

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 23<sup>rd</sup> December, 2014

+ **CS(OS) 786/2013 & I.A. No.6910/2013**

LAVASA CORPORATION LTD ..... Plaintiff  
Through Mr.Darpan Wadhwa, Adv. with  
Mr. Rohit Gupta and Mr.Arn timer  
Kumar Adv.

versus

KREST INFRATECH PVT LTD & ORS ..... Defendants  
Through Defendants are *ex parte*.

**CORAM:**  
**HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The plaintiff has filed the present suit for damages, rendition of accounts and a decree of permanent injunction restraining the defendants from infringing/passing off the plaintiff's registered trademark "Lavasa".

2. The suit and interim application were listed on 29<sup>th</sup> April, 2013, the Court has passed an *ex-parte* interim order restraining the defendants from using the plaintiff's registered trademark or any other word/mark identically/deceptively similar to "Lavasa". The relevant and operative part of the order is reproduced below :

"I.A.No.6910/2013 (by the plaintiff u/O XXXIX R-1 and 2 r/w Section 151 CPC)

1. Notice for the date fixed.

2. The plaintiff has instituted the accompanying suit against the defendants praying inter alia for grant of the reliefs of permanent injunction, restraining them from infringement of copyright, for rendition of accounts, delivery up, etc.

3. Learned Senior Advocate appearing for the plaintiff states that the plaintiff company was incorporated in the year 2000 as 'Pearly Blue Lake Resorts Pvt. Ltd. and in the year 2003, it came to be known as "Lake City Corporation Pvt. Ltd." and it was in the year 2004, that its name was changed to "Lavasa Corporation Ltd.". The plaintiff is stated to be a subsidiary of Hindustan Construction Company Ltd., which has been in existence for over 75 years and is in the business of construction and infrastructure projects.

4. The subject matter of the present suit is the name "LAVASA", which the plaintiff had adopted in the year 2004, for developing a unique hill station project, which is spread over 12500 acres and comprised in 18 revenue villages in Taluka Mulshi and Velhe District Pune, Maharashtra. Learned counsel submits that "LAVASA" is an invented word and has no dictionary meaning and the same had been conceived by the plaintiffs in the year 2000. Besides being a trademark and part of the plaintiff's corporate name, the word "LAVASA" is claimed to be an essential and integral part of the plaintiff's trading style. The plaintiff has averred that under the aforesaid mark, it has significant interest and involvement in the field of education, hospitality, leisure, theme parks, sports, arts and culture, health amenities as also in facilitating tours and travels. The trademark "LAVASA", various other "LAVASA" formative trademarks and the "LAVASA" artistic work/label have been depicted in para 14 of the plaint and it is stated that the same are being used by the plaintiff in all the advertisements, hoarding and promotional materials, etc., all over the country.

5. Learned counsel submits that due to the long, uninterrupted, extensive and exclusive use of the “LAVASA” trademark by the plaintiff, it has gained huge popularity and an instant recognition and the word “LAVASA” has come to be associated with the plaintiff who has acquired a valuable intellectual right in the said mark. The plaintiff has averred that it has applied for and has obtained in its favour, various registrations for the word “LAVASA” in different categories for the use of the word/mark “LAVASA”. The trademark registrations for the word “LAVASA” in classes 16,23,36,37,41 and 42 have been set out in para 18 of the plaint.

6. The promotional activities in respect of the mark “LAVASA” and the expenses incurred by the plaintiff thereon from the years 2000 to 2012 have been set out in para 21 of the plaint. The various modes of media, adopted by the plaintiff, to popularize and promote its business/products/services under the mark “LAVASA” have been set out in para 22 of the plaint. The various activities undertaken by the plaintiff and the events held by it to promote its business under the mark “LAVASA” have been detailed in para 25 of the plaint. The annual sales figures in respect of the products/services/business activities under the trademark “LAVASA” for the years 2008-2012, have been set out in para 28 of the plaint. It is thus stated by the learned Senior Counsel that the trademark “LAVASA” is associated exclusively with the plaintiff and its projects.

7. As regards the defendants, the defendant No.1 is stated to be a private limited company, which along with the defendant No.2, is developing, marketing and offering for sale, county farms and resorts under the name “LAVASA ON THE ROCKS” or “LAVASSA ON THE ROCKS” in Neemrana.

8. The printouts of the e-brochure as downloaded from the website of the defendants, i.e., [www.rbsinfra.com](http://www.rbsinfra.com) have

been filed along with the list of documents. It is stated on the aforesaid website that the defendant No.2's real estate division is spearheaded by its group founder, defendant No.3; defendant No.4 is stated to be the Executive Director of the defendant No.2, defendant No.1 is mentioned as one of the partners of the defendant No.2 and the defendant No.5 is stated to be the Director of the defendant No.1. All the defendants collectively claim to be one of the Northern India's leading real estate developers, active in multiple real estate formats. They claim that they are engaged in all segments of constructed space, viz., residential group housing, residential townships, commercial complex, retail hospitality and entertainments and have developed prime space in the Delhi-NCR.

9. Learned Senior Advocate appearing for the plaintiff states that the defendants have not only adopted the mark "LAVASA/LAVASSA", which is visually, structurally and phonetically identical/similar to the plaintiff's trademark, "LAVASA" but they are also using the same in respect of their business, products, goods and services which are similar to those that are being offered by the plaintiff. Further, the defendants' project under the mark "LAVASA ON THE ROCKS" is on an elevated terrain that meets the Aravali Hills, and the plaintiff is also developing a hill station project in the midst of the Sahyadris hill range under the mark, "LAVASA". It is thus stated that there is greater likelihood of confusion in the mind of the public as the project of the plaintiff and that of the defendants are on the same lines as they are both situated in a valley. Learned counsel contends that the defendants have copied the plaintiff's mark in respect of an identical project which is nothing but an attempt to encash upon the plaintiff's name and goodwill in the mark "LAVASA" and that they are trying to promote their project by giving an impression to the public that their project is in some way, associated with the plaintiff's project.

10. Learned counsel submits that the aforesaid deliberate' adoption by the defendants of the plaintiff's registered trademark, "LAVASA" amounts to capitalizing on the reputation and goodwill subsisting in the plaintiff and a blatant attempt to illegally achieve, increase and earn revenue, based on the aforesaid trademark. Hence, the present suit.

11. Having regard to the submissions made by the learned Senior Advocate for the plaintiff, as noted hereinabove, and upon perusing the averments made in the plaint and the documents placed on record, this Court is of the prima facie opinion that the plaintiff is entitled to grant of an ex parte ad interim injunction in its favour. Accordingly, till further orders, the defendants, their partners, directors, officers, servants, agents, representatives, etc., are, restrained from using the plaintiff's registered trademark, "LAVASA" or any other word/mark that is identically/deceptively similar to the plaintiff's trademark, "LAVASA" either in isolation or in conjunction with any other mark/logo, service or trade style or any word that may give an impression that the same is related to the plaintiff's trademark, "LAVASA".

3. Despite of service of summons and notice, the defendants did not appear before Court on 26<sup>th</sup> August, 2014. Thus, the Court directed that the defendants be proceeded ex-parte. The plaintiff was granted time for adducing *ex-parte* evidence by way of affidavit.

4. Ex-parte evidence by way of affidavit of PW-1 Mr.Suresh Kumar Pendharkar was filed. PW-1 tendered his evidence in chief examination of affidavit which is exhibited as Ex.PW-1/X. Documents were exhibited as the defendants were ex-parte, hence no cross examination of the plaintiff witness was conducted.

5. The plaintiff in its evidence has established and proved that the word “LAVASA” was conceived by the plaintiff in the year 2000, which is an invented word and has no dictionary meaning. The plaintiff is developing a unique Hill Station Project under the name “LAVASA”, spreading across 18 revenue villages in Taluka Mulshi & Velhe District Pune, Maharashtra. The development is being done as per the notification dated 26<sup>th</sup> November, 1996 of the Government of Maharashtra, being Notification number TPS-1896-1231-CR-123-96-UD-13 and pursuant to more than 75 permissions/approvals granted by various authorities for development. (Original advertisements of Lavasa Hill Station are exhibited as Exhibit PW 1/3).

6. It is also established on record that in view of the long, uninterrupted, extensive, unique and exclusive use and display of LAVASA trademarks, it has gained huge popularity and instant recognition. Thus, the word/mark LAVASA, alone or in conjunction with the artistic work, has become absolutely distinctive and associated exclusively with the plaintiff. The general public associates the word Lavasa with the plaintiff and its project. Therefore, since its adoption, the plaintiff has been using the mark “Lavasa” continuously, openly and extensively.

7. It has come on record and established in evidence that in the year 2004, the word “LAVASA” was incorporated as part of the plaintiff’s corporate name in respect of the project being developed by the plaintiff and services rendered thereto. (The certificate of incorporation is exhibited as Exhibit PW 1/ 2 (Colly)).

8. The plaintiff is undisputedly the registered proprietor of trademark “Lavasa” in numerous classes in respect of various categories of goods/services, with the earliest registration dating back as early as 9<sup>th</sup> January, 2004. All the trademark registrations have been duly renewed and are valid and subsisting. List of registered trademarks in favour of the plaintiff is mentioned at Para 18 of the plaint. (The original trademark certificates of the trademark Lavasa are exhibited as Ex. PW 1/4 (Colly)).

9. The plaintiff has obtained the registration of a copyright on 14<sup>th</sup> June, 2011 over an artistic label devised by it in respect of trademark “Lavasa”. (Original Copyright registration No. 90588/2011 dated 14<sup>th</sup> June, 2011 is exhibited as Ex. PW1/5). The word/mark LAVASA in conjunction with the artistic label has been used extensively by the Plaintiff in variants such as LAVASA FUTURE CITIES, LAVASA BUZZ, LAVASA WOMEN’S DRIVE, LAVASA UTSAV and numerous other LAVASA formative trademarks. It is proved that the trademark LAVASA, various other LAVASA formative trademarks and the LAVASA artistic work/label have been used by the plaintiff in all the advertisement, hoardings and promotional materials, sign boards of authorised agents, office stationery, web site, print and electronic media advertisements including feature advertisements telecasted or shown on TV channels and cinema theatres uniformly. (Original promotion material is exhibited as Exhibit PW 1/6 (Colly)).

10. As per evidence, the plaintiff has spent an amount of Rs. 94.06 Crores for the promotion and development of plaintiff’s marks. The

various mode of media adopted by plaintiff to promote its mark is mentioned in Para 22 of the Plaint. (Original certificate from the Chartered Account is exhibited as Exhibit PW 1/9, Original invoices in respect of promotional expenses is exhibited as Ex PW 1/7(Colly)). The annual sale figures in respect of products/services/business under the mark “Lavasa” is set out at Para 28 of the plaint. (Original certificate from the Chartered Account is exhibited as Exhibit PW 1/13).

11. The right of the plaintiff in the word/mark “Lavasa” has been recognized by Registrar of Companies, Maharashtra vide its orders dated 9<sup>th</sup> February, 2011 and 19<sup>th</sup> December, 2012, directing Lavasa Resorts Pvt. Ltd., Lavasa Lake SPA Pvt. Ltd, Lavasa Hill Retreat Pvt. Ltd and Lavasa Enterprises Pvt. Ltd to change their name under Section 22 of Companies Act, 1956. (Exhibited as Ex PW 1/7).

12. Sometime in the first week of March, 2013 one of the officials of the plaintiff received a text message/advertisement on its mobile phone which read as hereunder:

*“LAVASA - The Rocks, FarmHouses in NCR.\*3025 Sq.Yrd @30 Lacs.\*Well Connectivity wd NH-8 \*surrounding wd Hills.\*1.5 Hour Drive from Gurgaon Toll. Cl: 08800920461”*

The defendant Nos. 1 and 2 were using LAVASA as the most prominent feature in the advertisement. As per the information available from the website [www.rbsinfra.com](http://www.rbsinfra.com), defendant No. 1, Krest Infratech Private Limited along with defendant No. 2 are developing, marketing and offering for sale country farms and resorts under the

impugned mark/name “LAVASA ON THE ROCKS” or “LAVASSA ON THE ROCKS” in Neemrana. The use of the plaintiff’s mark LAVASA/LAVASSA on the website indicates that defendants are using the said trade mark on and in relation to its products/services to solicit trade inquiries from existing/prospective customers. (Printouts of an e-brochure as downloaded from the website [www.rbsinfra.com](http://www.rbsinfra.com) evidencing the Defendant No. 1 is using “LAVASSA ON THE ROCKS” Country Farms and Resort is exhibited as Exhibit PW 1/16).

13. It is evident from the averments made in the plaint and from evidence that the defendants adopted the mark LAVASA/LAVASSA which is visually, structurally and phonetically identical to the plaintiff’s trade mark/name LAVASA but is using the same in respect of core business and identical goods and services as those offered by the plaintiff. It is not a mere co-incidence that the defendants’ project under the mark/name LAVASA ON THE ROCKS is on an elevated terrain that meets the Aravali Hills whereas the plaintiff is also developing a Hill Station Project in the midst of the majestic Sahyadris hill range, under the mark LAVASA. The project of the plaintiff as well as that of the defendants is situated in the valley. The defendants have infringed the right of the plaintiff and it establishes defendant’s mala fide intent to encash upon plaintiff’s name and goodwill and brand identity vesting in the mark LAVASA.

14. The defendant No.1 who claims to be the promoter of this project was itself incorporated in 2011 thus the plaintiff is the prior user as well as the adopter of the mark “LAVASA”. The plaintiff

further submits that the aforesaid acts of the defendants lead to an irrefutable legal presumption of existence of confusion existing in the members of trade and public. The plaintiff has proved his case that the use of the plaintiff's trademark by the defendants is a clear case of infringement. The defendants are trying to sell their project to the general public as if they are promoted by the plaintiff and the use of the infringing trademark "LAVASA" or "LAVASSA" or any other similar mark, creates confusion in the general market.

15. The suit of the plaintiff is accordingly decreed in terms of prayer (a), (b), (c) and (d) of para 49 of the plaint. As regard relief (e) to (g) are concerned, the following decisions are referred by the counsel for the plaintiff :

- (i) In ***Time Incorporated Vs. Lokesh Srivastava & Anr., 2005 (30) PTC 3 (Del.)*** while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that *"time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."*
- (ii) In ***Microsoft Corporation Vs. Rajendra Pawar & Anr., 2008 (36) PTC 697 (Del.)*** decided on 27th July, 2007, this Court held that *"Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the*

*relief sought by the plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective."*

16. Keeping in view the infringement committed by the defendants, this Court is of the opinion that the plaintiff is entitled for punitive damages to the tune of Rs.5 lac and costs.

17. Decree be drawn accordingly.

**(MANMOHAN SINGH)  
JUDGE**

**DECEMBER 23, 2014**