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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 7/2018

A & A DUKAAN FINANCIAL
SERVICES PVT. LTD.

..... Plaintiff

Through: Mr. Jayant Mehta, Advocate with
Ms. Shruti Iyer and Mr. Anandh K.,
Advocates.

Versus

MR. ABHISHEK KOHLI & OTHERS

..... Defendants

Through: None

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Date of Decision: 13th August, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A.10783/2018

1. Today in Court, learned counsel for the plaintiff has handed over a photocopy of an application filed under Order XIII A Rules 2, 4 and 6 of CPC seeking summary judgment on 09th August, 2018. The original application has been numbered by the Registry at the instance of the Court and placed on record. Since the defendant is *ex parte*, the said application is taken up for hearing and disposal.

CS(COMM) 7/2018 & I.As.101/2018, 2789/2018

2. It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement, passing off, dilution, damages/account of profit in relation to the defendants' use of registered trademarks and domain name belonging to the plaintiff. The prayer clause is reproduced hereinbelow:-

“(a) decree of permanent injunction restraining the Defendant Nos.1 and 2, their principal officers, servants, agents, dealers, distributors, franchisees and anyone acting for and on their behalf from infringing the Plaintiff’s registered and otherwise well-known trademarks “bankbazaar” and “bankbazaar.com”, whether in isolation or in combination with any other word or words;

(b) decree of permanent injunction restraining the Defendant Nos.1 and 2, their principal officers, servants, agents, dealers, distributors, franchisees and anyone acting for and on their behalf from using the infringing domain name (www.bankbazaarloan.com), or any other name or phonetically, visually or otherwise deceptively similar to the Plaintiff’s registered and otherwise well-known trademarks “bankbazaar” and “bankbazaar.com”, whether in isolation or in combination with any other word or words;

(c) decree of permanent injunction against the Defendants from transferring, alienating or offering for sale the infringing domain to any third party and from creating any third-party interest in the said domain name and directing Defendant Nos.3, 4 and 5 to maintain status quo in relation to the domain name www.bankbazaarloan.com by keeping the same on hold till prayers (a), (b) and (d) are granted;

(d) decree of mandatory injunction ordering the Defendants to transfer the domain name www.bankbazaarloan.com to the Plaintiff without any charge/fees/price from the Plaintiff;

- (e) *order rendition of accounts by the Defendant Nos. 1 & 2;*
- (f) *decree of damages of Rupees Two Crores (Rs.2,00,00,000/-) in favour of the Plaintiff and against the Defendant Nos. 1 & 2 for the infringement of the Plaintiff's trademarks, passing of the Plaintiff's Domain Name and for dilution of the Plaintiff's goodwill and reputation; and*
- (g) *direct the Defendant Nos. 1 & 2 to handover to the Plaintiffs all materials including stationery, brochures, visiting cards, letterheads, pamphlets, etc. which bear the infringing domain name "bankbazaarloan.com" or the infringing mark "bankbazaarloan";*
- (h) *award costs of this suit in favour of the Plaintiff including fair/reasonable legal costs/counsel's fees, as may be deemed appropriate, against the Defendants;*
- (i) *Pass any such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice."*

3. Vide order dated 04th January, 2018, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

"Consequently, till further orders, defendants No.1 and 2, their directors, proprietors, servants, agents, assigns, representatives, successors, distributors, franchisees and anyone acting for and on their behalf are restrained from advertising, promoting or in any manner using, transferring, alienating or offering for sale the domain name www.bankbazaarloan.com and from creating third party interests in any manner in the said domain name or any other name phonetically, visually or otherwise deceptively similar to plaintiff's registered trade marks "bankbazaar" and

“bankbazaar.com” whether in isolation or in combination with any other words.

The defendants No.3 to 5 are also directed to freeze or mandatorily stop operation of the domain name www.bankbazaarloan.com and to maintain status quo by keeping the said domain name on hold till further orders.

Let the provisions of Order 39 Rule 3 CPC be complied within two weeks.

Order dasti under the signature of Court Master."

4. On 18th April, 2018, defendant no. 3 was deleted from the array of parties. Since despite service, none appeared for the defendant nos. 1 and 2, the said defendants were proceeded *ex-parte* on 07th August, 2018.

5. Learned counsel for the plaintiff states that he has instructions not to press for prayers (e) to (g) of the plaint. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

6. This Court is of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in **Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508** has held as under:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents

which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

7. The relevant facts of the present case are that the plaintiff is engaged in the business of online technology driven market for aggregation, display and comparison of financial products of its various partners under the name and style of BankBazaar through its website www.bankbazaar.com and other allied websites owned and maintained by the plaintiff. It is stated in the plaint that the plaintiff coined, conceived, conceptualised and created the term “bankbazaar” and registered the domain name “bankbazaar.com” and has been continuously and uninterruptedly using the same since its inception in 2008.

8. The plaintiff is also the registered owner of the trade mark “bankbazaar” and “bankbazaar.com” under Classes 9, 16, 35, 38, 42 and 99 of the Trade Marks Act, 1999. The earliest registration dates back to 30th July, 2008.

9. It is stated in the plaint that the aforesaid trade marks are an integral part of the plaintiff’s business and indicate a connection with the plaintiff and its services. It is further stated that the trade mark “bankbazaar” and “bankbazaar.com” are well known in the industry and the general public.

10. It is the case of the plaintiff that the annual revenue generated by the plaintiff from the use of the trade marks “bankbazaar” and “bankbazaar.com” in the year 2016-17 was Rs.5,231.9 lakhs and the

plaintiff had incurred a marketing and branding expenditure of Rs.4,966.6 lakhs in the year 2016-17.

11. To prove the popularity of the plaintiff's website, learned counsel for the plaintiff referred to the following chart showing the total number of views of the plaintiff's website:-

Period	Views
Jan-Dec, 2014	18421836
Jan-Dec, 2015	43727760
Jan-Dec, 2016	91596470
Jan-Aug-2017	120240923

12. According to learned counsel for the plaintiff, the aforesaid data is based on third party websites which maintain data regarding volume of traffic. He further states that according to the analysis of the plaintiff's website by www.alexa.com, the plaintiff is ranked 2,761 worldwide and 162 in India.

13. Learned counsel for the plaintiff states that in August, 2017, it came to the knowledge of the plaintiff that the defendants No.1 and 2 had registered a domain name www.bankbazaarloan.com which infringes the intellectual property rights of the plaintiff. Upon further enquiry, it became clear to the plaintiff that the defendant No.1 is also the registrant of another domain name www.smartloanindia.com. The website of www.smartloanindia.com indicates that the business belongs to the defendant No.2 company of which the defendant No.1 is the director. He

further states that the contact address given in the infringing domain name/website and in the aforesaid website www.smartloanindia.com is the same, i.e. A-38, Second Floor, Lane No.2, Madhu Vihar, IP extension, Patpargunj, Delhi-110092. In support of the aforesaid, the plaintiff has placed on record that WhoIs data of the domain name www.bankbazaarloan.com and the Company Master Data of the defendant no. 2.

14. Learned counsel for plaintiff states that the plaintiff issued a legal notice dated 19th August, 2017 upon the defendants to cease and desist from violating the plaintiff's intellectual property rights. However, the defendants refused to accept the aforementioned legal notice. He further states that on 06th October, 2017, the plaintiff submitted an abuse report with defendant No.3 who is the Registrar in the WhoIs database. Defendant No.3 replied stating that the trade mark dispute will have to be addressed through the Court proceedings. The plaintiff was also informed that the point of contact for the infringing website was defendant No.4. He states that the plaintiff on 25th October, 2017 submitted the abuse report to defendant No.4 who replied stating that the actual host was defendant No.5 and the plaintiff should contact defendant No.5. On 29th October, 2017, the plaintiff submitted the abuse report to defendant No.5. However, the plaintiff has till date not received any reply from defendant No.5.

15. Learned counsel for plaintiff states that defendants No.1 and 2 have deliberately and knowingly infringed the registered trade mark of the plaintiff by registering the infringing domain name/website and are trying to conduct business through the said infringing domain

name/website. He further states that the name of the infringing domain name/website is clearly and undeniably a blatant, manifest and intentional infringement upon the intellectual property of the plaintiff.

16. In the opinion of this Court, the defendants have no real prospect of defending the claim, as they have neither entered appearance nor filed their written statement. Further, the plaintiff is the registered user of the trade marks in question.

17. In view of the above, the present suit is decreed in favour of the plaintiff and against the defendant in accordance with paragraph(a) to (d) of the prayer clause of the present plaint along with actual cost and court-fees paid. Registry is directed to prepare a decree sheet accordingly.

18. With the aforesaid observations, present suit and pending application stand disposed of.

AUGUST 13, 2018
mn/js

MANMOHAN, J

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