. Bahut hi strong coconut ki smell aathi hein and it smells similar to a dried **or rotten** coconut.

(iv) Toh agar him ingredients ke taraf challengey, description dekhengein toh iske undher likha hai 100% pure coconut oil from the finest coconuts. Ab yeh sirf itna bathata hein ki yeh 100% pure coconut oil hein. Iska matlab yehi hein ki iske andhar coconut oil ke alawa kuch nahi hein, but kaunsi grade ki coconut oil hein, kaha se kaise extract kiya hein, kaunse coconut se extract kiya hein, non of this is mentioned over here.

(v) Ab mere pass ek test hein, jo mein aap se share karna chahato hu jo app bhi use ker sakte hein to find out the quality of your coconut oil which you have. Ab maine is test ke andhar kiya hein ki maine doh clear glasses liye hein, ek ke uper maine likha hein organic aur dusre ke uper maine likha hai Parachute aur jiske uper organic likha hein jaheer si baat hein I am going to be putting organic coconut oil joh mere paas hein and in the other glass I am going to be putting parachute coconut oil. Ab dono mein maine coconut oil daala huva hein aur ab mein een dono glasses ko cover karke daalne wala hu fridge ke aandhar for 30 minutes. Ab bahut logon ko yeh pataah hoga ki jabhi bhi aap coconut oil ko ek cool place mein rakogien, toh who solidify ho jayega and exactly aadhe ghante baad, mujhe yeh dikha hein ki dono joh glasses hai jinke andar coconut oil tha who huva hein solid. The organic coconut oil had become completely solid but the parachute coconut oil ke andhar ek ya do drop aise liquid reh gaye the, but that also got solidified jab maine usko aur thode dher ke liye fridge ke andar rakkha. Ab iske andhar test kya hein, freeze toh who waise bhi honewala tha.

(vi) So the first test is when you are pouring coconut oil into a clear glass, first thing you have to check is its colour. Toh jab liquid state

mein hota hein, aap yeh clearly dekh sakte hai- The organic coconut oil is completely clear. But jab mein parachute coconut oil daal raha hu, glass ke andhar, toh woh ek yellowish tint de raha hein.

(vii) Apart from this, the second part of the test is when you have frozen the coconut oil, jab woh solidify ho chukka hein. Ab jab aap esko test karoge, toh pure organic coconut oil should be completely snow white colour. Uske andhar koi bhi aapko impurities dikhne nahi chahiyeh, koi bhi stains nahi dikhne chahiyeh. So the glass jiske andhar jisme maine organic coconut oil dala tha, woh toh pure snow white jaisa dikh raha hai.

(viii) But woh glass jiske andhaar maine parachute coconut oil dala huva hein, uske andhaar aap dekh sakte hai thode impurities hein. It is of a darker greyer shade than the organic coconut oil and kaafi clearly aapko impurities oos glass ke andhar dikhne wali hein. Who solidify bhi barabar se nahi huva hein. Abye test share karne ki baad, aapko basically yeh toh sab pataah chal gaya hein, but now we are going into the conclusion.

(ix) So Sabse pehle mein aapko yeh bataunga ki pure virgin coconut oil jo hota hein cold pressed that is never heated to or never processed at temperatures heigher than 50 to 60 degree celsius Usse kum mein hi uski saari processing hoti hein. But joh expeller pressed coconut oils hote hein, those can be processed at temperatures just below 100 °C. Ab ye dono oils pure consider hote hein, lekin dono ki nutritional value bahut jyaada vary karti hein.

(x) Ab aur ek category hein, i.e. refined coconut oil and unrefined coconut oil. Ab refined coconut oil who hota hein jo bleach kiya jaat hein taaki who clear dikhe aur usse deoderised kiya jataah hein taaki usme se coconut oil ki smell na aayein. Ab yeh isliye karte hein, kyuki kuch logon ko coconut oil ke smell nahi pasand ya phir unhe koyi compound se allergy ho sakti hein ya irritation ho sakti hein. Toh aise refined coconut oils market mein available hein jo bahut hi jyaada saaste hote hein. They will have the fats of the coconut oil, on the other hand unrefined coconut oil matlab koi bhi bleaching process nahi hein koi bhi deoderisation process nahi hein. It has not undergone any such chemical process. Ab parachute coconut oil ek pure 100% edible oil hein, so that means it is not refined, toh abhi aapko yeh jaankari dene ke baadh, let's move on to the final verdict.

(xi) Ab is test se aur jitne bhi maine aapko information di hai, usse yeh toh prove ho chuka hein ki parachute coconut oil is of an inferior quality to other organic cold pressed coconut oils.

Joy yellow colour tha, it shows that it was heated to a higher temperature. Joh strong coconut flavour hai, Joh strong coconut fragrance hein, proves that it **is made from poor quality coconuts or it is** heated to a very high temperature. **Done reasons ho sakte hein for a strong coconut flavour** and the main thing to note is for a 500 ml ke liye, aap Rs.200 bhar rahe hein, but on the other hand, if you buy an organic cold pressed coconut oil that is costing you Rs.260 for 500 ml.

The one I am talking about is the pure and sure coconut oil. So pachaas saath rupay extra deke, agar aapko ek achchi quality ka coconut oil mil raha hein, then I don't understand why you will go for Parachute. But if you want an even higher grade of coconut oil, then you must go for something called virgine organic cold pressed coconut oil. Iske andhaar bahute saare criteria aa jaate hein. This is like the top of the line coconut oil and this will cost you a bit more. Aagar aap yeh category mein jaana chahate hein, this will have all the nutrients, all the antioxidants, all the medium chain, triglycerides which the coconut oil is known for an which it is you know beneficial for.

(xii) So abhi ek basic questionnaire le lete hain. Is parachute coconut oil Bad? I will give you reasons and I'll give you criterias.

(xiii) Agar aap aise insaan hai jo coconut oil aapke skin ya hair ke liye use karne wale hai, then yes parachute coconut oil might not be the correct choice because uske andhaar wo jo essential fatty acids hein which are actually going to help your hair or your skin in their anti bacterial or anti fungal properties, all those properties are going to be very less in parachute coconut oil because of its processing. Secondly if you are someone jo coconut oil raw consume karte hai jaise ki aapne agar mere salad wala video dekha hai, I recommend that you add one to two tablespoons of coconut oil raw and consume it raw. If you are someone who is going to do that, then again parachute coconut oil is not the right choice because aapko bohot saare usmein nutrients nahi milne waale hein, aapko sirf saturated fats milne waale hein. But agar aap ek aise insaan hein, jo coconut oil ko cooking ke andar use karne wale hein, then parachute coconut oil is okay because anyway you are going to heat it for long hours or at a higher temperature, so anyways sab kuch tab tak toh marne waale hein, saare nutrients toh jaane waale hein.

(xiv) So it is okay, if you can save like Rs.50 and buy a parachute coconut oil, but only the 100% pure edible version. So all in all, a final verdict, if you are going to use coconut oil on your skin, on your hair or for raw consumption, then virgin organic cold pressed coconut oil is the way to go. There is no second opinion about this. Parachute coconut oil does not meet the requirements and does not hit the checklist for that. It is only good for cooking, nothing else. **So guys, this was an extensive review of parachute coconut oil with the tests and proof proving that it is of an inferior quality than an organic cold pressed coconut oil.**

(xv) Agar aapka yeh video pasand aaya, agar aap iss video se kuch seekh ke ja rahe hai then please neeche who like button, woh share button aur woh subscribe button dabane na bhule. Agar aap mere koi video miss nai karna chahte toh who bell icon dabaiye taaki aapko har baar ek notification mil jaaye, Also mere saare social media links neeche description mein honge. Personal one on one consultation chahiye aapko then you can call me on the call me4 app. Its a paid consultation but its one on one right for your needs. With that said, jab tak hum log agli baar mile, be awesome, keep your beard awesome, and I'll meet you in the next one. Bye Bye!

15. The analysis of the Video could be penned – profiled in the stagewise visual representation: that the appellant has conveyed statements of facts and opinion by stating that the sale price of 100 ml. Coconut oil sold by the respondent is ₹ 40/- and on a scale of 5, he rated packaging between 3 to 3.5. The cap was flimsy and half the time it broke. The fragrance was strong and similar to dried or rotten coconut. The packaging records that the oil is 100% pure coconut oil extracted from the finest coconut which means that apart from coconut oil there is no other ingredient in the oil. The packaging does not disclose as to what grade coconut oil it is and from what source the coconut oil is extracted.

16. Thereafter the appellant informs the viewer that he has a test and wants to share the same with the viewer to find out the quality of the coconut oil. The appellant thereafter puts coconut oil claiming to be organic coconut oil in one glass and Parachute coconut oil in another glass and keeps both in a refrigerator and informs the viewer that he has taken them out from the refrigerator after 30 minutes and he presumes that the viewer knows that coconut oil solidifies when cooled. He shows the two glasses to the viewer and highlights that 1 glass, containing organic coconut oil, has completely solidified whereas the other glass

containing Parachute oil has 2 to 3 liquid drops which solidify on more cooling. He shows to the viewer that the organic coconut oil has a transparent colour and Parachute coconut oil has a yellowish tint. He shows to the viewer that organic coconut oil when frozen has a snow white colour but Parachute coconut oil has a greyish shade and one can see solids in the latter and none in the former.

17. The appellant has brought out in the video that the fragrance of the coconut oil under analysis is very strong and the Odour is similar to dried or rotten coconut. By comparing the optical view of organic coconut oil and parachute coconut oil in two glasses he informs the viewers that the organic coconut oil is seen to be transparent and the parachute coconut oil has a yellowish tint. Kept in a refrigerator for 30 minutes he displays to the viewers that the solidified organic coconut oil is of snow-white colour as against the greyish shade of parachute coconut oil. Further, solidification of the former is complete and of the latter, drops of liquid can be viewed within the solidified oil.

18. The information to the viewers given by the appellant that there are two processes by which coconut oil is extracted, is followed by the information that cold pressing and expeller pressing are the two

processes. Both result in pure coconut oil being extracted but they differ in the quality inasmuch as in cold pressing process the temperature does not cross 60 Degrees Celsius but in the expeller pressing process temperature reaches 100% Degrees Centigrade. Nutritional values change due to this difference in the temperature reached. Whereas nutrients in oil extracted by cold processing is high, in the latter, save and except fats, nutrients are destroyed.

19. The Appellant further informs the viewers that coconut oil could be refined or unrefined and that refined coconut oil is bleached so that it has a clear optical look and is de-odourised. The market is flooded with such kind of refined coconut oils which are cheap. These oils have fat content and are good only for purposes of cooking and not to be used as pure edible oil.

20. He informs that unrefined coconut oils are not subject to bleaching process nor de-odourisation process.

21. From the fact that parachute coconut oil shows a yellow tint and emits very strong odour, he draws the conclusion that parachute coconut

oil is unrefined but is inferior in quality to cold pressed coconut oil and this being the result of parachute coconut oil being extracted using the expeller pressed process. The strong coconut fragrance emitted by parachute coconut oil is linked by him to the **poor quality of coconuts** used or being heated to a very high temperature because both result in a strong coconut odour.

22. He then links the price at which respondent sells its coconut oil, being ₹ 40 per 100 ml, and informs the viewers that in view of the product which the viewers expect i.e. coconut oil extracted either from poor quality coconuts or by the expeller pressed process having utility of only for cooking, it makes no sense to purchase the Parachute oil at the price at which it is sold for the reason same quality oil is available in the market at cheaper rate.

23. He further informs that if the buyer wants to purchase coconut oil for external application i.e. for skin or hair, inasmuch as antibacterial or anti-fungal properties of this oil is less it's of no use. Further, if one wants to purchase coconut oil to be used as an ingredient for garnishing salad, due to lack of nutrients, parachute coconut oil is not the correct choice

since it has only saturated fats. If intended to be used for cooking then the oil can be used for the reason cooking is at a high temperature and inevitably destroys the nutrients. But the viewer is informed that if required for cooking purpose why should one pay more for Parachute coconut oil.

24. A clear statement of the value premise and the normative framework helps others obtain a better and more truthful view of the author's angle of perception, the tools of analysis employed and the moulds of thinking. The appellant has done so.

25. Where an objective analysis of words and expressions used is capable of being debated upon, the issue pertaining to defamation would have to charter a route in the context of freedom of speech -vs- reputation.

26. Where a person asserts a matter of fact, he cannot be restrained from expressing himself. Law does not so permit. Because if he fails to make good the fact asserted, damages are awarded.

27. But with respect to opinions and subjective issues, which cannot

demonstrably be shown to reveal the facts on which opinions are based, then different yardstick applies. If the statement is *per se* defamatory, an injunction must follow.

28. Labelling a statement as an opinion does not automatically make it an opinion or make it safe from the possibility of it being defamatory.

29. If a reader or listener could reasonably understand that the communication is stating a fact which can be verified, such communication is not treated as stating an opinion.

30. An expression of opinion may be simple or mixed. A simple expression of opinion is made after the facts on which the opinion is based are presented. A mixed expression of opinion is not accompanied by the facts. They may be employed by the speaker or assumed by those receiving the communication.

31. If an expression of an opinion is based on disclosed non-defamatory facts, an action is not supported, no matter how unreasonable or derogatory the opinion is.

32. However, if the expression of opinion is based on undisclosed or implied facts, support of an action depends on the understanding of the statement. If the recipient reasonably believes the truth of an undisclosed or implied defamatory fact about the subject of the statement, the speaker is liable for making defamatory statement.

33. In its pleadings, the respondent admits that coconut oil marketed by it is not extracted from fresh coconut and it uses Copra i.e. dried coconut and that it extracts the coconut oil using expeller pressed process to extract the oil from the Copra. This explains the yellowish tint in the oil marketed by the respondent as also a strong coconut odour. Thus the stand of the respondent accepts the statements of facts made by the appellant in the Video that the claim of the respondent projected by displaying a fresh coconut split into two with water dropping, obviously suggestive of the coconut oil being extracted from fresh coconut, is false.

34. Learned Senior Counsel for the respondent urged that the respondent is justified in puffing. Yes it is! But the appellant is also entitled to call off the bluffing. No exception can be raised by the respondent to said.

35. Notwithstanding the stand of the respondent that the coconut oil marketed by it has good nutritional value, the fact of the matter remains, and for which the appellant has shown expert opinion which has been noted by the learned Single Judge, that upon heating coconut oil loses nutrients such as vitamins etc.

36. Put in a capsuled form, the viewer of the Video is conveyed the message that coconut oils can be refined or unrefined. They can be virgin oil or mixed with other chemicals. Coconut oil can be extracted by cold pressing method or expeller processing method. The viewer is informed that the coconut oil marketed by the respondent is unrefined, which is a better oil than refined and is a virgin oil, but expeller processing method adopted. The viewer is informed that coconut oil extracted using expeller processing loses nutrients and is worthless for external application on the skin or for consumed for garnishing purposes. Its only value for money is for cooking and why should the consumer pay ₹ 46/- per 100 ml. for the respondent's coconut oil when similar quality oil is available at a cheaper price.

37. Prima facie, the learned Single Judge has wrongly held that the appellant has compared respondent's product with an unknown product

which was a virgin coconut oil. The learned Single Judge has overlooked the fact that even the respondent had claimed its oil to be virgin coconut oil. Thus, prima facie the 4 instances of falsehood in paragraph 19 of the impugned judgment which we have extracted in paragraph 7 above found by the learned Single Judge are incorrect. The only error committed by the appellant is to refer to the exemplar oil as organic coconut oil because the reference is to virgin coconut oil, but this is a trivial error and does not mislead the viewer who would clearly understand that the signature tune of the presentation is that Parachute coconut oil is not extracted from fresh coconuts and that the expeller pressed process is used to extract the oil from Copra and due to this reason the oil gets heated and loses its nutrients thereby rendering it money ill spent for external application on the body or for garnishing. It is value for money for cooking only, but if coconut oil at lesser price is available for cooking purposes, why pay more.

38. Shri. Abhinav Chandrachud learned counsel for the appellant stated that certain words and expressions used in the Video, though justified and permissible in law in the contextual setting of the sentences and paragraphs spoken by the appellant would be justified, but the

appellant does not wish to quibble and thus stated that the words and phrases highlighted in bold and underlined in paragraph 13 would be replaced by the phrase: **IT'S NOT WORTH THE PRICE YOU PAY FOR**. And the words and phrases highlighted in bold and underlined in various sub-paragraphs of paragraph 14 would be deleted.

39. The Interim Application is accordingly disposed of staying the operation of the impugned judgment dated 15th January 2020 but upon the condition that the appellant modifies the Video as stated by learned counsel for the appellant as noted in paragraph 38 above, which modification can be effected by the appellant within a period of two weeks from today.

40. Parties shall bear their own costs.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE