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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.03.2012

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FAO(OS) 99/2012

DRS DILIP ROADLINES PVT. LTD. & ORS. APPELLANTS

Vs

DRS LOGISTICS PVT. LTD. RESPONDENT

Advocates who appeared in this case:

For the Appellants: Mr Amit Sibal & Ms Prachi V. Sharma, Advocates.

For the Respondent: Mr C.M. Lall, Ms Ekta Sarin, Mr Raghav Malik & Ms Shilpi Mehta, Advocates

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

Caveat No. 229/2012

Since learned counsel for the caveator has entered appearance, the caveat stands discharged.

CM No. 3948/2012 (Exemption)

Allowed subject to just exceptions.

FAO(OS) No. 99/2012; CM Nos. 3946/2012 (Stay) & 3947/2012 (for condonation of 129 days' delay in re-filing the appeal)

1. This appeal is directed against the judgment of the learned single Judge dated 07.09.11, whereby the ex-parte injunction granted on 03.06.2011, in favour of the respondent/plaintiff, has been confirmed and the application of the appellants/defendants seeking its vacation being IA

No. 11799/2011, preferred under Order 39 Rule 4 of the Code of Civil Procedure, 1908 (in short the Code), has been rejected.

2. Being aggrieved, by the impugned judgment, the present appeal has been preferred. In order to appreciate the scope of the challenge laid in the present appeal the following broad facts need to be noticed.

2.1 The respondent/plaintiff is in the business of operating public carriers. It provides transportation and delivery of products, merchandise, commodities and luggage etc. of all kinds and descriptions in every part of India.

2.2 The respondent/plaintiff, is essentially, a closely held private limited company, which has its genesis apparently, in a partnership firm. Therefore, the board of directors of the respondent/plaintiff comprise of the members of the Agarwal family. The managing director is one Sh. Dayanand Agarwal. The other members, i.e., Sh. Rajinder Agarwal, Sh. Ramesh Agarwal, Sh. A.K. Agarwal, Sanjay Agarwal and Dinesh Agarwal are other members on the board of directors of respondent / plaintiff company. The Board of directors also comprises of two nominees of the Kotak Mahindra Trusteeship Service Limited.

2.3 Because of disputes erupting in the family, there appear to be two factions, seeking to take control of the respondent/plaintiff company. One faction comprises of Dayanand Agarwal and his sons A.K. Agarwal and Sanjay Agarwal, who evidently were inducted into respondent/plaintiff company as employees, in April, 1993 and April, 1996 respectively (hereinafter collectively referred to as the Dayanand Agarwal group). The other faction, comprises of the two brothers of Dayanand Agarwal, i.e., Rajender Agarwal, Ramesh Agarwal and also

Dinesh Agarwal (hereinafter collectively referred to as the Ramesh Aggarwal group).

2.4 Allegations and accusations are made by the two groups qua each other, with regard to the management of the affairs of the respondent/plaintiff company. In particular, the Dayanand Agarwal group has alleged siphoning of funds by the Ramesh Agarwal group. As a matter of fact, it is the case of the Dayanand Agarwal group (and hence the appellant), that an amicable settlement had been arrived between the two groups with the intercession of the representatives of the Kotak Mahindra Bank, which was, allegedly breached by the Ramesh Agarwal group.

2.5 It is in this background that the respondent/plaintiff company evidently filed a suit being: OS No. 185/2010, in the city civil court at Secunderabad against the Ramesh Agarwal group, amongst others. This suit was filed in November, 2010. In the suit prayers have been made for grant of permanent injunction against the defendants (which include the Ramesh Agarwal group) from infringing statutory rights of the respondent/plaintiff company qua the registered mark 'Agarwal Packers and Movers'. Relief of passing off has also been prayed for.

2.6 It is alleged that, the Ramesh Agarwal group in retaliation instituted the instant suit, in this court, in the name of the respondent/plaintiff company, being CS(OS) No. 1486/2011, out of which, the present appeal has emanated. In effect, in a sense, the instant suit is a mirror image of the suit at Secunderabad. In CS(OS) 1486/2011, similar prayers of injunction and damages for infringement of trade mark and copy right have been made; in addition to, reliefs based on passing off and an unfair competition.

2.7 In this suit, as indicated above, the respondent/plaintiff company had sought interim reliefs, which were granted, in the first instance, by way of an ex-parte order by order dated 03.06.2011, and have now been confirmed by the impugned judgment.

3. Aggrieved by the same, as indicated above, the present appeal has been filed. Both before us and the learned Single Judge the burden of the appellant's argument has been:

(i) there was no disclosure by Ramesh Agarwal, who had instituted the suit, on behalf of the respondent/plaintiff company, as regards the pendency of the earlier suit filed in Sikandarabad, i.e., OS 185/2010. This, according to the appellant, was a material fact, which the respondent/plaintiff company failed to disclose, and hence, on this short ground ought to have been denied the equitable relief of injunction, as sought by it, before the learned Single Judge;

(ii) the suit instituted for and on behalf of the respondent/plaintiff company lacks the requisite authority of its board of directors. The board of directors' resolution dated 25.01.2007, is a fake and forged document, which did not entitle Sh. Ramesh Agarwal, to institute the instant suit;

(iii) the appellant no.1/defendant no.1 have been permitted, by virtue of the board of resolution dated 18.09.2009, to use the trademark of the respondent/plaintiff company, and hence, the relief sought for by the respondent/plaintiff company ought not to have been granted to it. In other words, it was submitted that the respondent/plaintiff company had acquiesced to the use of trademarks 'Agarwal Packers & Movers' and/or 'DRS Group logo', by the appellants/the defendants.

4. Mr Sibal, who appeared for the appellants, most vehemently argued that the learned Single Judge had not given due consideration to these aspects of the matter. It was Mr Sibal's submission that the learned Single Judge had relied upon the board of directors' resolution dated 06.10.2006, to hold, albeit on a prima facie basis, that Ramesh Agarwal had the requisite authority to institute the suit. Mr Sibal appeared to contest the position as the resolution filed with the suit was one dated 25.01.2007. It was also the contention of Mr Sibal that non-disclosure of the institution of the Secunderabad suit, ought to have weighed with the learned Single Judge, being a material fact. The suppression of this fact ought to have disentitled the respondent/plaintiff company from obtaining any relief from the learned Single Judge.

4.1 On behalf of the respondent/plaintiff company Mr C.M. Lall put in an appearance. He appeared to rely largely on the impugned judgment.

5. Having heard the learned counsels for the parties and perused the record of the case, in our view, the impugned judgment deserves to be sustained for the following reasons.

5.1 What has emerged on perusal of the appeal, and the record of the case, is that, there is no dispute that the trademark: "Agarwal Packer and Movers" and the "DRS Group logo", is owned by the respondent/plaintiff company. The said trademarks are registered in the name of the respondent/plaintiff company. The learned Single Judge records this facts in paragraph 5 of the impugned judgment. Mr Sibal, did not raise any cavil, with regard to this position, evidently, for the reason that this aspect is clearly admitted even in the appeal filed before us. Therefore, the learned Single Judge taking this as the base, and noticing the fact that, the appellant no. 1/ defendant no. 1 was neither the proprietor nor the

registered owner of the trademark “Agarwal Packer and Movers” and the “DRS Group logo”; came to the conclusion that the appellants / defendants had no right to use the same.

5.2 The appellants /defendants had, however, based their rights on the board of directors’ resolution dated 18.09.2009. Based on the said resolution, the appellants/defendants have taken a stand that the respondent/plaintiff company has acquiesced to the use of the aforementioned trademark and logo by appellants/defendants. Mr Sibal, had infact, contended that the learned Single Judge had not dealt with this aspect of the matter. We, however, tend to disagree with Mr Sibal. A perusal of the observations made by the learned Single Judge from paragraphs 10 onwards, would show, that the impugned judgment squarely deals with the said issue. As a matter of fact, the relevant extract of the board of directors’ resolution dated 18.09.2009 has been culled out in the impugned judgment.

5.3. After examining the contents of the resolution, the learned Single Judge in paragraph 12 and 13 of the impugned judgment has come to the following prima facie finding.

“In my view, the aforesaid minutes do not amount to any permission /acquiescence on the part of the plaintiff-company with respect to use of the trademarks Agarwal Packers & Movers and / or DRS Group Logo by defendant No.1. Defendant No.2 Mr. A.K. Agarwal, when questioned about the business of defendant No.1-company, claimed that this business was started only for serving MRF Limited because he was facing some practical problem in making payments on this customer’s account. He specifically stated that he had not started any new business in DRS Dilip Roadlines. In fact, the explanation given by Mr. A.K. Agarwal did not satisfy the Chairman, who asked him to give comfort to the Board that there was no diversion resulting in loss of business to the

plaintiff-company. The Chairman also questioned the formation of DRS Dilip Roadlines without consent of the Board and when Mr. A.K. Agarwal stated that a number of other things had been done without consent of the Board, the Chairman maintained that this did not absolve the wrongdoings on the part of Mr. A.K. Agarwal.

13. In my view, this resolution at best can mean that the Board of Directors of the plaintiff-company condoned the act of defendant No.1 in serving MFT Limited on account of some practical problems which Mr. A.K. Agarwal claimed to be facing in respect of payments and bookings on this customer's account. This resolution cannot by any stretch be interpreted to mean that the Board of Directors of the plaintiff-company had permitted the use of the trademark Agarwal Packers & Movers by defendant No.1-company and forever. This is not the case of defendant No.1 that it is using the trademark Agarwal Packers & Movers and DRS Group Logo only for serving one client MRF Limited. In fact, the plaintiff-company had not permitted use of its trademarks by defendant No.1 even for serving MRF Limited in future."

(emphasis is ours)

5.4. In brief, what has been concluded by the learned Single Judge is that, the appellants/defendants, contrary to what was contended, had not been permitted to use the trademark and/or the logo of the respondent/plaintiff company. We tend to agree with the view taken by the learned Single Judge in that behalf.

6. The last aspect of the matter was with regard to the authority of Mr Ramesh Agarwal, to institute the instant suit. We had put to Mr Sibal as to whether the resolution dated 06.10.2006 found mention in the plaint. Mr Sibal informed us quite candidly, that the Board of Directors' resolution dated 06.10.2006 was mentioned in the list of documents filed with the plaint. It is not in dispute that instead of filing the resolution

dated 6.10.2006, what got filed was a resolution dated 25.01.2007. The learned Single Judge notes this fact in paragraph 14 of the impugned judgment. It is also noted that the signatures of Sh. Dayanand Agarwal, the father of appellant nos. 2 and 3, found on the resolution dated 6.10.2006 are not in dispute. The resolution of 6.10.2006, undisputedly permits Ramesh Agarwal to institute suits, of the like nature. It is in this background that the learned Single Judge came to the conclusion that it could not be said that the instant suit filed by Sh. Ramesh Agarwal lacked due authority of the respondent/plaintiff company. We have no reason to come to a different conclusion.

6.1 Mr. Sibal in the context of the above also made a submission that three (3) FIRs have been lodged by the Dayanand Aggarwal Group. This according to him would show that the very same persons who evidently have appended their signatures on the board of directors' resolution dated 06.10.2006 (i.e., Dayanand Aggarwal Group) were distrustful of Shri Ramesh Aggarwal and hence, the board of directors' resolution could not have been relied upon. We are unable to appreciate this argument as institution of the FIRs and passing of the board of directors' resolution dated 06.10.2006 cannot be inter-related in such like fashion. The issue before the learned Single Judge was as to whether Shri Ramesh Aggarwal had the requisite authority to institute the suit. Having found so, he repelled the argument of lack of authority raised by the appellant. We also find that this particular submission finds no mention in the impugned judgment, and appears to have been raised for the first time before us.

7. One another fact which deserves to be noticed is that the suit in Secunderabad has been filed by one, Shri Bhopal Rao, whose authority to

institute the suit has been disputed by the respondent/plaintiff company. The appellant no. 1/ defendant no. 1 is not a party to those proceedings. It also came through that the proceedings in the said suit have been stayed by the Andhra Pradesh High Court.

8. The learned Single Judge keeping in mind the nature of the dispute and the issues raised in the instant suit, has, in our view, correctly come to the conclusion, that the fact that respondent/plaintiff company in the instant suit, had failed to make a reference to the suit filed at Secunderabad, did not amount to suppression of a material fact, as it had no bearing on the question of infringement of trademark (owned by the respondent/plaintiff company) by appellants/defendants. We wholly agree with the conclusion arrived at by the learned single Judge in this behalf, as well.

9. Before we conclude, it would be apposite to say that the learned Single Judge, while disposing of the interim application has employed discretion in accordance with well accepted principles of law. It is not been shown to us that the exercise of discretion is either arbitrary, capricious or perverse. For the appellate court to interfere, it would have to be shown firstly, that it is an 'appeal on principle', and secondly, that no reasonable person could have reached the conclusion, which the trial court has reached, based on the material placed before it. None of the two tests are complied with; therefore, the impugned judgment does not call for our interference. (see *Wander Ltd. and Another Vs. Antox India P. Ltd., 1990 (Supp) SCC 727*).

10. The appeal being devoid of merit is, accordingly dismissed with costs of Rs.50,000/-.

11. Needless to say, the observations both in the impugned judgment and those made by us, hereinabove, are prima facie in nature and, would thus have no impact whatsoever at the stage of final adjudication of the suit.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

MARCH 02, 2012

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