

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 25.05. 2011
Judgment Pronounced on: 03.06.2011

+ **CS(OS) No. 395/2008**

Greaves Cotton Limited**Plaintiff**

- versus -

Mr. Mohammad Rafi & Ors.**Defendants**

Advocates who appeared in this case:

For the Plaintiff: Mr. Saurabh Banerjee, Advocate

For the Defendant: Mr. Dinesh Mehra, Advocate

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

1. This is a suit for permanent & mandatory injunction, damages, rendition of accounts and delivering up of infringing material. The plaintiff company is engaged in the manufacture of a wide range of industrial products including diesel engines, generating sets, agro equipments, construction equipments and road construction

equipments. It is claimed that the word/mark 'GREAVES' is an essential and prominent feature of plaintiff's trade name, corporate name and business style and the trademark 'GREAVES' is the surname of the founder of the plaintiff's predecessor 'GREAVES COTTON AND COMPANY LIMITED'. Other groups companies of the plaintiff are Greaves Leasing Finance Limited, Greaves Midwest Engineering Company Limited, Crompton Greaves Limited, Dee Greaves Limited, Piaggio Greaves Vehicles Limited and Greaves Farymann Diesel GMBH. It is also alleged that 'GREAVES' is the principal trademark of the plaintiff company and is exclusively associated with the products, business and activities of the plaintiff company and its subsidiary/associate companies. The plaintiff company holds the following registrations in its favour:

Sl.No.	Trademark	Goods	Class
1.	Greaves Care (Label)	Machines and machine tools, motors (except for vehicles), machine couplings and belting (except for vehicles), large size agricultural implements, incubations (diesel generating sets)	7
2.	Greaves Engines (Label)	Diesel oil engines (for use in motor land vehicle) and parts and fittings thereof	7
3.	Greavespart (with	Diesel oil engines (for use in	12

	an artistic logo of Phoenix inside a geometric device)	motor land vehicle) and parts and fittings thereof	
4.	Greaves Limited (with an artistic logo of Phoenix inside a geometric device)	Unwrought and partly wrought common metals and their alloys, metallic pipes and tubes, cables and wires (non-electric) and parts thereof	6
5.	Greaves Engines	Diesel oil engines (for use in motor land vehicle) and parts and fittings thereof	12
6.	Greaves	Parts of internal combustion engines for water crafts, diamond drill bite, diamond drilling machines, diamond grinding wheels and parts included in Class 7 or internal combustion engines, motor driven centrifugal pumping sets, diesel driven pump sets and steam traps.	7
7.	Greavespart	Diesel oil engines (for use in motor land vehicle) and parts and fittings thereof	7

2. The plaintiff company has set out the sales figures of pumps of different descriptions during the period 2003 to 2007 as under:

(Rs. in lacs)				
Model	2003-04	2004-05	2005-06	2006-07
MK12	18637	22356	21167	19885
MK25	3424	4126	3925	6628
MK20	2675	4936	6711	6348

The plaintiff company claimed to have incurred advertising expenditure during the period 2002-03 to 2006-07 as under:

Year	Advertising Expenses (Rs. in lacs)
2002-03	9.09
2003-04	23.54
2004-05	36.47
2005-06	48.13
2006-07	51.74

3. It is alleged that defendant No.1 who is the proprietor of defendant No.2, made an application for registration of the trademark 'GREAVES INDIA' claiming use of aforesaid mark since 1.12.2004 in respect of self priming pump, monobloc pump, jet pump, shallow well pump, coupled pump, high head coupled pump, diesel pump, which are exactly of the same type as the pumps of the plaintiff company. The plaintiff company sent a legal notice dated 26.12.2007 to the defendant No.1 calling upon it to cease and desist from using the aforesaid mark. In his reply, the defendant claimed to have acquired popularity and publicity through use since 1.12.2004.

It is alleged that defendant No.1 is engaged in a business which is similar to the business of the plaintiff company and is dealing in products as that of the plaintiff

company, the use of the aforesaid mark by the defendant No.1 would result in causing deception in the market and is likely to lead the purchaser to believe that the products being sold under the marks 'GREAVES INDIA' are manufactured, sold and marketed by the plaintiff company or that the use of the aforesaid mark has been licensed/authorized by the plaintiff company.

4. The plaintiff has sought permanent injunction restraining the defendant No.1 from manufacturing, exporting, selling, marketing or advertising his products/goods/services under the name 'GREAVES INDIA' or in other name which is deceptively similar to the name 'GREAVES' of the plaintiff company. The plaintiff has also sought mandatory injunction directing the defendant No.1 to withdraw its application for registration of the mark 'GREAVES INDIA'. The plaintiff has further sought for rendition of accounts.

5. The defendant No.1 has contested this suit. It is alleged in the Written Statement that the defendant No.1 has been using the trademark 'GREAVES INDIA' since November, 2004 and has also applied for its registration. It is also alleged that the quality, price and packaging of the

products of the defendant No.1 are entirely different from that of the plaintiff company and the same are clearly distinguishable by the consumers. It is also claimed that the trademark of the defendant is altogether different from trademark of the plaintiff company.

6. The following issues were framed on the pleadings of the parties:

1. Whether the plaintiff is the registered owner of the trademark 'GREAVES'? – OPP
2. Whether the defendants have been using the trademark 'GREAVES INDIA' since December, 2005 and if so, its effect? – OPD
3. Whether the defendants had any right to adopt, use and apply for the registration of the impugned mark 'GREAVES INDIA'? – OPD
4. Whether the defendants are guilty of infringement and passing off its product as those of the plaintiff by choosing a mark which incorporates the plaintiff's registered trademark 'GREAVES'? - OPP
5. Whether the plaintiff is entitled to rendition of accounts and damages, if so, to what extent? – OPP
6. Relief.

Issue No. 1

7. Exh. PW-1/5 to PW-1/9 are various registrations in favour of the plaintiff company. Vide certificate Exh. PW-1/5 the mark 'GREAVES CARE' (LABEL) has been registered in Class 7 in respect of Machines and Machine tools, Motors (Except for vehicles), machine couplings and belting (except for vehicles), large size agricultural implements, incubators (diesel generating sets); vide certificate Exh. PW-1/6, the mark 'GREAVES' has been registered in Class 7 in respect of parts of internal combustion engines for water-crafts, diamond drill bits, diamond, truers and dressers, diamond drilling machines, diamond grinding wheel and parts included in Class 7 of internal combustion engines motor driven centrifugal pumping set, diesel driven pumps sets and steam taps; vide certificate Exh. PW-1/7, the mark 'GREAVES-ENGINES' has been registered in Class 12 in respect of Diesel oil engines (for use in motor land vehicles) and parts and fittings thereof included in Class 12; vide certificate Exh. PW-1/8, the mark/label bearing the name of 'GREAVES COTTON & CO. LTD.' has been registered under Class 7 in respect of diesel oil engines (not for use in Motor Land Vehicles) and parts and fittings thereof included in Class 7 and vide certificate Exh. PW-1/9, the mark/label of

‘GREAVESPART’ has been registered under Class 12 in respect of Diesel Oil Engines (for use in Motor Land Vehicles) and parts and fitting thereof included in Class 12.

Thus, the plaintiff company is the registered proprietor of the aforesaid trademarks. The issue is decided accordingly.

Issues No. 2 to 4

8. These issues are interconnected and can be decided together. In his affidavit by way of evidence, the defendant No.1 Mr. Mohammad Rafi (DW-1) has stated that his products are entirely different and are not in any manner related or connected with the consumer class of the plaintiff company. He further stated, that the term ‘GREAVES’ itself is not sufficient to make the mark ‘GREAVES INDIA’ deceptive and confusing. He also stated that he is also making motor pumps in the name of ‘POWER FLOW’ and he has already applied for registration of the trademark ‘GREAVES INDIA’. He claimed that he has stopped sale and marketing of products under the trade name GREAVES INDIA after the injunction.

In his cross examination, he admitted that he used to manufacture and trade in self priming pump, monobloc

pump, jet pump, shallow well pump, coupling pump, high head pumps, diesel pumps under the trade name 'GREAVES INDIA', though he stopped using the aforesaid mark after injunction by this Court.

9. PW-1 Mr. Vinod Kumar Agarwal, who is the only witness produced by the plaintiff company has stated in his affidavit by way of evidence that 'GREAVES' is the principal trademark of the plaintiff and is exclusively associated with its product and its business activities. He has further stated that the goods manufactured by the plaintiff under the trademark 'GREAVES' are offered for sale in every part of the country and also exported to several other countries. According to him, the plaintiff company besides other products also manufactures engines, sold under the model name MK-12, MK-20 & MK-25. MK-12, according to the witness, is a pump being assembled with various models of None Self Priming pumps (monobloc and coupled) and is also being used with many other applications whereas MK-20 is a single cylinder, air cooled engine, being assembled with various models of Non Self Priming pumps (monobloc). According to him MK-25 is a single cylinder, air cooled engine and this engine is also being coupled with Self

Priming Pumpset and is being used for other applications as well. He has stated that the plaintiff company had sale of Rs. 18637 lac, Rs. 22356 lac, Rs. 21167 lac, Rs. 19885 lac for MK 12 Pumps, Rs. 3424 lac, Rs. 4126 lac, Rs. 3925 lac, Rs. 6628 lac for MK 25 and Rs. 2675 lac, Rs. 4936 lac, Rs. 6711 lac, Rs. 6348 lac for MK-20 Pump for the years 2003-04, 2004-05, 2005-06 & 2006-07 respectively. According to him the plaintiff company incurred advertising expenditure of Rs. 9.09 lac, Rs. 23.54 lac, Rs. 36.47 lac, Rs. 48.13 lac & Rs.51.74 lac for the years 2002-03, 2003-04, 2004-05, 2005-06 & 2006-07. He has further stated that the defendant No.1 in his application seeking registration of trademark 'GREAVES INDIA' has claimed use of the aforesaid mark in respect of self priming pumps monobloc pump, jet pump, shallow well pump, coupled pump, high head coupled pump, diesel pump, which are exactly of the same type as are the pumps of the plaintiff company.

10. Section 28 of Trade Marks Act, 1999 gives to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in

the manner provided by this Act. The action for infringement is, thus, a remedy provided by Trade Marks Act to the registered proprietor of a registered trade mark in case there is an invasion of the statutory right provided to him for use of that trade mark in relation to the goods for which the trade mark has been registered in his name. Section 29(1) of Trade Marks Act, 1999 provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

11. It is also a settled proposition of law, which was reiterated by Supreme Court in ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, PTC (Suppl) (2) 680 (SC)***, that if the defendant resorts to colourable use of a registered trade mark such an act of the defendant would give rise to an action for passing off as well as for infringement. In an action based upon infringement

of a registered trade mark if the mark used by the defendant is visually, phonetically or otherwise so close to the registered trade mark of the plaintiff that it is found to be an imitation of the registered trade mark, the statutory right of the owner of the registered trade mark is taken as infringed. In such a case, if it is found that the defendant has adopted the essential features of the registered trade mark of the plaintiff, he would be liable even if he is able to establish that on account of packaging, get up and other writings on his goods or on the container in which the goods are sold by him, it is possible to clearly distinguish his goods from the goods of the plaintiff. On the other hand in a case of passing off if it is shown that on account of these factors it is very much possible for the purchaser to identify the origin of the goods and thereby distinguish the goods of the defendant from the goods of the plaintiff, the defendant may not be held liable.

In **Corn Products Refining Co. vs. Shangrila Food Products Ltd.**_ 1960 (1) SCR 968, the Supreme Court observed that the question whether two competing marks are so similar as to be likely to deceive or cause confusion is one of first impression and it is for the court to decide it.

The question has to be approached from the point of view of a man of average intelligence and imperfect recollection.

In ***Parle Products (P) Ltd. v. J.P. & Co., Mysore***, AIR 1972 SC 1359, Supreme Court inter alia observed as under:-

According to Karly's Law of Trade Marks and Trade Names (9th Edition Paragraph 838) "Two marks, when placed side by side, may exhibit many and various differences, yet the main idea left on the mind by both may be the same. A person acquainted with the one mark, and not having the two side by side for comparison, might well be deceived, if the goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted.

It would be too much to expect that persons dealing with trademarked goods, and relying, as they frequently do, upon marks, should be able to remember the exact details of the marks upon the goods with which they are in the habit of dealing. Marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole. Moreover, variations in detail might well be supposed by customers to have been made by the owners of the trade mark they are already acquainted with for reasons of their own.

It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

12. It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the plaintiff. When the mark of the defendant is not identical to the mark of the plaintiff, it would be necessary for the plaintiff to establish that the mark being used by the defendant resembles his mark to such an extent that it is likely to deceive or cause confusion and that the user of the impugned trademark is in relation to the goods in respect of which the plaintiff has obtained registration in his favour. It will be sufficient if the plaintiff is able to show that the trademark adopted by the defendant resembles its

trademark in a substantial degree, on account of extensive use of the main features found in his trademark. In fact, any intelligent person, seeking to encash upon the goodwill and reputation of a well-established trademark, would make some minor changes here and there so as to claim in the event of a suit or other proceeding, being initiated against him that the trademark being used by him, does not constitute infringement of the trademark, ownership of which vests in some other person. But, such rather minor variations or distinguishing features would not deprive the plaintiff of injunction in case resemblance in the two trademarks is found to be substantial, to the extent that the impugned trademark is found to be similar to the registered trademark of the plaintiff. But, such malpractices are not acceptable and such a use cannot be permitted since this is actuated by a dishonest intention to take pecuniary advantage of the goodwill and brand image which the registered mark enjoys, it is also likely to create at least initial confusion in the mind of a consumer with average intelligence and imperfect recollection. It may also result in giving an unfair advantage to the infringer by creating an initial interest in the customer, who on account of such

deceptive use of the registered trademark may end up buying the product of the infringer, though after knowing, either on account of difference in packaging etc. or on account of use of prefixes or suffixes that the product which he is buying is not the product of the plaintiff, but is the product of the defendant.

13. As held by the Supreme Court in ***Amritdhara Pharmacy v. Satyadeo Gupta, AIR 1963 SC 449***, whether a trade name is likely to deceive or cause confusion by its resemblance to another mark already registered is a matter of first impression and the standard of comparison to be adopted in judging the resemblance is from the point of view of a man of average intelligence and imperfect recollection. What is important to keep in mind that the purchaser does not have both the marks lying side by side for comparison and, therefore, chances of deception are rather strong.

14. In a case based on infringement of a registered trademark, the plaintiff need not prove anything more than the use of its registered trademark by the defendant. In such a case, even if the defendant is able to show that on account of use of other words by him in conjunction with

the registered word/mark of the plaintiff, there would be no confusion in the mind of the customer when he come across the product of the defendant and/or that on account of the packaging, get up and the manner of writing trademark on the packaging, it is possible for the consumer to distinguish his product from that of the plaintiff, he would still be liable for infringement of the registered trademark.

15. In **K.R. Chinna Krishna Chettiar vs. Shri Ambal and Co., Madras and Anr.**, *AIR 1970 SC 146*, the respondents were the two registered trademarks. The first mark consisted of a label containing a device of a goddess Sri Ambal seated on a globe floating on water enclosed in a circular frame with the legend "Sri Ambal parimala snuff" at the top of the label, whereas the other mark consisted of expression "Sri Ambal". The appellant before Supreme Court was seeking registration of a label containing three panels. The first and the third panels contained equivalents of the words "Sri Andal Madras Snuff", whereas the central panel contained the picture of goddess Sri Andal and the legend "Sri Andal". Sri Andal and Sri Ambal are separate divinities. The question before the Court was whether the proposed

mark of the appellant was deceptively similar to the respondents' mark. Noticing that the word Ambal was an essential feature of the registered trademarks, the Court was of the view that the name Andal proposed to be used by the appellant did not cease to be deceptively similar because it was used in conjunction with a pictorial device. Supreme Court referred to the case of **De Cordova and Ors. v. Vick Chemical Coy.** (1951) 68 R.P.C.103 where Vick Chemical Coy were the proprietors of the registered trade mark consisting of the word "Vaporub" and another registered trade mark consisting of a design of which the words "Vicks Vaporub Salve" formed a part. The defendants advertised their ointment as 'Karsote vapour Rub" and the Court held that the defendants had infringed the registered marks. The view taken by Lord Radcliffe that "a mark is infringed by another trader if, even without using the whole of it upon or in connection with his goods, he uses one or more of its essential features" was affirmed by the Supreme Court. The appeal was accordingly dismissed by Supreme Court, despite the fact that the words Ambal and Andal had distinct meanings.

16. The learned Counsel for the plaintiff has relied upon **Ruston & Hornsby Ltd. vs. Zamindara Engineering Co.** PTC (Suppl.) (1) 175 (SC) and **KSB Aktiengesellschaft & Ors. vs. KSB Global Limited** 2011 (45) PTC 103 (Del.) whereas the Counsel for the defendant has relied upon **K.Narayanan & Anr. vs. S.Murali** (2008) 10 SSC 479.

In the case of **K.R.Narayanan** (supra), it was held that a mark ought to be registered, before a person can claim its infringement, and a proposed registration, which may or may not be granted, does not confer a cause of action to the person who has applied for its registration. I fail to appreciate how this judgment can be of any help to the defendant No.1 when the mark “GREAVES” and “GREAVES (Label)” are already registered in favour of the plaintiff company in various classes including Class 7, which includes centrifugal pump sets and diesel driven pump sets.

In **KSB Aktiengesellschaft** (supra), the plaintiff company was using “KSB” as part of its corporate name. Plaintiff No. 2 in that case was also exporting goods under the trademark “KSB” and/or under the trade name “KSB” & Logo. The defendant was using “KSB” as a part of its trade

name. It was contended on behalf of the defendant that no infringement was made out on its part as it was using the words “Global Limited” as suffix to the word “KSB”. The contention was however, rejected by this court noticing that the parties were in similar line of business and holding the rival marks were deceptively similar. The Court felt that a lay consumer could by association relate the origin of defendant’s goods to that of the plaintiff.

17. In **Ruston & Hornsby Ltd.** (supra), the appellant was registered proprietor of trade mark “RUSTON” in Class 7 in respect of the diesel internal combustion engines. The respondent was found using the trademarks “RUSTAM” and ‘RUSTAM INDIA’. The High Court held that use of the word “RUSTAM” by the respondent constituted infringement of “RUSTOM INDIA” on the ground that the plaintiffs products were manufactured in England whereas the defendant was manufacturing them in India and the suffix “INDIA” would be a sufficient warning that the engines sold was not a “RUSTON” engine manufactured in England. Setting aside the decision of the High Court, Supreme Court held that if the respondent trade mark ‘RUSTOM’ was deceptively similar to that of the appellant’s trade mark “RUSTON”, the

mere addition of word “INDIA” to the respondent’s trade mark was of no consequence and the appellant was entitled to succeed in its action for infringement of trade mark.

18. As noted earlier, the defendant No.1 himself has admitted in his cross examination that he was manufacturing monoblock pumps, jet pumps, shallow well pumps, coupling pumps, high head pumps, and diesel pumps under the trade name ‘GREAVES INDIA’. It has also come in deposition of PW-1, that the defendants are manufacturing self priming pump, monobloc pump, jet pump, shallow well pump, coupled pump, high head coupled pump, diesel pump etc. and in his application for registration also the defendant No.1 has claimed use of the mark “GREAVES INDIA” in respect of the above referred products which according to PW-1 are exactly of the same type as are the pumps of the plaintiff company. It thus, stands proved that the mark “GREAVES INDIA” is being used by the defendant No.1 in respect of the same products for which the mark Greaves is being used by the plaintiff company. The defendant before this Court has thus, been manufacturing and selling the same product under the trade name “GREAVES INDIA”, which the plaintiff company

has been manufacturing and selling under its registered trade mark "GREAVES". By using the word "GREAVES INDIA" the defendant No.1 lifted and adopted the whole of the registered trademark of the plaintiff company, thereby causing infringement of that trade mark. Mere use of the word "INDIA" would make no difference since the word "GREAVES" is not only an essential but also the main component of the trademark "GREAVES INDIA" being used by the defendant No.1. Use of the word "INDIA" as a suffix and not as a prefix is also a strong indicator that the defendant No.1 wanted to encash upon the popularity, goodwill and reputation of the word "GREAVES" engines not only in India but in many other countries. In fact had the defendant No.1 used the word "INDIA" as prefix even that, in my view would have constituted infringement, in facts and circumstances of this case. It would be pertinent to note here that the defendant No.1 has not given any reason or explanation for use of the word "GREAVES" which is the most essential component of his trademark. During cross examination, he could not even give any meaning to the word "GREAVES". This clearly shows that the adoption of the word "GREAVES" by the defendant was dishonest,

actuated with the intention to encash upon the tremendous reputation which the registered trademark of the plaintiff enjoys in the market. It would also be appropriate to note here that “GREAVES” is not a dictionary word and is alleged to be the surname of the founder of the plaintiff company. Neither deletion of a part of a registered trademark nor the prefix or suffix of another word to it would validate the use of the registered mark by an unlicensed user, once it is shown that the part used by the infringer is an essential part of the registered trademark.

19. It also in interest of the consumer that a well established brand such as “GREAVES” is not to be allowed to be used by another person. A person purchasing pumping sets being sold by the plaintiff company under the name “GREAVES”, when he comes across the product of the defendant No.1 being sold under the trade name “GREAVES INDIA”, on account of imperfect recollection and his not having the product of the plaintiff with him at that time, may form an impression that both the products emanate from the same source and that is why both of them are using the word “GREAVES” for selling similar products. This may cause confusion in the minds of the consumers.

Also, if the quality of the product of the defendant No.1 is not found to be as good as the quality of the product of the plaintiff, the consumer may feel cheated; he having paid the price which the product of the plaintiff commands in the market and he may also form an opinion that the quality of the product of the plaintiff had gone down and that is why the product purchased by him was found to be of inferior quality.

For the reasons given in the preceding paragraphs, the plaintiff is entitled to injunction against use of the trademark "GREAVES" by the defendant No.1. The plaintiff is also entitled to mandatory injunction directing the defendant No.1 to withdraw his application submitted to trade mark registry for registration of the mark "GREAVES INDIA". The issues are decided against the defendant No.1 and in favour of the plaintiff.

Issue No. 5

20. The relief of delivery up of infringing material was not pressed during the course of arguments. The learned counsel for the plaintiff, however, insisted on award of punitive compensatory damages.

In ***Time Incorporated v. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del), this Court observed that punitive damages are founded on the philosophy of corrective justice and as such, in appropriate cases these must be awarded to give a signal to the wrong doers that the law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the lis but suffer on account of the breach. In the case of ***Hero Honda Motors Ltd. V. Shree Assuramji Scooters***, 2006 (32) PTC 117 (Del), this Court noticing that the defendant had chosen to stay away from the proceedings of the Court felt that in such case punitive damages need to be awarded, since otherwise the defendant, who appears in the Court and submits its account books would be liable for damages whereas a party which chooses to stay away from the Court proceedings would escape the liability on account of the failure of the availability of account books.

21. In ***Microsoft Corporation vs. Deepak Raval***: *MIPR 2007 (1) 72*, this Court observed that in our country the Courts are becoming sensitive to the growing menace of

piracy and have started granting punitive damages even in cases where due to absence of defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.

In **Larsen and Toubro Limited vs. Chagan Bhai Patel**: *MIPR 2009 (1) 194*, this Court observed that it would be encouraging the violators of intellectual property, if the defendants notwithstanding having not contested the suit are not burdened with punitive damages.

Also, the Court needs to take note of the fact that a lot of energy and resources are spent in litigating against those who infringe the trademark and copyright of others and try to encash upon the goodwill and reputation of other brands by passing off their goods and/or services as those of that well known brand. If punitive damages are not awarded in such cases, it would only encourage unscrupulous persons who actuated by dishonest intention,

use the well-reputed trademark of another person, so as to encash on the goodwill and reputation which that mark enjoys in the market, with impunity, and then avoid payment of damages by remaining absent from the Court, thereby depriving the plaintiff an opportunity to establish actual profit earned by him from use of the infringing mark, which can be computed only on the basis of his account books. This would, therefore, amount to putting premium on dishonesty and give an unfair advantage to an unscrupulous infringer over those who have a bona fide defence to make and therefore come forward to contest the suit and place their case before the Court. The issues are accordingly decided in favour of plaintiff and against the defendant No. 1.

Issue No. 6

In view of my finding on other issues, the plaintiff is entitled to injunction and damages as stated above in this judgment.

ORDER

A decree for perpetual injunction is hereby passed restraining the defendant No.1 from manufacturing selling,

offering for sale advertising or promoting any self priming pump, monobloc pump, jet pump, shallow well pump, coupled pump, high head coupled pump, diesel pump under the trade mark "GREAVES INDIA" or any other mark which is identical or deceptively similar to the registered trademark 'GREAVES' of the plaintiff. A decree for mandatory injunction is also passed directing the defendant No.1 to withdraw its application No. 1387589, submitted by it to trademark registry for the registration of the trademark "GREAVES INDIA", within six weeks. A decree for damages amounting to Rs.1 lac is also passed in favour of the plaintiff and against defendant No.1. The defendant No. 2 is not a legal entity and is only a trade name adopted by defendant No.1. Hence, the suit against defendant No.2 is dismissed. If the amount or damages is not paid within six weeks, the plaintiff will also be entitled to pendente lite and future interest @ 6% p.a. on the amount of damages. The plaintiff will also be entitled to proportionate cost of the suit.

(V.K. JAIN)
JUDGE

JUNE 03, 2011
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