

Delhi High Court Montari Overseas Limited vs Montari Industries Limited on 7 December, 1995 Equivalent citations: ILR 1997 Delhi 64 Author: A D Singh Bench: M Rao, A Singh JUDGMENT Anil Dev Singh, J. (1) This is an appeal against the order of the learned single Judge dated March 1, 1995 passed in 1.A. 129/95 in Suit No. 43/95, whereby the appellant (defendant in the suit) was enjoined from using the word 'MONTARI' or any other word deceptively similar thereto as part of its corporate name. (2) The facts giving rise to this appeal are as under:- (3) M/S. Montari Industries Ltd. the respondent (plaintiff in suit) was incorporated on January 27, 1983. As per the assertion of the respondent it has several subsidiaries namely Montari Leasing & Finance Ltd., Montari Chem Care Investments Ltd., Montari Agro Chem Investments Ltd., Montari Leather Ltd., Montari Financial services Ltd. and Montari Inks Ltd. The respondent and its subsidiaries are said to be manufacturing products like Chemicals agro-Chemicals, paints cosmetics, pharmaceuticals, leather articles, tea, coffee, clothing carpets, inks, food articles etc. The respondent also claims to have a turn over of Rs. 90 crores. (4) The appellant, on the other hand, M/s. Montary Oveseas Ltd. was incorporated on April 21, 1993. It is claimed that the fields of operation of the appellant and the respondent companies are different as the later is involved in production of worsted yarn & sale and purchase of blends, acrylic and hosiery. It is not disputed that the factory of the appellant was under construction when the suit was filed and had not been completed when the impugned order was passed by the learned single Judge. The appellant came out with public issues which opened on January 10, 1995 and closed on January 20, 1995. (5) On coming to know of the existence of the appellant on its entry in the capital market, the respondent instituted a suit (being Suit No. 43/95) on January 4, 1995 for permanent & mandatory injunction and damages. The respondent also moved an application (1.A. 129/95) praying for injunctive relief. In that application a composite prayer seeking an ad-interim ex-parte injunction restraining the defendant from using, trading and making public issue under the name Montari Overseas Limited, was made. The prayer was as follow :- "PASS an ad-interim exparte injunction restraining the defendant, their agents, servants and/or anyone claiming under them from using trading and from entering the capital market and making public issue under the name 'Montari' Overseas Limited." (6) In so far as the prayer of the respondent regarding the public issue was concerned, the same was not granted by the learned single Judge in view of the decision of the Supreme Court in Morgan Stanley Mutual Fund vs. Kartick Das, However, in regard to the use of corporate name by the appellant, the learned single Judge, as noted above, passed a restraint order on March 1, 1995. (7) While passing the order, learned single Judge observed as fallows :- "THE trend of judicial opinion is that reputation or goodwill in business generally attaches with the trade name adopted by a house. Such reputation or goodwill would be protected by the court. Copying of the name by a competitor is likely to cause an injury to its business. No one is entitled to commence or carry on business in such a way as to represent it to be the business of someone else or at the least associated with such someone else. If a person or house uses a name which is likely to deceive and divert the business

of some one else to him or is likely to cause confusion in the mind of the person likely to deal with such competing business house, then the impugned action or intended action would be prevented by the course on the same principles which are applicable to ordinary cases of passing off relating to sale of goods. Innocence of the defendant is no defense. The law applies with more rigour when the defendant is an inanimate person such as a company and when the name consists of a coined word". (8) The first ground of attack against the order of the learned single Judge is based on Sections 20 & 22 of the Companies Act. Learned counsel submitted that the Central Government had allowed the incorporation of the company as 'Montari Industries Limited' and if the respondent was aggrieved of the same, it could have applied for rectification of the name of the appellant company to the Central Government and should have utilised the remedy under the Companies Act. (9) We have considered the submission of learned counsel but we have not been persuaded to accept the same. Section 20 of the Companies Act, 1956 provides that no company will be registered by a name which is similar or identical or too nearly resembles the name by which a company in existence has been previously registered. In case where a company has been incorporated with a name which is identical or too nearly resembles the name of a company which has been previously incorporated, Section 22 makes a provision for getting the the names of the former altered. No doubt, Section 22 makes provision for rectification of the name of a company which has been registered with undesirable name but that does not mean that the common law remedy available to and aggrieved party stands superseded. The plaintiff will have two independent rights of action against the defendant who may be using the corporate name of a previously incorporated company, one under Section 22 of the Companies Act and the other for injunction restraining the defendant from using the corporate name of the plaintiff or from using a name bearing close resemblance which may cause or which is likely to cause confusion in the minds of the customers or general public in view of the similarity of names. Both the remedies, one under Section 22 and the other under the common law operate in different fields. Under section 22 of the companies Act, the Central Government has no jurisdiction to grant any injunction against the use of an undesirable name by a company whereas in a suit for permanent injunction the court can pass an order injecting the defendant from using the name which is being passed off by the defendant as that of the plaintiff. In *M/s. K.G. Khosla Compressors Ltd. vs. , Khosla Extraktions Ltd. and others*, Air 1986 Delhi 184(2), the plaintiff filed a suit against the defendant for permanent injunction restraining the latter from using, trading or carrying on business under the name and style of Khosla Extraktions Ltd. on the ground that the plaintiff was incorporated as K.G. Khosla Compressors Ltd. prior to the incorporation of the defendant and it cannot be allowed to imitate or copy the trade name of the appellant. Along with the suit, the plaintiff had filed an application under Order 39. Rules 1 and 2 for temporary injunction restraining the defendant from using trading and carrying on business and from entering capital market and making public issue under the name M/s. Khosla Extraktion Ltd. In that application, the defendant had taken the same plea

which has been taken in the present case about the competence of the court to grant relief in view of Sections 20 and 22 of the Companies Act, 1956. The learned single Judge after review of the case law held that the Court would, have jurisdiction to grant injunction and Sections 20 and 22 of the Companies Act, 1956 in no way limit the jurisdiction of the Civil Court. In this regard the Court observed as follows:- “BUT then in the present suit the plaintiff has also based its cause of action on passing off of the name of defendant No. 1 as that of the plaintiff. I would rather say that jurisdiction of the Central Government under Ss. 20 and 22 of the Act and the jurisdiction of the Civil Court operate in two different fields. Further the Central Govt. has to act within the guidelines laid down under S. 20 of the Act, while there are no such limitations on the exercise of jurisdiction by the Civil Court.” (10) The view taken by the learned single Judge in that decision, if we may say so with respect, lays down the correct law. Accordingly, we find no force in the submission of the learned counsel for the appellant which is hereby rejected. (11) The learned counsel for the appellant then submitted that the learned single Judge was not right in passing an order restraining the use of the word ‘MONTARI’ in its corporate name. Learned counsel submitted that adoption of that name by the appellant was not due to lack of bonafides on its part. He contended that the respondent has not produced any evidence to show that any confusion has been created in the minds of the customers or any member of the public by the use of the word “MONTARI’ by the appellant in its corporate name nor is there any evidence to show that the business of the respondent has been diverted by the appellant. He submitted that there was no question of any confusion as the appellant was dealing with items which were different from the items in which the respondent was trading. Learned counsel also referred to the fact that in the prospectus, advertisements and press reports of the company, it was pointed out that the appellant has nothing to do with the respondent company. As a sequitor, he submitted that there was no intention on the part of the appellant to draw any undue benefit or identify itself with the respondent company. (12) On the other hand, learned counsel for the respondent submitted that the use of the word ‘MONTARI’ in the corporate name of the appellant was not bonafide. He alluded to the fact that the respondent was incorporated as far back as on January 27, 1983 while the appellant, copying the word ‘MONTARI’ from respondent’s corporate name launched the company on April 21, 1993. The learned counsel further submitted that the appellant has established a name in the market and has acquired great reputation. The use of the word ‘MONTARI’ by the appellant to mislead the public into believing that the defendant belongs to Montari group of the companies of the respondent. (13) It is well settled that an individual can trade under his own name as he is doing no more than making a truthful statement of the fact which he has a legitimate interest in making. But while adopting his name as the trade name for In’s business he is required to act honestly and bonafidely and not with a view to cash upon the goodwill & reputation of another. An individual has the latitude of trading under his own name in recognition of the fact that he does not have choice of name which is given to him. However in the case of a Corporation the position

is different. Unlike an individual who has no say in the matter of his name, a company can give itself a name. Normally a company can not adopt a name which is being used by another previously established company, as such a name would be undesirable in view of the confusion which it may cause or is likely to cause in the minds of the public. Use of name by a company can be prohibited if it has adopted the name of another company. It is well settled that no company is entitled to carry on business in a manner so as to generate a belief that it is connected with the business of another company, firm or an individual. The same principle of law which applies to an action for passing off of a trade mark will apply more strongly to the passing off of a trade or corporate name of one for the other. Likelihood of deception of an unwary and ordinary person in the street is the real test and the matter must be considered from the point of view of that person. Copying of a trade name amounts to making a false representation to the public from which they have to be protected. Besides the name of the company acquires reputation and goodwill, and the company has a right too to protect the same. A competitor cannot usurp the goodwill and reputation of another. One of the pernicious effects of adopting the corporate name of another is that it can injure the reputation and business of that person. (14) In the present case, there are certain striking features which have to be taken note of in arriving at a decision whether the appellant in adopting the word 'MONTARI' as a part of its corporate name is likely to deceive or cause confusion in the minds of the public. It is not disputed that the appellant was incorporated on April 21, 1993 after about a decade of the incorporation of the respondent. From the record of the trial Court it appears that the respondent and its other group of Montari companies has an established business. On the other hand, the appellant has entered the capital market very recently. It was noticed by the learned single Judge that the factory of the appellant was in the process of completion and its products have not entered market. It was not claimed, either before us or in the memo of appeal, that the products of the appellant are now being marketed. The respondent has explained as to why the word 'MONTARI' was selected by it. It is explained that the word was coined by the respondent by deriving a part of it from the name of the Chairman of the company and part of it from the name of his wife. The appellant has also tried to furnish some explanation by urging that the word MONTARI' is also of significance to it and the same was derived from the names of the father of the Managing Director of the company and his father in-law. It claimed in the written statement that the father of the Managing Director is Mohan Singh while the name of his father-in-law is Avtar Singh. However, during arguments it was not disputed that the name of the father of the Managing Director was Kirpal Singh. This shows that the word 'MONTARI' has nothing to do with the name of the father of the Managing Director. The explanation appears to be not correct. If this is so then, what was the purpose of selecting the word 'MONTARI' by the appellant for" use in its corporate name. No satisfactory explanation has been given by the appellant in this regard. It is also not a case where the appellant had no knowledge of the corporate name of respondent. Rather the stand of the appellant is that in the prospectus and press reports

of the company, it was pointed out that the appellant had nothing to do with the respondent. In the circumstances it appears to us that the adoption of the corporate name by the appellant with the word “MONTARI” figuring in it, was not innocent. When a defendant does business under a name which is sufficiently close to the name under which the plaintiff is trading and that name has acquired reputation and the public at large is likely to be misled that the defendant’s business is the business of the plaintiff, or is a branch or department of the plaintiff the defendant is liable for an action in passing off. Even if the word “MONTARI” as part of the corporate name of the appellant was derived from the names of the father and father-in-law of the M.D. of the appellant company it would still be liable for an action in passing off as the use of the word “MONTARI” in its corporate name is likely to cause confusion and injure the goodwill and reputation of the respondent, in the sense that this is a reasonable and foreseeable consequence of the appellant’s action. We find from the record of the trial court, which contains the Memorandum of Association of six Montari group of companies and annual reports of Montari Industries Ltd, that Montari group of industries have large operations and some of them have been in business for a long time. The members of the public are likely to mistakenly infer from the appellant’s use of the name which is sufficiently close to the respondent’s name that the business of the appellant’s company is from the same source, or the two companies are connected together. (15) The question to consider in a case of similarity in trade names is whether ordinary person or public at large will mistake one company for the other. Relying on the observation of Sir George Jessel in *Guardian Fire and Life Assurance Co. Vs. Guardian and General Insurance Co. Ltd.* (8) (1880) 50 L.J. Ch. 253 to (3) to Bombay High Court in *National Bank of India Vs. National Bank of Indore* Air 1923 Bombay 119 (4) observed as follows: “. BUT the question in this class of cases is not whether the intelligent section of the public is likely to be deceived but whether the public at large is likely to be deceived. Further as observed by Sir George Jessele in *Guardian Fire and Life Assurance Co. vs. Gurdian and General Insurance Co. Ltd* (8),”the public arc careless, and it is no use supposing that if they paid a very moderate attention to names they would sec they were not the same but only similar“. (16) This court in *Kwality Restaurant & Ice Cream (1978) Company, New Delhi Vs. Kwality Confectioners, New Delhi* 1981 Ptc 276 (5) had an occasion to deal with a case where the plaintiff Kwality Restaurant and Ice Cream Company, New Delhi brought a suit for injunction for restraining the defendant Kwality Confectioners, New Delhi from using the word “KWALITY” in latter’s trade name. The court while granting injunction against the defendant observed : “I may say here that the law relating to trade names and trade marks is based partly on the Trade and Mechandise Marks Act and partly on ordinary law. Thus a person who has a goodwill relating to business particularly in respect of trade name has a right to injunct others from using the name which is similar or deceptive. Reference”Kerly’s Law of Trade Mark and Trade Name, Tenth Edition at page 408 ; “IF the name of the defendant company is one which is calculated to lead to the belief that it is an agency, branch or department of the plaintiff company, an injunction will

beganted. Where there is probability of confusion in business, an injunction will be granted even though the defendants adopted the name innocently.” (17) In *Hormus Ardeshar Kandawala Vs. Ardeshar Cowashji Dustoor* the facts were that the plaintiff for about 20 years carried on business of dyers and cleaners under the name and style of “Bombay Dyeing and of Cleaning Co.” at 1. Lindsay Street, in Calcutta. The plaintiff, however, shifted to another shop in the same locality. Thereafter the defendant commenced similar business at 1, Lindsay Street, plaintiff’s old place of business, under the name and style of “Bombay Art Dyers and Cleaners”. In a suit for injunction and damages by plaintiff against the defendant it was held as follows: “IN my opinion, apart from the motive of the defendant in selecting the name, the name itself, and the distribution and contents of the notice boards, make it likely that old customers of the plaintiff’s would take the defendant’s shop to be the plaintiff’s and selecting the premises formerly occupied by the plaintiff certainly made it all the more incumbent on the defendant to distinguish his business from that of the plaintiff. In my opinion, one of the few distinctions between the principles applicable to this class of case and cases relating to trade-marks is that the rule as to anything being common to the trade does not apply to the former class of case, except when it is claimed that the business name or part of it connotes the plaintiff’s goods or work”. “THERE are two distinct classes of rights in respect. of the name of a business: one only arises when that name or some part of it, whether it be what is known as a fancy word, an ordinary word or a geographical name, has come to mean the goods of, or to connote the skill, probity or excellence of the particular business. The other class of right is to be distinct name, that is the right to prevent others from adopting a name which is likely to lead the public to mistake another new business for the plaintiff’s business.”. (18) In *M/s. Kala Niketan Vs. M/s. Kala Niketan* the plaintiff, who was carrying on business under the name and style of ‘Kala Niketan’, instituted a suit against the defendant for permanent injunction restraining the defendant from carrying on business in Sarees and other textiles goods under the trade name ‘Kala Niketan’, this Court while granting decree for permanent injunction held as under: “23.The trade name ‘Kala Niketan’ was not descriptive of the Sarees in which the parties were dealing. Defendant was, therefore, not entitled to trade under the name ‘Kala Niketan’ and the plaintiff was entitled to relief of permanent injunction.” (19) In *Simatul Chemical Industries Pvt. Ltd. v. Civatul Ltd.* the plaintiff Cibatul Ltd. claimed injunctive relief against the defendant Simatul Chemical Industries on the ground that the name under which new company Simatul was doing business was deceptively similar to the name of the plaintiff and the members of the public were likely to believe that they were dealing with the plaintiff or with the company having same connection or association with the plaintiff. The Gujrat High Court while granting injunction took note of the fact that the defendant had commenced production subsequently under a name similar to that of the plaintiff which was likely to cause deception. (20) In *Exxon Corpn. and other v. Exxon Insurance Consultants International Ltd.*, (1981)2 All Er 495 (9) the plaintiff Exxon Corporation was dealing in petroleum and similar products.

The defendant company, though had no connection with the plaintiff, adopted the word “EXXON” as part of its corporate name. The plaintiff brought an action for injunction for restraining the defendant from passing off its goods as that of the plaintiff’s goods by use of the word “EXXON”. It was held that the plaintiff was entitled to an injunction restraining the defendant from using the word “EXXON” as part of its corporate name. (21) It was submitted by the learned counsel for respondent that the objects of respondent company as enshrined in the Memorandum of association are very wide and the business which the appellant is entering into is also covered by them. Besides it is claimed that the field of activity of appellant would be proximate to the field of the activity of the respondent. (22) In considering the question whether the activities of the appellant are likely to cause confusion or pose a real and tangible risk of injuring the respondents reputation or goodwill, regard must be had to the fact that appellant is using a name similar to that of the respondent and it will amount to making a representation that the appellant is associated with the defendant. The appellant cannot be permitted to appropriate the reputation and goodwill of the respondent to promote its business interests. (23) Regard must also be had to the fact that the expansion of business by the appellant and respondents in future may bring the parties into competition (See *The Dunlop Pneumatic Tyre Co. Ltd. Vs. The Dunlop Lubricant Co.* 1899(XVI)RPC 12 (10) at page 15 and *Crystalate Gramophone Record Manufacturing Co. Ltd. Vs. British Crystalite Co. Ltd.* 1934 (51) Rpc 315 at page 322(11). (24) The quality of goods and services and kind of business which a new company undertakes and the credit which it enjoys may injure the reputation of the existing company due to adoption of a name by the former which is similar to the name of latter as they may be assumed to be connected with each other (See. *Ewing Vs. Buttercup Margarine Company Ltd.* 1917 Vol. II (12) Chancery Division 1 at page 3 and *Ewing (Trading as the Buttercup Dairy Company Vs. Buttercup Margarine Company Ltd.* 1917 (Vol. 34) Rpc 232 at page 239) (13). (25) There is another aspect of the matter. Section 20 of the Companies Act 1956 treats a name of the company to be undesirable if it is identical with or too nearly resembles the name by which a company in existence has been previously registered. Since the legislature itself considers name of a company which is identical with the name of the other pre existing company to be undesirable, the legislative intent must be given effect to by giving injunctive relief to a plaintiff against a defendant who has copied the corporate name of the plaintiff. (26) The decisions in *British Association of Aesthetic Plastic Surgeons Vs. Cambright Ltd. and others* (1987) R.P.C. 549, (14) *Nestle’s Products Limited and another Vs. M/s. Milkmaid Corporation and another* Ilr (1973) 1 Delhi 203, (15) *Marathon Oil Company and another Vs. Marathon Shipping Company Limited* (1968) Vol. 15 R.P.C. 443 (16) and *S.M. Chopra & Sons Vs. Rajendra Prasad Srivastava* cited by the learned counsel for the appellant do not help the case of the appellant. None of these cases apply to the facts of the present case. Besides in these cases implication of Sections 20 and 22 of the Companies Act, 1956 or similar provisions were neither urged nor considered. (27) Since actual production by the appellant has yet to take place it will be less advantageous to the appellant

if it is injuncted at the threshold from using the word ‘Montari’ as a part of its corporate name. (28) Having regard to the facts and circumstances of the case, we are of the opinion that the learned single Judge was right in coming to the prima facie conclusion that the respondent had made a case for grant of an interim injunction. Accordingly the appeal has no merit and the same is dismissed but without any order as to costs.