

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 1107/2008**

Date of Decision: 5th October, 2012

IN THE MATTER OF

M/S HT MEDIA LIMITED

..... Plaintiff

Through: Mr. Subhash Srivastava, Advocate

versus

MR. ANAND PANDEY AND ANR.

..... Defendants

Through : None.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. At the outset, counsel for the plaintiff submits that he proposes to confine the relief in the present suit to a decree of permanent injunction against the defendants for restraining them from using the name of the plaintiff, its employees, editors, members or any deceptive variant thereof in their advertisement material in any form.

2. The present suit has been instituted on behalf of the plaintiff company by Mr. Majoj Bhargava, A.G.M. (Legal), described as an authorized signatory of the plaintiff company, competent to sign and verify the plaint and institute and prosecute the suit. The plaintiff has filed the suit against the defendant No.2, 'Poorvanchal Vishesh', a magazine published and edited by the defendant No.1, Mr. Anand Pandey. The photocopy of the power of attorney dated 14.2.2007 executed in

favour of Mr. Majoj Bhargava has been filed (marked as 'A') and the original thereof has been produced by the counsel for the plaintiff, perused by the Court and returned to him. Mr. Manoj Bhargava (PW-1) is also the deponent of the affidavit dated 23.2.2011 tendered in evidence as PW-1 and marked as Ex.PW-A.

3. It is averred in the plaint that the plaintiff is a leading media house of the country that is engaged in the business of print media, radio, internet, etc. The plaintiff claims to enjoy a leadership position in the English and Hindi newspaper markets in India. It has a flagship publication in the name of "Hindustan Times" which is a daily newspaper published in English and "Hindustan", a Hindi daily. Both the newspapers are stated to have a wide circulation in India. Apart from the "Hindustan Times" and "Hindustan", the plaintiff claims that it has other publications including "Mint" (English Business daily) and "Nandan" (Monthly children's magazine).

4. It is averred in the plaint that the cause of action for instituting the present suit against the defendants had arisen in May 2008 when it was brought to the notice of the representatives of the plaintiff that defendant No.1, the publisher and Editor of defendant No.2, was representing on their website at www.poorvanchalvishesh.com that their magazine published under the name of 'Poorvanchal Vishesh' was being published by the plaintiff. On subsequent inquiries made by the plaintiff, it was revealed that the defendants were operating the aforesaid website,

wherein it was claimed that the “*magazine 'Poorvanchal Vishesh' is a Hindi National News Magazine founded by the auspices of Editors, Editor-in-Chief and other prominent media persons of Hindustan Times Group*”. Further, the defendants had stated in their magazine (April 2008) Issue No.20 that Ms. Mrinal Pande, the Group Editor of Hindustan is the Group Editor of the magazine and Ms. Shobhana Bhartia is the President of the magazine (Ex.PW1/4). The defendants had also displayed the pictures of Ms. Mrinal Pande and Ms. Shobhana Bhartia on their website. A copy of the webshot of the defendants taken by the plaintiff and placed on record is marked as Ex.PW1/3. Additionally, the plaintiffs claim to have come upon the magazine of the defendants, “Poorvanchal Vishesh” (Issue No.20) wherein on the very first page, the name of Ms. Mrinal Pande was mentioned as the Group Editor of the said magazine. It is averred in the suit that she does not have any association with the defendants and nor had she consented at any time to be associated with them. The original issue of the aforesaid magazine of the defendant No.2, published in April 2008 is handed over by the counsel for the plaintiff and taken on record.

5. Aggrieved by the aforesaid activities of the defendants in trying to misrepresent to the public at large that they are associated with the senior management of the plaintiff company, both, for their magazine and on their website, the present suit for permanent injunction has been instituted against the defendants.

6. The present suit was registered on 30.5.2008. On the said date, an *ex parte ad interim* injunction order was passed against the defendants in I.A.No.6990/2008, restraining them, their employees, agents, franchisees, servants, representatives, etc., from using the mark, 'The Hindustan Times' and/or any deceptive variant thereof and/or using the name of the plaintiff's Editors/employees, in their advertising material in any form, including as description/introduction of the defendant No.2, or in any manner representing that the defendant No.2 is connected or affiliated with the plaintiff.

7. The records reveal that despite service, neither of the defendants had entered appearance in the suit and nor did they file their written statements. As a result, vide order dated 23.2.2011, the defendants were proceeded against *ex-parte* and the interim order dated 30.5.2008 was made absolute. Thereafter, the plaintiff was directed to file its *ex parte* evidence by way of affidavits. In compliance of the aforesaid order, the plaintiff has filed the affidavit of Mr. Manoj Bhargava (PW-1) in support of the averments that have been made in the plaint.

8. The Court has heard counsel for the plaintiff, perused the averments in the plaint as also the affidavit by way of evidence filed by the plaintiff, apart from the documents that have been placed on record as part of the evidence.

9. In the absence of any contest from the defendants, the averments made by the plaintiff in the plaint have remained unrebutted

and are therefore deemed to be true and correct. On the basis of the evidence placed on record, this Court is satisfied that the defendants did not obtain any authorization or consent from the plaintiff and/or its senior officers, including its Vice Chairman and Editorial Director, Ms. Mrinal Pande and its Group Editor, Ms. Shobhana Bhartia, before proceeding to use their names in their magazine and on their website and give an impression to the public at large that they are associated with the defendants. Thus the plaintiff is justified in stating that the defendants are attempting to mislead the public in believing that the magazine, 'Poorvanchal Vishesh' has any association with the plaintiff or that the plaintiff and/or its management has authorized or promoted the said magazine.

10. There is merit in the submission made by learned counsel for the plaintiff that the aforesaid act of the defendants in trying to associate the senior management of the plaintiff company with their publication is nothing but an attempt to deceive the subscribers, readers, advertisers and customers of the plaintiff and the public at large. The plaintiff has categorically asserted that it has at no point in time consented to or acquiesced in the aforesaid unlawful conduct of the defendants and immediately upon coming to know of the defendants' unlawful activities, it has approached this Court for seeking appropriate relief.

11. Having regard to the averments made in the plaint and the evidence placed on record, which has remained uncontested, the same

are accepted as true and correct. The suit is decreed in favour of the plaintiff and against the defendants by restraining the defendants, their employees, agents, franchisees, servants, representatives, etc., from representing to the public in any manner whatsoever that the plaintiff or its Vice Chairman and Editorial Director, Ms. Mrinal Pande and its Group Editor, Ms. Shobhana Bhartia are in any way connected with them or their publications including "Poorvanchal Vishesh". Further, the defendants are restrained from using the name of the plaintiff and/or its management/employees in their advertisement material including the publication, 'Poorvanchal Vishesh' and on their website, www.poorvanchalvishesh.com or any other publication/website connected to or associated with them, so as to give an impression to the public at large that they are connected or affiliated with the plaintiff.

12. The suit is decreed as above with costs and litigation expenses quantified at ₹20,000/-

(HIMA KOHLI)
JUDGE

OCTOBER 05, 2012
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