



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 30th OF JANUARY, 2026

MISC. PETITION No. 148 of 2026

*SOM DISTILLERIES AND BREWERIES LTD. THROUGH ITS
AUTHORISED SIGNATORY SHRI GAGANJEET SINGH JAGGI*

Versus

MOUNT EVEREST BREWERIES LTD.

.....
Appearance:

*Shri Ajay Bagadia - Senior Advocate assisted by Shri Yash Tiwari -
Advocate for the petitioner.*

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ORDER

Per. Justice Vijay Kumar Shukla

The petition is filed under Article 227 of the Constitution of India being aggrieved by the order dated 05.12.2025 passed by the Commercial Court, whereby the application filed by the petitioner / defendant seeking production of imperative evidence, which is subject matter of the suit has been rejected.

02. The respondent has filed a suit alleging infringement of respondent's registered trademark, copy right, infringement and piracy of the registered design by unauthorized commercial use of the respondent's embossed bottles by the petitioner. The petitioner filed an application under Section 151 Code of Civil Procedure, 1908 (hereinafter referred as "CPC")



for production of the imperative evidence for perusal and thereafter to pass an order for temporary injunction.

03. The said application was opposed by the respondent / plaintiff by submitting that the petitioner / defendant has tried to delay the proceedings from the beginning of the suit, during mediation and in filing the written statement. It was contended that such relief cannot be sought in an application under Section 151 of CPC under inherent powers, it is established that the inherent powers enshrined under Section 151 of CPC can be exercised only when no remedy has been provided for in any other provision of the CPC. The learned Single Judge considered the submissions made by counsel for the petitioner / defendant in Para 5 to 7, which are reproduced as under:

05. I.A. No. 2/2025 is filed u/s. 151 of CPC, 1908 by the defendant submitting that the suit regarding permanent injunction restraining infringement of Plaintiff's registered trademark STOK and the copyright in the caricature of the STOK PANDAS, and infringement and piracy of the Plaintiff's registered design and unauthorized use of the Plaintiff's embossed bottles by the Defendant. However, plaintiff failed to adduce any evidence as to infringement. Therefore, sought permission to stay the suit in absence of evidence or if required, for issuance of direction to the plaintiff to produce the bottle alleged to have been used by the defendant.

06. I.A. No. 2/2025 is replied by the plaintiff submitting that the application is a mere after thought, filed to delay the proceedings and frivolous, as the Hon'ble High Court has already taken the cognizance of the matter and passed the order dated 12.11.2024 in Writ Appeal no. 683 of 2024, wherein the said bottles in question have been duly depicted on page 12-13 of the order. The Hon'ble Division Bench restrained the defendant from using glass bottles which carry an embossment of other manufacturers on them, for the purposes of refilling and sale of liquor. Copy of order dated 12.11.2024 is attached and annexed as Annexure-1.

07. In the light of the facts and circumstances mentioned hereinabove, it appears that the said bottle was produced at the pre-litigation mediation. It is also settled that the burden of proving case in a civil suit, mainly lies on the plaintiff, in the instant matter, at the stage of evidence. At present, the temporary injunction application is to be considered. Hence, this Court does not found it proper, to issue direction regarding production of evidence at this stage, consequence lies on the party. Therefore,



applicataion filed by as the the defendant u/s. 151 of the Code of Civil Procedure, 1908 dt. 13.11.2025, 1.A. No. 2/2025 is hereby dis-allowed and dismissed, without any order as to cost.

04. Considering the Para 6 of the judgment, we called the record of Writ Appeal No.683/2024. The Bench of the Writ Appeal filed by the respondent herein was allowed and the impugned order dated 13.03.2024 passed by the learned Single Judge remitting the matter to the Commissioner of Excise for deciding the dispute afresh was set aside. The order dated 07.11.2020 of the Commissioner of Excise prohibiting all liquor / bear bottle units, including the private respondent using the old glass bottles which carry an embossment on them for the purposes of refilling and sale of liquor was upheld. The direction for prohibiting the reuse of the old bottles after reusing and scratching the embossed logo was set aside and the issue was left open to be decided by an Appropriate Authority in appropriate proceedings.

05. We find that in Para 20 of the Writ Appeal No.683/2024, the Court had considered the pictorial representation of both the bottles and held in Para 23 against the present petitioner that the private respondents are scratching out the embossed logos and marks clearly demonstrates that they also acknowledge that use of bottles with embossed logo and trademark would infringe the Intellectual Property rights of other manufacturers.

06. In view of the specific order passed by the Division Bench in the Writ Appeal No.683/2024, we find that the learned Single Judge has rightly made observation in Para 6 of the impugned order dated 05.12.2025.

07. Learned counsel for the petitioner vehemently argued that the plaint filed by the respondent is not in accordance with the amended



provisions of Order XI, which relates to disclosure, discovery and inspection of document in suits before the Commercial Division of a High Court or a Commercial Court. He argued that as per the provisions of Order XI Rule 1 of CPC, the plaintiff shall file a list of all documents and photocopies of all documents in its power, possession, control or custody, pertaining to the suit alongwith the plaint. He argued that in fact, the bottles which were asked to be produced by him falls within the definition of a document under Section 3 of the Indian Evidence Act and, therefore, the said article being a document ought to have been filed alongwith the plaint. Therefore, the Court ought to have ordered for production of two bottles.

08. We find that the aforesaid contention cannot be appreciated at this stage. The reason being that the learned Court below was not considering any application for dismissal of the suit on the ground that the suit was not filed in accordance with the provisions of Order XI Rule 1 of CPC, but the Court was considering the application under Section 151 of CPC for production of the bottles. The Court below has assigned reasons in Para 7 that the bottle was produced at the pre-litigation mediation and the same has been considered in Writ Appeal No.683/2024.

09. Counsel for the petitioner vehemently argued that from where this finding has been recorded is not clear. From the perusal of this order, we find that in Para 3 of the order, the Court below has mentioned about the earlier mediation proceedings. There is no pleading either in the petition or in the application for production under Section 151 of CPC that there was no such pre-litigation mediation. Therefore, the contention that mentioning of pre-



litigation mediation is contrary to the record cannot be accepted.

10. In view of the aforesaid, we do not find any illegality or perversity in the impugned passed by the Court below inheriting any interference under Article 227 of the Constitution of India.

11. The Misc. Petition is **dismissed**. No order as to costs.

(VIJAY KUMAR SHUKLA)
JUDGE

(ALOK AWASTHI)
JUDGE

Divyansh