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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 14.12.2009

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CS (OS) No. 241/2009 & I.A No.1600/2009 (U/O 26 R 9)

TATA SONS LIMITED

..... Plaintiff

Through : Mr. Pravin Anand and Mr. Achuthan Sreekumar, Advocates

versus

MR.LAXMAN & 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. |

HON'BLE MR. JUSTICE S.RAVINDRA BHAT, (OPEN COURT)

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1. The plaintiff, claims decrees for permanent injunction restraining defendant from trademark infringement, passing off, damages and rendition of accounts and delivery-up against the defendants. The plaintiff company is duly incorporated under the Indian Companies Act, 1913 having its registered office at Bombay House, 24 Homi Mody Street, Mumbai-400 001. Mr. V. Gurumoorthi is its duly constituted attorney is authorized to sign and verify the pleadings and institute the present suit on its behalf and has filed his affidavit in evidence, which is marked as Ex. PW-1/A.

2. The suit alludes to the plaintiff company being established in the year 1917 as a body corporate and is the principal investment holding company of TATA, which is India's oldest, largest and best - known conglomerate, with a turnover of over US\$ 62.5 billion/Rs. 251,543 crores for the financial year 2007-08. Its origin is traced to the surname of its founder Jamsetji Nusserwanji Tata, and which has become synonymous with excellence in almost every field of

business activity, the group companies are engaged in. The enterprises promoted by the TATA have laid the foundation in the industrial core sectors, pioneering the textiles, steel, power, chemicals, hotel and transport industries in India.

3. As per the plaintiff, since its inception, it has been continuously and consistently using the trademark and trade name TATA for its business activities and those of the companies promoted by it; such use is claimed to date back to the year 1868. The House of TATA consists of over 100 companies of which over 50 companies use TATA as a key and essential part of their corporate name. The plaintiff claims to be the proprietor of the trademark TATA by virtue of priority in adoption, long, continuous and extensive use and advertising, and the reputation consequently accruing thereto in the course of trade. It is further claimed that the said trade mark/name TATA is a rare patronymic name possessing the distinctiveness of an invented word.

4. In addition to the common law rights that have accrued to the plaintiff by virtue of the aforesaid facts, it is also the registered proprietor of several TATA-formative trademarks in relation to various goods across various classes including class 39, class 37 and class 12 being the relevant classes for the purposes of the present suit. The plaintiff is also the proprietor of the trademark TATA as well as the "T within a circle" devices in three different styles as shown in para 8 of the plaint. The plaintiff has filed the tabulated list of its trademark registrations alongwith representative copies of a few trademark registration certificates and some original trade mark registration certificates exhibited as Ex. PW-1/3 (colly) and Ex. PW-1/4 (colly). By virtue of the said registrations, the plaintiffs claims to have exclusive right to use the trademark TATA and TATA SUMO in relation to the goods covered thereunder and to obtain relief in respect of their infringement. The plaintiffs also own trademark registrations for the word TATA in numerous countries besides India and have additionally applied for registration of their trademark TATA in over 50 countries. The plaintiffs aver that as a result of the continuous and extensive use of the trademark TATA over a long period of time spanning a wide geographical area coupled with vast promotion and publicity, the said trademark enjoys an unparalleled reputation and goodwill and has acquired the status of a "well-known" trademark within the meaning of the expression as defined under section 2 (1)(zg) of the 1999 Act.

5. The plaintiff alleges that the first defendant, a resident of Bangalore is the proprietor of the second defendant, i.e. M/s TATA Cabs and Taxi Services and is engaged in the business of offering cab/taxi service under the said mark TATA as well as the "T within a circle" device.

Services of a professional investigating agency were engaged to investigate the defendants' role in the alleged infringement of the plaintiff's trademark; a report, dated 25.09.2008 (Ex. PW-1/7) was submitted by the said agency revealing that the second defendant business was found to be three months old as on date of the report and that around 15 vehicles were in use for the said taxi service by the second defendant. The first defendant's business card is exhibited as Ex.PW-1/8 and Ex. PW-1/9. The plaintiff claims that the adoption and use of a trading style identical to the its trademark "TATA" and the "T within a circle device" is dishonest, motivated by *mala fides* in order to gain unfair advantage of the plaintiff's reputation by creating an impression that the products and services offered by the defendants are in some manner affiliated to or are endorsed by the plaintiff. Further, it is claimed that by illegally and unauthorized by using of the said mark and device the defendants are causing and have caused irreparable harm to the goodwill and reputation of the plaintiff.

6. The Court, by its order, dated 21.08.2009, had set down the defendants *ex-parte* and an interim injunction was issued against them restraining them from using the impugned mark and device of "T within a circle". The defendant has not moved the Court for the vacation of the said order and as such the averment in the suit, established in the evidence by way of affidavit, remain uncontroverted. The plaintiff places reliance of judgment of this Court dated 27.10.2009 in the case *Tata Sons Ltd. v. Tata Industrial Recruitment*, CS (OS) 1836/2006, in a similar action brought by it against the defendant therein, where the Learned Single Judge has elaborately discussed the rights of the in the said trademark and concluded the suit in its favour.

7. The plaintiffs mark "TATA" and the device of "T within a circle" in the form as shown in the suit are registered make, the plaintiff has never authorized the defendants to use the said mark in any manner whatsoever, leave aside for commercial exploitation as was being done by them in the instant suit. Therefore the plaintiff has successfully established its averment against the defendants for infringement of its registered trade mark and device. As for the relief against passing-off, the adoption of the said mark and device by the defendants is appears to be with a view to mislead the consumers into believing that their business is in some manner associated with that of the plaintiff. The defendants have not come forward to render any explanation as to what motivated them to adopt the said trade name, and in absence of any explanation supporting honest adoption by them such adoption and use is found to be dishonest.

8. As far as the question of damages is concerned the plaintiff has stated the illegal activities of the defendants have caused irreparable and incalculable injury to its business and reputation and that all profits earned by the defendants in pursuance of their business activities under the said trade name are the plaintiff's losses and amount to unjust enrichment. The plaintiff has estimated the damages to the tune of at least RS. 20 lakhs, but have failed to substantiate their claim by producing any documents. There is no approximation of earnings of the defendants and neither has the plaintiff produced a statement of loss of profits suffered by it on account of business diversion due to the defendants using the mark. It is a well established principle that 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 which would have entitled the plaintiff to damages. Therefore, while holding that the defendants cannot be permitted to continue with its illegal activities the Court finds that no award of damages can be made in favor of the plaintiff; the plaintiff cannot claim anything more than costs of these proceedings.

9. 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 25 (i), (ii) and (iii); with costs. Counsel's fee is quantified at Rs.50,000/-. Let decree be drawn in these terms and all pending applications are accordingly disposed of.

December 14, 2009

(S.RAVINDRA BHAT)
JUDGE