

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS)No.1175/2003**

Judgment delivered on: 18th August, 2009

M/s. Living Media India Ltd. Plaintiff
! Through : Mr. S.D. Salwan, Advocate
Mr. Neeraj Choudhary, Advocate

Versus

\$ Adarsh Gupta & Ors. Defendants
^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

JUDGMENT

ARUNA SURESH, J.

1. Plaintiff company has filed the present suit for perpetual injunction for restraining the defendants from passing off, infringement of copyright, rendition of accounts and delivery etc. in the name of 'Today'.

2. Briefly narrated, the case of the plaintiff is that it is a public limited company and Chand Prakash being Manager Administration of the plaintiff company has been duly authorized by way of resolution of Board of Directors dated 25.4.2003 to sign, verify and file the present suit on its behalf, that plaintiff is the publisher of most reputed leading magazine 'India Today' which is being published in different languages in India as well as abroad, that it has wide circulation, that plaintiff alleges that it is running its business of printing, publishing and producing the magazine 'India Today' since 1975, that the said registered magazine is registered under the name and style of 'India Today' with the Registrar of Newspapers for India under Registration Certificate No.28587 of 1975, that plaintiff is also registered as proprietor of trademark 'India Today' having registration No.295963 as of 4th October, 1982, that plaintiff filed an application seeking registration of the said trademark 'India Today' in Hindi language for its newspapers, periodicals, magazines etc., that the

word 'Today' is an essential and dominant feature and it is written in a characteristic logo style in which the artistic copyright subsists with the plaintiff, that plaintiff is first person to use the word 'Today' as covered under Section 2(c) of the Copyright Act, that the name and style as well as layout of the word 'Today' is the exclusive property of the plaintiff for all categories as specified in its application, that under the law it is distinct and exclusive copyright and the trademark 'Today' for publications with the plaintiff since 1954, that the visual impact of the word 'Today' being represented in the artistic script is a significant one and the viewers/public and readers identify the plaintiff's production not by the trademark 'Today' but also by peculiar style of writing, that English evening daily newspaper published under the name and style 'Today' is also registered under registration No. DELENG/2002/9066, that the word 'Today' has become synonymous to authentic news and has been generated and used exclusively by the plaintiff in various languages which has given a

secondary meaning to the identification of the word as 'India Today Group', that 'Today' is so distinctive that it has acquired a meaning, that any prefix or suffix has no relevance so far as action of passing off is concerned, that the only object and design of any person to adopt the trademark 'Today' would be to trade and encash upon the goodwill of the plaintiff earned over the years because of its extensive popularity, that the annual subscription of the magazine 'India Today' all over India is approximately Rs.15 lacs and annual turnover of the company from the sale of its various publications since the year 1998 has been increasing from Rs.8867.07 lacs to Rs.10479.14 lacs in 2002, that the said artistic work at the behest of the plaintiff was originally authored by one of its employees employed under a contract of service and the plaintiff became the first copyright owner of the said artistic work and the first publisher of the said artistic/literary work of the way and style of writing the 'Today' in Hindi as well in the other languages, that no person without the

permission or consent of the plaintiff has right to use or reproduce the word 'Today' in its distinctive style and manner or any other deceptively similar manner, that without the permission of the plaintiff any such move is an infringement of the copyright of the plaintiff, that during the last week of March 2003 the plaintiff came to know that the defendants have introduced the newspaper under the name and style of 'Today News' in Hindi, that on search by the plaintiff with the concerned authorities, it was revealed that no such name had been registered earlier in any class, that the adoption and use of the mark 'Today' by the defendants in respect of their publication is an exact reproduction of the mark of the plaintiff which is illegal and unlawful, that the layout style as well as the manner in which the plaintiff's trademark has been depicted has been copied/infringed in an identical/similar manner, that the adoption of trademark of name 'Today' in a deceptively similar artistic style and manner of the defendants is actuated by malafides and with an intention to

encash upon the goodwill and reputation belonging to the plaintiff, that as the adoption and use of the trademark 'Today' which is visually and phonetically similar to the reputed and well known trademark 'Today' of the plaintiff in respect of the news related magazines, newspapers and newsletter is bound to lead to confusion and deception amongst the purchasing public and trade and creating an impression that the defendants' goods are some way connected with the goods of the plaintiff, that defendants are guilty of passing off their goods as those of the plaintiff as their goods are of cognate and allied nature to that of the plaintiff's goods having identical trading channels and sold to the same purchasers, that therefore the defendants have infringed the trademark/trade name of the plaintiff and also its copyright in their artistic style and writing 'Today', that if the defendants are allowed to continue with their illegal designs, the loss suffered by the plaintiff would be of irreparable nature and would cause injury to its business name, reputation and

goodwill. Hence, this suit for injunction and rendition of accounts.

3. Defendants were served vide publication in newspaper '*Statesman*' dated 2.4.2004 at their last known address as well as on the notice board of the Court by way of affixation. Despite due service of process on them defendants did not care to appear in the Court and contest the suit of the plaintiff. Hence, they were proceeded ex-parte by this Court vide its order dated 15.9.2004.
4. Plaintiff company has produced its evidence by way of affidavit Ex.PW1/A of Sh. Chand Prakash, its Senior Manager Legal and affidavit Ex. PW2/A of Sh. Binod N. Tiwari, its Assistant Manager.
5. Plaintiff had filed an affidavit of Chand Prakash in evidence in the Court on 10.5.2005. Plaintiff filed another affidavit of this very witness in the Court on 12.2.2007. The second affidavit is in fact the detailed affidavit in evidence of Chand Prakash filed by the plaintiff. It is in no manner additional affidavit as is apparent from the record. After the

filing of the first affidavit in evidence, the learned counsel for the plaintiff exhibited some documents in the Court as Ex.PW1/2 to Ex.PW1/13 on 20.5.2005. Probably the second affidavit was filed without taking into consideration the fact that affidavit of Chand Prakash had already been placed on record. In the second affidavit plaintiff has exhibited documents PW1/1 to PW1/31. Some of these documents have also been exhibited in evidence in the affidavit of Binod N. Tiwari. I shall be referring to some of the documents exhibited in the statement of PW-2, Binod N. Tiwari which though shown as exhibited in the affidavit have not been exhibited in evidence by the learned counsel for the plaintiff while examining Mr. Chand Prakash. I also make it clear that since there are repeated different exhibit marks on the same documents I shall refer only to the exhibits which find mention in the affidavit Ex.PW1/A filed by Chand Prakash on 12.2.2007.

6. Chand Prakash, PW-1 in his evidence by way of his affidavit has proved that plaintiff is a company

incorporated under the Companies Act vide Certificate of Incorporation Ex.PW1/1. He has testified that by way of Resolution dated 25.4.2003, original copy of which Ex.PW1/2, he has been authorized by the plaintiff to sign, verify and file the present suit on behalf of the plaintiff company against the defendants. By way of his affidavit he has fully supported the case of the plaintiff as averred in the plaint and has proved in evidence the documents like various trademark registration certificates of the word 'Today' being used by the plaintiff with many other pre-fix or suffix in various magazines, newspaper and other publications which are Ex.-PW1/3 to PW1/25. He also proved in evidence the original front cover of the magazine named 'India Today' published in English as well as in Hindi as Ex.-PW1/26 and PW1/27 respectively. He further proved in evidence the registration certificate No.DELENG/2002/9066 dated 14.2.2003 wherein the name and style of plaintiff's newspaper 'Today' is registered as Ex.PW1/29 along with its representations. He has categorically deposed that

defendants, in order to cash in on the name and goodwill of the plaintiff, have started Hindi newspaper with the name of 'Today' with a suffix of 'news' suggesting its publication to be called 'Today News'. The defendants have used the word 'Today' in their newspaper in exactly the same manner and style in which the word 'Today' is written in the Hindi Magazine of the plaintiff. He further testified that defendants have therefore copied the plaintiff's trademark and copyright of the word 'Today' and has used it in a deceptive manner with a view to give an impression on the public that their paper is also published by the plaintiff company. He also testified that the style and presentation of 'Today' by defendants in their impugned publication is identical to that of plaintiff which is causing grave loss of business and credibility to the plaintiff and such user is also an infringement to the intellectual property right of the plaintiff. The defendants have passed off their publication as that of the plaintiff. In his testimony he proved the issue of 'Today News' dated 3/9-

4.2003 as Ex.-PW1/30. He also proved in evidence the legal notice dated 7.4.2003 Ex.-PW1/13 (in his affidavit he has exhibited copy of the notice as Ex.-PW1/31 but the document was not tendered in evidence, however, since the copy of this notice was earlier tendered in evidence when the first affidavit was filed and exhibited as PW1/13, the same finds mention here).

7. PW-2 Binod N. Tiwari, Assistant Manager, tendered in evidence his affidavit Ex.-PW2/A. He has testified that plaintiff company had filed a complaint for offence under Section 78 and 79 of the Trade and Merchandise Marks Act read with Section 63 and 65 of the Copyright Act under Sections 420,425 and 486 of the Indian Penal Code, which complaint is pending adjudication before the Metropolitan Magistrate at Patiala House Court. He proved the copy of the complaint as Ex.-PW2/1 and copy of the court proceedings as Ex.-PW2/2. He further corroborated the testimony of PW-1 Chand Prakash regarding the certificate of registration of the plaintiff company passed by

Deputy Registrar of trademarks on 29.1.1988 in respect of 'India Today' of the Hindi edition along with additional representations in Form TM-1 Ex.-PW2/5, Certificate of Registration dated 14.2.2003, Extract of Resolution dated 25.4.2003 and notice dated 4.7.2003 Ex. PW1/13 which was sent by registered cover as well as UPC which he proved in evidence as Ex.-PW2/7 and PW2/8. Ex.-PW2/9 is the AD card received from the defendant No.1 for having received the notice.

8. I have heard Mr. Neeraj Choudhary, learned counsel for the plaintiff and have carefully perused the record. Plaintiff is a company which is carrying on its business of publishing newspapers, magazines and other various publications for number of years. Plaintiff is a duly incorporated company under the Companies Registration Act vide Certificate of Incorporation copy of which is Ex.-PW1/1. Chand Prakash PW-1 has been duly authorized to sign, verify and file the present suit on behalf of the plaintiff against the defendants as is proved from the copy of the Directors' Resolution

dated 25.4.2003 Ex.-PW1/2. Plaintiff has successfully proved in evidence that the word 'Today' is a distinct name which is used by the plaintiff for publication of its magazine 'India Today' which is being published in various languages including Hindi. It is admittedly a well known magazine which is in circulation and in demand not only all over India but also overseas. The name 'Today' has been registered for newspaper in English to be published by the plaintiff vide registration No.DELENG/2002/9066 Ex.-PW1/29. Plaintiff is the owner of numerous trademarks for its different publications in newspaper, other magazines, music cassettes etc. which have been exhibited as Ex.-PW1/3 to PW1/25.

9. By way of evidence, plaintiff has successfully proved that it is the holder of trademark 'India Today' in Hindi Language. All these registration certificates conclusively prove that the plaintiff is the exclusive owner and user of the word 'Today' being its registered trademark in all its magazines,

newspapers, other publications and music cassettes etc. Plaintiff had applied in form TM-I along with additional representation vide its application dated 15.1.2002 Ex-PW2/5. The artistic style and manner of writing the trademark 'India Today' in Hindi for which the plaintiff applied for registration of a trademark have been specifically shown in writing in the said form TM-I; Ex.-PW2/5.

10. The grievance of the plaintiff is that defendants have copied their trademark 'Today' in Hindi which is an infringement to its trademark 'Today' registered with the trademarks registered at Bombay. The infringing newspaper has been proved in evidence as Ex.-PW1/30. I have visually examined the infringing name 'Today' in Ex.-PW1/30 with that of the registered trademark 'India Today' in Hindi Ex.-PW1/27. I do find that defendants have copied the trademark of the plaintiff 'Today' in Hindi in an identical and similar manner which, for a common person, visually could appear to be the same. A common man under these circumstances would go for purchasing the

paper published by the defendants taking it to be published by the plaintiff company i.e. the same publisher who published 'India Today' in Hindi or in English and other magazines carrying the trademark name 'Today'. Phonetically also, when spoken, the name 'Today' as registered would be identical to name 'Today News' when spoken.

11. Infringing newspaper was published much after the plaintiff had filed an application in TM-I form seeking registration of its trademark name 'Today' in Hindi as well. The name 'Today' appearing in Ex.-PW1/27 when compared with name 'Today' appearing in Ex.-PW1/30, I find no difference as visually they look identical. The defendants therefore have copied the name 'Today' in the same manner and the style in which it has been got registered by the plaintiff as its trademark. Under the circumstances plaintiff, being user of this name over a long period, have got copyright in the artistic style and manner in which it is used in its various publications. Plaintiff therefore has acquired exclusive property rights in the trademark

‘Today’ for all the categories for which it has been registered or in its application and its style. Plaintiff has also acquired exclusive copyright in the writing style of the word ‘Today’ as it has a particular characteristic style which can be termed as an artistic work of the plaintiff and is being used by it daily in its numerous publications.

12. To save its trademark and copyright in the name ‘Today’, plaintiff has also filed a complaint on 14.5.2003 before the concerned court of Metropolitan Magistrate at Patiala House. Vide order dated 18.8.2003 the MM was pleased to direct the SHO, Police Station Connaught Place to investigate the matter under Section 156(3) Cr.P.C. in accordance with law.
13. Hence, I conclude that plaintiff has successfully proved its case against the defendants. The defendants have infringed the copyright and trademark of the plaintiff in the trade name ‘Today’ by using it in identical manner in its own magazine. Defendants have therefore passed off the name

'Today' in their publication 'Today News' as that of the plaintiff. This obviously must have decreased the circulation of the publications of the plaintiff in the market and consequent turnout of the plaintiff company. The defendants are therefore guilty of passing off their goods as those of the plaintiff and also for infringement of its copy right in the publication 'Today'.

14. Plaintiff, though has claimed a relief of rendition of accounts of profits illegally earned by the defendants on account of use of the name 'Today' in its publication 'Today News', however, no evidence has been led by the plaintiff as regards this relief is concerned. Plaintiff has also not led any evidence to indicate if it actually suffered any loss to the advantage of the defendants because of publication of 'Today News' and its circulation in the market. In para 23 of the plaint, plaintiff has submitted that on account of being rendered plaintiff would be found entitled to more than Rs.20 lacs. Plaintiff has not led any evidence regarding its production turnover or defendants' earned

profits. Hence, in the absence of any evidence, plaintiff is not entitled to any rendition of accounts as prayed. Since the plaintiff itself has alleged in para 23 that on account of being rendered, it shall be found entitled to more than Rs.20 lacs and the plaintiff itself has valued the suit for the purpose of Court fees at Rs.20 lacs in para 31 (d) of the plaint and has paid the ad-valorem court fees on the said amount.

15. Consequently, I hereby pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants themselves, their agents or any other persons on their behalf from printing/publishing, offering for sale, advertising, directly or indirectly dealing in respect of printing and publication material bearing the name 'Today' or 'Today News' and from passing off their newspaper or any other publication as the publication of the plaintiff or any other trademark/name/tile/name of a publication which is deceptively similar to the plaintiff's trademark 'Today', in Hindi or any other language

and from using the name 'Today in any manner or in the same logo script or an obvious or fraudulent imitation or a substantial reproduction of the plaintiff's logo script used in characteristic manner or any other logo script which is imitation and substantially reproduction of plaintiff's highly artistic work amounting to infringement of the plaintiff's copyright therein.

16. Defendants are further directed to hand over the infringing goods including magazines, blocks, dies, lables, wrappers, price list, leaflets and literature for purposes of destruction and/or obliteration to the plaintiff on an affidavit with cost of the suit. Suit of the plaintiff as regards relief of rendition of accounts is hereby dismissed.

17. The decree sheet be prepared accordingly.

**ARUNA SURESH
(JUDGE)**

**AUGUST 18, 2009
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