

Bajaj Finance Ltd & Anr vs Niko Das & Anr on 13 April, 2022

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 233/2022

BAJAJ FINANCE LTD & ANR.

..... Plai

Through: Mr. Saikrishna
Mr. Sidharth Chopra, Mr. Nitin Sharma,
Mr. Vivek Ayyagari, Mr. Angad S. Makkar
Ms. Anjali Agrawal, Advocates.
versus

NIKO DAS & ANR.

..

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 13.04.2022 I.A. 5783/2022(seeking leave to file additional documents)

1. Present application has been preferred on behalf of the Plaintiffs seeking leave to file additional documents under Order 11 Rule 1(4) CPC.

2. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015.

3. Application is allowed and disposed of.

I.A. 5784/2022(exemption)

4. Subject to the Plaintiffs filing originals, clearer copies and documents with proper margins, which they may seek to place reliance on, within four weeks from today, exemption is granted.

5. Application is allowed and disposed of.

I.A. 5782/2022(seeking exemption from serving Defendants No. 5 and 6)

6. Since there is an urgency in the matter and the matter is being heard today, Plaintiffs are exempted from serving Defendants No.5 and 6 with advance notice.

7. For the reasons stated in the application, the same is allowed and disposed of.

CS(COMM) 233/2022

8. Let plaint be registered as a suit.

9. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 18.07.2022. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs.

10. Replication be filed by the Plaintiffs within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiffs.

11. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

12. List before the learned Joint Registrar on 18.07.2022.

13. List before the Court on 05.05.2022.

I.A. 5781/2022(directions)

14. Present application has been filed under Section 151 CPC seeking direction to Cyber Cell, Special Cell, Delhi Police.

15. Issue notice to the Defendants through all prescribed modes, returnable on 05.05.2022.

16. Dasti in addition.

I.A. 5780/2022 (under Order 39 Rules 1 and 2 CPC)

17. Issue notice to the Defendants through all prescribed modes, returnable on 05.05.2022.

18. Dasti in addition.

19. Present application has been preferred by the Plaintiffs under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of ex-parte ad-interim injunction.

20. It is averred that Plaintiff No. 1 is a Deposit Accepting Non-Banking Finance Company registered with the Reserve Bank of India. Plaintiff No. 1 is in the business of finance and extending various types of loans such as Personal Loan, Consumer Durable Loan, Business Loan and Flexi Loan to its customers as per their requirement and subject to meeting the criteria of Plaintiff No. 1. Plaintiff No. 1 enjoys a leadership position in the financial services market in India. Plaintiff No. 1 has worked with almost 48.6 million customers since its incorporation in 2007 and has expanded its footprint to 2,988 locations with vast distribution networks and a massive presence in the digital space.

21. It is averred that Plaintiffs with bona fide intent and during its regular course of business, have adopted the trademarks 'BAJAJ', 'BAJAJ FINANCE' and in Class 36 for insurance, financial and monetary affairs.

22. It is further averred that Plaintiff No. 1 is the authorized user and licensee of these registered trademarks, whose proprietor is Plaintiff No. 2, i.e., 'Bajaj FinServ Limited', which is a part of 'BAJAJ GROUP'. Plaintiff No. 1 being a Licensee, has been extensively using 'BAJAJ FINSERV' as a part of its brand campaign and for every mode of communication/correspondence. Plaintiff No. 2 has licensed the Plaintiffs' Marks to Plaintiff No. 1 vide License Agreement dated 23.12.2011 and Plaintiff No. 1 has accordingly been using the Plaintiffs' Marks in connection with its business operations and the plethora of financial services offered by it.

23. The Bajaj Group has been using the trademark 'BAJAJ' since 29.11.1945 and the trademark has earned widespread reputation and goodwill. It has been registered in India under various classes covering range of goods and services. The trademark is a well-known mark within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999 and has been inserted in the list of well-known marks maintained by the Trade Marks Registry, as a result of which it is entitled to the highest degree of protection under law.

24. Plaintiffs coined and adopted trademark 'BAJAJ FINSERV' in 2009 and have been using the same ever since. Plaintiffs' website/domain name www.bajajfinserv.in is registered by Plaintiff No.1. Plaintiffs have secured various trademarks registrations, which are valid and subsisting and details whereof have been furnished in para 19 of the plaint.

25. It is averred that the astounding reputation of the Plaintiffs' business is best illustrated by the magnitude of the Plaintiffs' revenue, which for the financial year 2020-2021 for Plaintiff No.1 stood at INR 4,767.46 crores and for Plaintiff No.2 stood at INR 6,655.12 crores and the Plaintiffs' business continues to grow rapidly. Details of the revenue of the Plaintiffs between 2018-2021 are furnished in paragraph 21 of the plaint.

26. It is further averred that Plaintiffs have incurred significant expenditure and efforts on the promotion of their business including advertisement, etc. which has been indicated in the plaint, as per the books of account and annual reports, as certified by the Chartered Accountant.

27. In the light of the aforesaid, it is contended by learned counsel for the Plaintiffs that the Plaintiffs have both statutory and common law rights in the trademarks, as aforementioned and are entitled to their protection. Any unauthorised use of an identical and/or deceptively similar mark/logo and/or essential and distinctive features of the said marks would amount to infringement and/or violation of Plaintiffs' proprietary rights and passing off.

28. It is averred that Defendants No. 1 and 2 are rogue entities that approach innocent and unsuspecting members of the public by contacting them through, inter alia, phone calls, SMS text messages, WhatsApp, etc. and claim to offer financial services provided by the Plaintiffs. In order to lend credibility to their fraudulent activities, the Rogue Defendants share fake employee IDs and

'Loan Approval Letters' bearing the Plaintiffs' Marks with potential customers and thereby dupe such unsuspecting members of the public into believing that Defendants No. 1 and 2 have been authorized by the Plaintiffs to offer their financial services. Samples of such fake employee IDs and 'Loan Approval Letters', are scanned and placed below :

29. It is further averred that Defendants No. 1 and 2 subsequently inform potential customers that their loan requests have been approved and to process such loan amounts, Defendants No. 1 and 2 seek payment of a processing fee/insurance fee from such unsuspecting customers. To facilitate such payments, Defendants No. 1 and 2 share details of bank accounts registered with the Defendants No. 5 and/or 6 and/or phone numbers registered with eminent digital payments applications, arrayed as Defendants No. 3 and 4. Through this fraudulent scheme, Defendants No. 1 and 2 dupe and deceive unsuspecting members of the public into paying their hard earned monies to rogue Defendants, who purport to be authorized employees of the Plaintiffs or operating under the aegis of the Plaintiffs, through inter alia illegal and unauthorized adoption and misappropriation of the Plaintiffs' marks.

30. It is pleaded that Plaintiffs have received information and material, evidencing the illegal and fraudulent activities of Defendants No.1 and 2, through complaints from aggrieved customers who have been duped and defrauded by them.

31. It is contended by learned counsel for the Plaintiffs that the marks of the Plaintiffs, as detailed in the plaint, are registered and thus they are entitled to their sole and exclusive use in relation to the services for which the registrations have been secured. Plaintiffs' services under the said marks enjoy insurmountable goodwill and reputation, which is linked solely and exclusively with Plaintiffs and no one else. The rogue Defendants' wrongful and dishonest acts of using the identical and/or deceptive impugned mark(s) have caused and will continue to cause confusion and deception in the minds of the public and members in the trade circles. Further, it would lead to a common belief that there is a definite association/connection between the Plaintiffs' and the rogue Defendants' services. Resultantly, the use of the Plaintiffs' mark by the rogue Defendants amounts to trademark infringement as well as passing off.

32. Having heard learned counsel for the Plaintiffs, this Court is of the opinion that Plaintiffs have made out a prima facie case for grant of ex parte ad-interim injunction. Balance of convenience lies in favour of the Plaintiffs and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

33. Accordingly, the rogue Defendants (Defendants No.1 and 2), their owners, partners, proprietors, officers, servants, employees and all others in capacity of principal or agent acting for and on their behalf or anyone claiming through, by or under them, are restrained, in any manner, from directly or indirectly using the Plaintiff's marks inter alia i.e., 'BAJAJ';

'BAJAJ FINANCE'; FINSERV; and or any other mark identical/deceptively similar to the Plaintiffs' marks, amounting to trademark infringement of the Plaintiffs' marks i.e., 'BAJAJ'; 'BAJAJ FINANCE'; FINSERV; and .

34. Defendants No.1 and 2, their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under them, are hereby restrained, from, in any manner, using directly or indirectly the Plaintiffs' marks i.e., BAJAJ'; 'BAJAJ FINANCE' and or any other mark identical/deceptively similar to the Plaintiffs' aforesaid marks, amounting to passing off of the Plaintiffs' registered trademarks, 'BAJAJ'; 'BAJAJ FINANCE'; and .

35. Plaintiffs shall comply with the provisions of Order 39 Rule 3 CPC within five days from today.

JYOTI SINGH, J APRIL 13, 2022/st