

Bench: Reva Khetrapal

REPORTED

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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DATE OF RESERVE: July 30, 2009

DATE OF DECISION: August 27, 2009

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CS (OS) 331/2007

M/S KRBL LIMITED

..... Plaintiff

Through: Mr.S.K.Bansal with Mr.Akshay
Srivastava, Advocates.

versus

RAMESH BANSAL & ANR.

..... Defendants

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

The present suit has been filed by the plaintiff under Sections 134 and 135 read with Section 27(2) of the Trademark Act, 1999 and under Section 51 of the Copyright Act, 1957 for permanent injunction restraining the defendants from passing off their goods as those of the plaintiff, infringement of copyright, rendition of accounts, delivery up and damages.

2. The plaintiff's case, succinctly stated, is that the plaintiff is a company duly incorporated under the provisions of Indian Companies Act, 1956 having its registered office at 5190, Lahori Gate, Delhi-110 006. The plaintiff company is engaged in the business of processing, marketing and exporting of rice of various kinds, including Basmati rice. In the year 1993, the plaintiff through its predecessors, i.e., the partnership firm adopted the mark/label "INDIA GATE" with the device "INDIA GATE" in relation to the business of rice in India and has built up a valuable trade, goodwill and reputation thereunder. By an agreement dated 01.04.1996, this partnership firm was taken up as a going concern with all its assets and liabilities, including the rights related to trade mark/label "INDIA GATE" with device of "INDIA GATE", by the incorporated company of M/s. Kushi Ram

Behari Lal Limited. The name of this company was subsequently changed to M/s. KRBL Limited. On 17.03.1999, the plaintiff filed an application for registration of its aforesaid trade mark/label under the Trade Marks Act, 1999 under Trade mark Application No.846009 in Class 30, which application is pending adjudication. Pertinently since this application was filed by the plaintiff's predecessors M/s. Kushi Ram Behari Lal Limited, Form TM-16 was filed in the office of the Registrar of Trademark to bring the said application for registration in the name of the present plaintiff. The application of TM-16 was duly allowed by the Trademark Office. However, due to the mistake of the Trademark Office, the mark was advertised in the Trademark Journal as "INDIA GATE" (word mark) without device of "INDIA GATE". The user claimed in the application was also wrongly shown as 01-01-1956, while the user claimed in the application was from the year 1993 and a request has been made to amend the same to 1993. The plaintiff has also filed other applications for registration of its trademark "INDIA GATE" with device of "INDIA GATE" in Class 30 for export of rice as well as in Class 42.

3. The plaintiff's aforesaid trademark is duly registered in many countries/regions of the world like European Union, Canada, Australia, etc. and is pending registration in many other countries. The details of the trademark applications and registrations thereof are exhibited as Ex.PW-1/3. The copyright involved in the said trademark as well as in the said label which are claimed to be original artistic work of the plaintiff are of the well known and already existing word and monument "INDIA GATE". The copyright in the label is also registered in favour of the plaintiff under the Copyright Act - Ex.PW-1/4. The trademark "INDIA GATE" with device of "INDIA GATE"

forms part of this label viz., copyright registration. The plaintiff has been dealing with the said copyright in the course of its trade within the meaning of Section 14 of the Copyright Act and has already built up valuable trade and business thereunder. The comprehensive particulars of sales achieved by the plaintiff are furnished by the plaintiff as Ex.PW-1/5. The plaintiff has filed copies of advertisements, sale bills and invoices, etc. in support of the trademark as Mark PW-1/3 (Colly.). The plaintiff has also placed on record the original bills and invoices, etc. in support of the use of the mark, which are exhibited as Ex.PW-1/6.

4. The plaintiff in June, 2006 learnt about the defendant's illegal adoption and contemplated use of the plaintiff's mark from the application for registration thereof under No.1271195 in Class 30 for iodised salt and all types of salt in Trademark Journal No.1340 dated 01.03.2006 at page 1049/1050, which is marked as Mark F. Aggrieved with the same, the plaintiff immediately lodged a notice of opposition thereto within the statutory period. The plaintiff also launched enquiries through trade to ascertain the defendants' activities under the impugned trademark/label. The said enquiries revealed that the defendants had so far not started using the impugned trademark/label in the course of trade on its vendible goods, however, the defendant was soliciting trade, distribution and marketing networks in relation to the impugned goods under the impugned trade mark/label in Delhi and other parts of the country and had all the intention of commercially using the same. Copy of notice of opposition filed by the plaintiff against the registration of the defendant's trademark "INDIA GATE" is marked as Mark D and the defendants' label for iodised salt is exhibited as Ex.PW-1/7.

5. Summons of the suit were issued to the defendants which were duly served upon the defendants, but the defendants did not choose to appear in the Court and were accordingly proceeded ex parte vide order dated 23.07.2007. Thereafter the plaintiff was directed to file its ex parte evidence by way of affidavit, which was filed by the plaintiff on 18.02.2009. The plaintiff examined himself as PW-1, tendering in evidence his affidavit as Ex.PW-1/A as well as documents Ex.PW-1/2 to Ex.PW-1/6 (Colly.) and Ex.PW-1/7, initially marked as PW-1/D1.

6. The learned counsel for the plaintiff has taken me through the pleadings and documents as well as the affidavit by way of evidence filed by the plaintiff and has relied upon the judgments of this Court reported in Century Traders Vs. Roshan Lal Duggar & Co. AIR 1978 Delhi 259(DB); Borosil Glass Works Ltd. vs. O.P. Batra 1995 (16) PTC 55; M/s. Kumar Electric Works Vs. Anuj Electronics (1990) PTC 26 and Glaxo Operations UK Ltd., Middlesex (England) and others Vs. Samrat Pharmaceuticals, Kanpur AIR 1984 Delhi 265 to buttress his case of passing off and infringement of copyright by the defendants.

7. The learned counsel for the plaintiff has also referred to the decision of this Court in Mars Incorporated Vs. Kumar Krishna Mukerjee & Ors. 2003 (26) PTC 60 (Del) to contend that injunction by Quia Timet action is not only appropriate but also essential and injunctive relief in such an action ought to be granted. Additionally, reference was made by the learned counsel for the plaintiff to the judgments of this Court in Hero Honda Motors Ltd. Vs. Shree Assuramji Scooters 2006(32) PTC 117 (Del) and Asian Paints (India) Ltd. Vs. Balaji Paints and Chemical and Anr. 2006(33) PTC 683 (Del) to contend that the plaintiff would also be entitled to damages. In the former case, damages of Rs.5 lacs and in the latter case damages of Rs.3 lacs were awarded in favour of the plaintiff. The plaintiff also claimed costs of the suit, in respect of which a certificate of costs dated 21.02.2009 for the sum of Rs.1,02,013/- was filed by the counsel for the plaintiff.

7. It cannot be lost sight of that in the instant action the plaintiff's own case is that when it came across the Trademark Journal No.1340 dated 01.03.2006 with regard to the defendants' contemplated use of the impugned trademark and application for registration thereof, the plaintiff launched enquiries through the trade to ascertain the defendants activities under the impugned trademark/label. The said enquiries revealed that "the defendant has so far not started using the impugned trademark/label in the course of trade on its vendible goods and business and nor has the plaintiff so far come across any of the impugned vendible goods under the impugned trademark/label in the market, however, the defendant is soliciting trade, distribution and marketing networks in relation to the impugned goods under the impugned trademark/label in Delhi and other parts of the country. The defendant has all intention of commercially using the impugned trademark/label in relation to the impugned goods/business, if not already so used."

8. It is obvious from the aforesaid that the present action is more in the nature of a quia timet action, which action is to nip in the bud the evil contemplated, the injury apprehended and the invasion threatened, though no actual injury or damage has been caused. "Quia Timet" is actually a Latin word which means "because he fears or apprehends" and is thus a preventive action to ensure that no damage is caused to the plaintiff.

9. Further the plaintiff's own assertion in the plaint is that the defendant has all intentions to use the impugned trademark/label in Delhi and that the plaintiff's proprietary rights are likely to be prejudicially affected thereby. This clearly brings out the fact that the defendant was contemplating user and there was no actual use of the trademark and device of the plaintiff by the defendant. Without user, in my view, there can be no question of damages. Further, no decision has been brought to my notice wherein damages have been awarded in a quia timet action.

10. In view of the aforesaid, a decree is passed in favour of the plaintiff and against the defendants in the following terms:

A. Defendants by themselves, their individual proprietors, partners, directors, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf are restrained by an order of permanent injunction from using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing in or using the impugned trade mark/label "INDIA GATE" with device of "INDIA GATE" or any other identical with and/or deceptively similar word/mark/label in relation to their impugned goods and business of iodised salt and all types of salts and related/allied products and from doing any other acts or deeds amounting to or likely to result in :

(i) Passing off and violation of the plaintiff's rights in the plaintiff's said trade mark/label "INDIA GATE" with device of "INDIA GATE".

(ii) Infringing or otherwise violating by way of passing off the plaintiff's copyright in the plaintiff's said trade mark/label "INDIA GATE" with device of "INDIA GATE".

B. Costs of the suit in favour of the plaintiff as calculated by the Registry.

11. CS(OS) 331/2007 stands decreed accordingly.

REVA KHETRAPAL, J.

AUGUST 27, 2009 dc