

Judgment Reserved on 06.08.2009
Judgment Pronounced on: 11.08.2009

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CS(OS) 686/2004

LARSEN AND TOUBRO LTD.

..... Plaintiff

Through : Ms. Purnima Sethi, Advocate.

versus

LAKSHMI INDUSTRIES & ANR.

..... Defendants

Through : Nemo.

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

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| 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 |

S.RAVINDRA BHAT, J.

1. The plaintiff sues for permanent injunction to restrain the defendants from using the trademark 'LT' as it infringes their registered trademark 'L&T'.

2. The suit averments are that the plaintiff is the successor-in-business of a partnership firm, M/s. Larsen and Toubro, formed by two Danish nationals, Henning Holck Larsen and Soren Kristian Toubro in 1938 for the purpose of engineering business. It is claimed that as the business grew, the concern was incorporated in 1946 and it took-over the affairs of the firm. It is submitted that the plaintiff is also known by its acronym 'L&T' and identified by its logo

wherein the two letters are distinctively placed within a circle. According to the plaintiff, the mark has been used for more than five decades and appears in all its stationery, literature, advertisements etc.

3. The plaintiff claims to have expanded and diversified its activities and formed subsidiaries; all of these are described fully in para 6 of the suit. It relies upon the turn-over figures which are set-out in para 8; its total turn-over for the years 2002-03 was Rs.10,124 crores, of which the profit before tax was Rs.510 crores. It is claimed that for the corresponding period, the plaintiff's net worth was Rs. 3563 crores. The plaintiff adverts to its significant advertisement campaigns conducted in the print and electronic media and details of these expenses for the periods 1993-94 and 2002-03. In 1993-94, the expenses claimed are Rs.10 crores whereas for the period 2002-03, it is Rs.43 crores.

4. The plaintiff, in support of its claim for being longstanding user of the trademark relies upon the Annual Reports published during the periods 1946-47, 1999-2000 as well as the Annual Report for the period 2002-03. It further relies upon an advertisement issued on its behalf, which discloses use of the mark, as far back as on 14.01.1975; it is an advertisement published in the *Financial Times*.

5. The plaintiff avers to defendants having dishonestly adopted its logo and trying to get the mark registered. The plaintiff claims to have become aware of this in the third week of April 2004 when it was informed about the defendant's logo. The plaintiff has also produced a copy of the Trademark journal dated 25.11.2003 (Ex.PW-1/3) containing defendant's proposed mark 'Li', which it submits is almost identical with its (the plaintiff's) mark, 'L&T', as the letters are placed in the same manner within a similar circle. The plaintiff claims that its mark is well-known as it has distinctiveness due to its logo and also in respect of the quality of services

rendered by it. It submits that its logos are printed on all its products, cartons, boxes, containers etc. with its name 'LARSEN & TOUBRO'. It describes the mark in the following terms:

- (a) In L&T's logo, the letters 'L' and 'T' are put together, the letter 'L' placed little above the left side of the letter 'T';
- (b) The letters 'L' and 'T' are put inside a full circle;
- (c) The letters 'L' and 'T' are written in 'italics' and in capital letters;
- (d) The brand name 'LARSEN & TOUBRO' is usually written or printed on all the Plaintiff's products in capital letters.

6. According to the plaintiff, the defendants have adopted a phonetically identical and structurally similar mark to the 'L&T' logo with the letter 'L' placed on the upper left side of the letter 'T', both written in capital italics, within a circle. The defendants' use of the mark, it is alleged, is entirely dishonest and solely with the purpose of misusing the plaintiff's well-deserved reputation. The defendants' products are television parts, tape recorders, decks, voltage stabilizers, electric transformers, wires, cables, electrical fittings and accessories; it is submitted that the plaintiff also is engaged in a similar trade.

7. The defendants, despite service of summons, did not enter appearance; they were set-down ex-parte by an order dated 25.07.2006. The plaintiff's witness, Mr. K.R. Palta deposed through an affidavit affirmed on 17.04.2007; it was accompanied by 11 exhibits. Essentially, these proved documents were filed along with the list at the time the suit was filed in Court. The said witness affirmed about the affidavit and proved it as Ex. 1/A, on 08.08.2007.

8. The plaintiff has referred to various judgments of the Courts, including the Supreme Court, on the question of distinctiveness of trademarks and the claim of another entrant seeking use of similar mark, even if the goods are separate. Reliance was placed upon the decisions

reported as *Larsen & Toubro Ltd. v. Lachmi Narain Trades & Ors.* 2008 (36) PTC 223 (DB); *Kirloskar Diesel Recon (P) Limited v. Kirloskar Proprietary Limited* AIR 1994 (Bom) 242; *Mahendra & Mahendra Paper Mills Limited v. Mahindra & Mahindra Limited* 2002 (2) SCC 147; *Sunder Parmanand Lalwani and Ors. v. Caltex (India) Limited* AIR 1969 (Bom) 24, and *Laxmikant. V. Patel v. Chetanbhai Shah and Anr.* 2002 (3) SCC 65.

9. The Court has carefully considered the materials on record and the submissions made by the plaintiff. The pleadings and the deposition of PW-1 establish that the mark, which is based on the acronym 'L&T' originated from the two partners of the predecessor firm established sometime in 1938. That firm was subsequently corporatized; the plaintiff has been functioning for over five decades. The plaintiff has been able to demonstrate – as may be seen from PW-1/5, the advertisements that the mark has been known and used in the print media for more than 35 years; copies of the Annual Reports (PW-1/4 series) also corroborate this position. The plaintiff has spent considerable amounts towards its advertisement expenses, for creating brand consciousness about its diverse products. Though it initially was engaged in engineering business, it appears to have diversified into service industry and is also involved in the manufacture of other products. The defendants appear to have applied for registration of its mark – impugned in these proceedings – in 2003; the Trademark journal extract dated 25.11.2003 (Ex. PW-1/8) claims user of the mark since 01.04.1992, in respect of wires and cables, including PVC cables, in class-9. The plaintiff apparently had resisted the registration and filed its opposition on 26.05.2004.

10. The plaintiff, in the opinion of the Court, has been able to establish that its mark is widely known in the trade and even acquired distinctiveness; it has also shown that its business has grown manifold and its subsidiaries were established for carrying-on diverse activities. In

relation to the name-based marks, the Bombay High Court, in *Kirloskar Diesel Recon (P) Limited (supra)* stated that:

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14. In the case of trading name which has become almost a household word and under which trading name a variety of activities are undertaken, a passing off can successfully lie if the defendant has adopted identical or similar trading name and even when the defendant does not carry on similar activity. Even if the defendant's activities in such circumstances, are remote, the same are likely to be presumed a possible extension of plaintiff's business or activities.

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18. In passing off action, the plaintiff is not required to establish fraudulent intention on the part of the defendant and as such, it was not necessary for the respondents to establish fraudulent intention on the part of the appellants in incorporating the word 'Kirloskar' as part of corporate names of 1st appellant in each of the appeals. It was even not necessary for the respondents to prove causing of actual confusion amongst the customers or public at large by the appellants adopting the word 'Kirloskar' as part of corporate names of 1st appellant in each of the appeals. What the respondents were required to establish, which the respondents have established, is a likelihood of deception or confusion.....

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11. Similarly, in the judgment in *Mahendra & Mahendra Paper Mills Limited (supra)*, the Supreme Court, while quoting the *Kirloskar Diesel Recon Private Limited (supra)* held that:

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“Without intending to be exhaustive some of the principles which are accepted as well settled may be stated thus: that whether there is a likelihood of deception or confusion arising is a matter for decision by the court, and no witness is entitled to say whether the mark is likely to deceive or to cause confusion; that all factors which are likely to create or allay deception or confusion must be considered in combination; that broadly speaking, factors creating confusion would be, for example, the nature of the market itself, the class of customers, the extent of the reputation, the trade channels, the existence of any connection in course of trade, and others.”

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12. The judgment in *Larsen & Toubro Ltd. v. Lachmi Narain Trades & Ors.* concerned use of the marks ‘LNT’ and ‘ELENTE’. The Division Bench of this Court, relying upon *Mahendra & Mahendra Paper Mills Limited (supra)* as well as the other judgments on the issue negated the defence and held that dissimilarity in some of the products, which the parties to the litigation dealt with, did not make any difference so far as grant of relief was concerned. It was further held that the mark ‘L&T’ had acquired distinctiveness and was entitled to protection.

13. The above judgments establish that where an individual or a business concern, in the lawful exercise of its right to trade, creates and uses a distinctive mark with which its goods and services are associated, the goodwill in such brands is created over a period of time; the law typically concerns the distinctive claims of such service providers and the need to give protection to such marks. A peculiarity in this branch of property law is that the mark in question becomes so intrinsically associated with the product and its quality that it denotes a reputation which the consumer expects of the products. If such marks are copied by others – whether in the same trade or in relation to other products and services - often the question the Court is confronted with is whether dilution occurs. In the case of strong marks, where the consumer is aware of the excellence in the reputation of goods, use of a distinctive mark by someone else, in relation to even unrelated goods may result in dilution of brand and consequential reputation, thereby resulting in injury to the trademark owner.

14. In this case, the plaintiff has been able to establish that its mark ‘L&T’ has been used distinctively for about five decades and has been known in the public domain for at least about 35 years; its reliance on the Annual Reports placed on the record also establish that sales figures have risen steadily and that it carries out diverse activities through its subsidiaries. The defendants’ use of the letters ‘L’ and ‘T’, placed together in a deceptively similar manner as that

of the plaintiff, within one or use of any other letters in combination 'L' (such as 'L' and 'T') in a similar manner would inevitably result in a striking resemblance and consequent confusion about the defendants' goods being those of the plaintiff. In these circumstances, the plaintiff has been able to prove that the defendants have unjustifiably used the mark 'L&T' in a confusingly similar manner and sought to pass it off as their own.

15. Though the plaintiff made a claim for damages in excess of Rs.22 lakhs, no meaningful evidence has been led to establish that the defendants' use of the mark has led to any injury of the kind that would persuade the Court to grant such amounts. In the circumstances, the plaintiff would be entitled to some nominal amount.

16. In view of the above discussion, the suit is entitled to succeed. The defendants, their servants, agents, employees etc. are hereby permanently restrained by perpetual injunction from using, in relation to their business, service, goods or products (mentioned in para 32(a) of the Suit), any mark containing the letters 'L' and 'T' written in a circle or in any other deceptively similar logo or mark as that of the plaintiff as to result in passing off their products or goods as that of the plaintiff's goods or services. The plaintiff is also entitled to nominal damages, quantified at Rs.50,000/-, payable by the defendants.

17. CS (OS) 686/2004 is decreed in the above terms with costs.

S. RAVINDRA BHAT
JUDGE

AUGUST 11, 2009
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