

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on : 18.08.2009

+ **CS(OS) 1658/2003 & IA No.8977/2003**

VARDHMAN SILK MILLS PVT. LTD.

..... Plaintiff

Through : Mr. Manu Mridul, Advocate

versus

VARDHMAN SAREES PVT. LTD.

..... Respondent

Through : Nemo

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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

**Hon'ble Mr. Justice S.Ravindra Bhat (Open Court)**

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1. The plaintiff in this suit seeks permanent injunction to restrain the defendants, their assigns, employees, servants, agents, dealers or representatives and all others acting on their behalf, from using the trademark "VARDHAMAN" in relation to garments or articles of clothing, or from passing off their goods and/or services and/or business by manufacturing, marketing, selling, advertising, directly or indirectly dealing in goods/services under the trade mark "VARDHAMAN", or otherwise using the said expression. A decree for accounts is also claimed.

2. The Plaintiff was initially trading as a partnership concern, VARDHAMAN SILK TRADERS, for many decades, and carrying on business in variety of textile products including dress materials, suiting, shirting, bed linen, etc. It is contended that the said concern was the proprietor and owner of the trademark "VARDHAMAN" since 1975. According to the plaintiff, the trademark was devised in 1971 and has been used for the business in question ever since. It is contended that trademark ownership was consolidated through registrations, in class 24, through Registration Nos. 303319 and 303371; the latter also pertains to the visual stylized representation of the word mark. Registration was granted in February and March, 1975. The plaintiff contends that due to long, extensive use and substantial promotional activities, the mark/name has acquired phenomenal goodwill and reputation, and consumers and general public all over India associate the trade mark/name exclusively with the plaintiff. It is contended that the plaintiffs' goodwill and widespread popularity is testified by its growing sales; figures for the period 1989-90 to 2001-2002 have been disclosed in the suit. In 1989-90 the sales figures were Rs. 169 lakhs; in 2001-2002, they had grown to Rs. 746 lakhs.

3. The plaintiff contends that it issued a public notice on 16<sup>th</sup> October, 2000, stating that any unauthorized use of the trademark would be dealt with strictly. It is claimed that around June, 2001, the plaintiff discovered that the defendant, was engaged in the business of garments and related products, similar and directly relatable to its (plaintiff's) business; the defendant was using the trademark VARDHAMAN, in relation to its business, in sarees.

4. The plaintiff submits to having caused a legal notice to be issued to the defendant on 27-6-2001, asking it to desist using the word mark VARDHAMAN, in relation to its products, as it was likely to result in real confusion in the consumers' minds, about the two products, and

injure the plaintiffs goodwill and reputation. It is alleged that the defendants, in complete disregard of the plaintiff's requests were still continuing using the infringing mark prominently in their dealings; they also replied on 11-7-2001 denying any infringing activity. It was denied that their trade name VARDHAMAN SAREES would result in market confusion.

5. The plaintiff alleges that the defendant's unauthorized use of its (the plaintiff's) registered mark wrongfully depicts that the defendant's services are connected to the plaintiff's and is certain to mislead the consumers and public at large. The defendant, asserts the plaintiff, by using the infringing mark have caused confusion/deception amongst the trade and public at large to the effect that their goods and services originate from, or have a trade connection, approval or association with the plaintiff. This, says the plaintiff, is a misrepresentation constituting a tort of passing off of the goods/services of the defendant as those of the plaintiff.

6. The defendant in this proceeding was proceeded against *ex-parte* by order dated 30.07.2008 as it failed to appear in the proceedings, despite substituted service in the suit. The plaintiff filed its *ex-parte* evidence by way of affidavit in the matter. In this view, only the facts urged by the plaintiff and established through the evidence by way of affidavit shall be considered for adjudication of the suit.

7. The plaintiff's case is sought to be proved through the deposition of Shri Praveen N.K. Lodha, its constituted attorney. He corroborated the version set out in the suit, deposing about the plaintiff's reputation and business activities in various products and textiles throughout India. According to the deposition, the mark " VARDHAMAN" is distinctive, having enormous goodwill and recognition in relation to the plaintiff's products and goods. The plaintiff's

trademark registrations in various classes have been testified in the deposition, through affidavit; they are produced as Ex. P-2. It is deposed that the trademark was originally owned by the partnership firm, but was later assigned to the plaintiff; a copy of the assignment deed is produced as Ex. PW-1/10. The witness produced the copy of the invoices issued by the defendant, on 17-5-2000, as Ex. PW-1/12, to establish use of the trademark, and its infringement. It is also stated in the suit that the defendant's name appears in the package, a sample of which is marked as Ex. PW-1/13. The plaintiff further produces the defendant's reply, as Ex. PW-1/15.

8. The plaintiff has been able to establish its reputation for its products and services and that its mark "VARDHAMAN" is distinctive of its business in India. Further, the plaintiff holds registered trademark for the expression "VARDHAMAN". The use of that mark by the plaintiff for over three decades and the growing sales turnover supports its claim that it has an established reputation. To prevent any confusion and protect their registered trademark from infringement the plaintiff has, published various caution notices in newspapers and journals. Further, the plaintiff has also established that it had, on discovering the fact of infringement adopted the due process of law and served 'cease and desist' notices on the defendant.

9. In *Infosys Technologies Ltd. v. Park Infosys and Ors.*, 2002 (34) 178 (DEL) the facts alleged and grounds taken are similar to those in the present case. The defendants there were using the expression "Infosys" as a prominent part of their business/trade name and domain name. After noticing various provisions of law and relevant precedents the court, in that matter held as under:

*"27. The trade mark 'Infosys' is certainly associated distinctively with the business and trade of the plaintiff. The pre-fix by the defendant of the word "Park" before*

*the trademark 'Infosys' is certainly of no significance in as much as the word 'Infosys' is distinctive of the business and trade of the plaintiff. There can be no manner of doubt that use by the defendant is likely to result in confusion and the same has propensity of diverting customers and business of the plaintiff to the defendant. It is well settled that honesty and fairplay are required to be the basic policies in business and trading and no person has any right to carry on his business in such a way as would lead the public into believing that the goods or services belonging to someone else are his or associated therewith. The service range of the defendant is also similar to that of the plaintiff. In this view of the matter, I am of the considered view that the plaintiff is entitled to a decree for injunction as prayed for.*

10. The facts and legal position averred by the plaintiff in this case are closely similar to what were before the court in that case. In that case the defendants were using the expression 'Park Infosys' and more prominently 'Infosys' in respect of their goods and services as a part of their trademark and corporate name. In this case the defendant is marketing its goods/services under the business name 'Vardhaman Sarees Pvt. Ltd.', it is using 'VARDHAMAN' as a salient part of the expression. In the reply given, the defendant no doubt seems to suggest that the term 'VARDHAMAN' cannot be anyone's monopoly, since it describes a Jain saint. Yet, it does not explain the *rationale* for using what is obviously a non-descriptive mark. By promoting its goods and marketing them under that expression the defendant is indulging in infringing activity, and trading on the goodwill that the plaintiff has acquired in its business. The mark is a contrived one in relation to silks and garments, and has acquired distinctiveness, connecting it with the plaintiff's services. The facts revealed to this court are sufficient to hold that the defendant is indulging in infringement of the plaintiff's trademarks, with the attendant confusion. There is no reason why this court should deviate from what was held in that case. The plaintiff is thus, held entitled for a decree of injunction as is claimed.

11. As regards damages it is settled that the assessment of damages has to be based on cogent evidence furnished for the purpose. The plaintiff has not provided any record of the business procured by the defendants as being detrimental to the business of the plaintiff nor has it annexed a statement of loss of profits suffered by it on account of business diversion due to the defendant using the mark. The plaintiff merely alleges that the profits made by the defendant by misappropriating the goodwill and reputation, as well as on account of business diversion is the loss suffered by the plaintiff and that as it has no access to the accounts of the defendant, it is unable to assess the profits made by it (the defendant).

12. In *Infosys Technologies* (supra), the court after noticing the observations of the court in *Microsoft Corporation v. Yogesh Popat and Anr* 118 (2005) DLT 580, *Hero Honda Motors Ltd. v. Shree Assuramji Scooters* 125 (2005) DLT 504, *The Heels v. V.K. Abrol and Anr.* CS (OS) No. 1385/2005, *Hindustan Pencils Ltd. v. Aparna Enamel Industries* 131 (2006) DLT 65 and discussing the reasoning of the court in detail and distinguishing the facts and law cited in those cases from the case for consideration before the court held as under:

*“42. Upon a consideration of the plaint and the affidavit by way of the evidence filed before this court, I find that the plaintiff has failed to prove either the profits derived by the defendant from its illegal activities or such sales record to establish the loss which has resulted to the plaintiff by establishing a decline in the value of its business or a fall in the percentage increase in the business as compared to preceding years. The only material which has been placed by the plaintiff on record is the value of its international sales over different years. Bald figures without even an assertion of loss or diminution in business and without any submission in this behalf do not establish the essential features noticed above which would have entitled the plaintiff to damages. Therefore, while holding that the defendants cannot be permitted to continue with its illegal activities, however, I find that no award of damages can be made in favor of the plaintiff.”*

The court concerns with the above observations, the plaintiff cannot claim anything more than costs of these proceedings.

13. In view of the above discussion, the suit is entitled to succeed in so far as the claim for permanent injunction is concerned. Accordingly, the suit is decreed in terms of Para 31 (a) to (c); with costs. Counsel's fee is quantified at Rs.25,000/. Let decree be drawn in these terms.

August 18 , 2009

(S. RAVINDRABHAT)  
JUDGE