



C.S.No.379 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.08.2023

PRONOUNCED ON: 01.09.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

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MISSTEENINDIA.CO.IN.PRIVATE LIMITED,
Gummadi Villa,
Flat No.2-B, 2nd Floor,
New No.103, Old No.33,
Habibulla Road, T.Nagar,
Chennai 600 017

...Plaintiff

Vs

1.GLAMANAND ENTERTAINMENT PRIVATE LIMITED,
49, Begampur Malviya Nagar,
New Dlehi (South Delhi) 110 017.

2. Nikhil Anand,
Director,
GLAMANAND ENTERTAINMENT PRIVATE LIMITED,
49, Begampur Malviya Nagar,
New Dlehi (South Delhi) 110 017.



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3. Flash Film Productions,
Bank Colony, Annapurna Main Road,
Indore, M.P.452 009, India

... Defendants

Prayer: Civil Suit is filed under Order 4 Rule 1 of O.S.Rules read with Order VII Rule 1 of C.P.C and Section 134 of Trade Marks Act, praying to pass a judgment and decree:

a) Of permanent injunction, restraining the defendants, their men, servants, agents or any other person(s) or entity(ies), claiming or action through or under them from in any manner infringing the Plaintiff's registered trademark 'MissTeenIndia' including by using the identical or deceptively similar trademark/tradename 'MissTeenIndia' or any colourable variations thereof in respect of their website, web pages, domain names, ad-word, keyword, shows, beauty pageants, events, advertisements, publicity materials, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, either directly or indirectly, or any other mark/name/style which is identical with or deceptively similar to the Plaintiff's registered trademark 'MissTeenIndia'.



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b) Of permanent injunction, restraining the defendants, their men, servants, agents or any other person(s) or entity(ies), claiming or acting under them from in any manner passing off their website, web pages, domain names, ad-word, keyword, shows, beauty pageants, events, (5) advertisements, publicity materials, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, either directly or indirectly, under the name/ mark "MissTeenIndia" or any other mark/name/style which is identical with or deceptively similar to the Plaintiff's trademark 'MissTeenIndia;

c) Of a mandatory injunction directing the defendant to surrender to the Plaintiff for destruction of all labels, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, and any other variations thereto infringing upon the plaintiff's marks;



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d) Of a preliminary decree in favour of the plaintiff directing the Defendant to render true and proper accounts of profits made by the Defendant by virtue of any sale or sponsorship or conducting of events or advertising or by any other manner whatsoever and a final decree be passed in favour of the Plaintiff for the amounts of profits generated found to have been made by the Defendant after the later have rendered accounts;

e) For costs of the Suit:

For Plaintiff : Mr.Bijesh Thomas

For Defendants

1 and 2 : *Served – No Appearance*

For Defendant-3: Dismissed as per Order dated
28.06.2023.

JUDGEMENT

The suit in question involves the infringement of a trademark



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"MISSTEENINDIA," for which the plaintiff sought the reliefs, which have been set out in the plaint.

A) Of permanent injunction, restraining the Defendants, their men, servants, agents or any other person(s) or entity(les), claiming or action through or under them from in any manner infringing the Plaintiff's registered trademark 'MissTeenIndia' including by using the identical or deceptively similar trademark/trade name 'MissTeenIndia' or any colourable variations thereof in respect of their website, web pages, domain names, ad-word, keyword, shows, beauty pageants, events, advertisements, publicity materials, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, either directly or indirectly, or any other mark/name/style which is identical with or deceptively similar to the Plaintiff's registered trademark 'MissTeenIndia';

B) Of permanent injunction, restraining the



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Defendants, their men, servants, agents or any other person(s) or entity(ies), claiming or acting under them from in any manner passing off their website, web pages, domain names, ad-word, keyword, shows, beauty pageants, events, advertisements, publicity materials, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, either directly or indirectly, under the name/ mark "MissTeenIndia" or any other mark/name/style which is identical with or deceptively similar to the Plaintiff's trademark 'MissTeenIndia';

C) Of a mandatory injunction directing the Defendant to surrender to the Plaintiff for destruction of all labels, signs, boxes, packages, advertisements, posters, programs, circulars, brochures, publicity releases, magazines, stationery, audio or video recordings, and any other like paraphernalia bearing the trademark 'MissTeenIndia' or any other variations thereto infringing upon the Plaintiff's marks;

D) Of a preliminary decree in favour of the Plaintiff



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directing the Defendant to render true and proper accounts of profits made by the Defendant by virtue of any sale or sponsorship or conducting of events or advertising or by any other manner whatsoever and a final decree be passed in favour of the Plaintiff for the amounts of profits generated found to have been made by the Defendant after the later have rendered accounts;

E) For costs of the suit

2. PLAINTIFF'S CASE:

(i).It is the case of the plaintiff that they had acquired the business from the partnership firm called “MISSTEENINDIA” on 19.12.2001 under an agreement. It is the case of the plaintiff that the agreement was a tripartite agreement between the plaintiff, the erstwhile partnership firm, 'Missteenindia', and Amarlal G.Nichani, in whose name the trademark registration "MISSTEENINDIA" had been applied for in the year 2000. The plaintiff would submit that after the



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purchase of the business they had followed up the registration of the trademark and got the registration in their name in the year 2004. It is also the case of the plaintiff that they have two domain names 'www.misteenindia.co.in' and 'www.misteenindia.com'. The web portal had been created in the year 2000 and it was built on three pillars: (i) 'e-magazine', (ii) 'interactive portal services' and (iii) 'beauty pageants'. The web portal focused on aspects that would catch the eye of the youth. The plaintiff had engaged themselves in conducting a beauty contest. The plaintiff's contention is that the application for registration of the trademark “MISSTEEN INDIA” had been made as early as on 04.12.2000 and was registered in 2004. The validity of the trademark has been renewed and is valid as on date. Prior to the purchase of the business by the plaintiff, the plaintiff was known as 'Nichani's Transworld Exports Private Limited’, which is now known as “MISSTEENINDIA CO.IN.PRIVATE LIMITED”.



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(ii). It is the contention of the plaintiff that their trade name and reputation has spread internationally and that their mark is also registered in the United States of America. "MISSTEENINDIA" is not only a corporate name but also their trade and service mark and domain name. The plaintiff, through its sheer hard work and innovative method, has created a name for itself in the beauty world. Their business has also increased and they are spending heavily on publicity.

(iii). Earlier, INX Media Private Limited and another had infringed their mark, against which the plaintiff had filed a suit C.S.No.447 of 2009, and ultimately, the suit was compromised with INX Media Private Limited. The other defendants had not contested the suit. It is also the contention of the plaintiff that they had published the details of their trademark and their ownership of the same in an Intellectual Property Rights Caution Notice in Indian Express in the year 2009. This notice had been predominantly displayed. The



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advertisements had, in very clear terms, stated that the proprietorship in the trademark "MISSTEENINDIA" was only with the plaintiff.

(iv).While so, in the third week of June 2016, the plaintiff had come across the news that the defendants were conducting auditions for the beauty contest "MISSTEENINDIA", which was proposed to be held in July 2016. After making further enquiries, the plaintiff was shocked and surprised to come across the facebook page titled "MISS TEEN INDIA" wherein the defendants have promoted their beauty contest under the caption "MISSTEENINDIA which, on the face of it, is a blatant infringement of the plaintiff's trademark "MISSTEENINDIA", particularly when the plaintiff is in the very same line of business. Capitalizing on the goodwill earned by the plaintiff over the years, the defendants have come forward to use the trademark to advertise the holding of the beauty pageants. The adoption of the mark is dishonest and the plaintiff is entitled to protection. Therefore, the plaintiff has come forward with



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the present suit in order to protect their mark, "MISSTEENINDIA," which has been adopted since 2000 and which they are using continuously. Further, this trademark has also been registered with the Trademark Registry.

3. WRITTEN STATEMENT

The defendants 1 and 2 had filed a written statement. The brief details of which are that the trade name in respect of which the plaintiff was seeking protection is a generic term used for beauty pageants all over. Further, the registration is not under Class 41 but is under Classes 16, 28, and 9, which is totally unrelated to the beauty industry. The defendants would further submit that the plaintiff's mark is a label mark having a combination of words and there is no separate registration for the same. The defendants would also submit that the word is neither a coined word nor an invented one. That apart, they



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would submit that "MISSTEENINDIA," are awards / recognitions which are given to the teenagers, who participate in the beauty contest and the plaintiff cannot claim a right over these words. The defendants had also taken the defence that the plaintiff was never in the beauty pageants and fashion industry and the only event which the plaintiff has elaborated in the plaint is a beauty show conducted in the year 2008 in a college in Tamil Nadu, which cannot be termed a mega event and which would catapult the plaintiff into being a veteran in beauty pageants and the fashion industry. It is the case of the defendants that they have been conducting these fashion shows for several years which had gained popularity. These contests were held not only at the national level but also internationally. It is the plaintiff who is trying to gain from the defendants' goodwill, not vice versa. The defendants would further submit that the trademark registered by the plaintiff is a device mark having a combination of words and the device of a lady on their label, whereas the mark used by the defendants 1 and 2 is merely a



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common word used in the beauty pageants, viz., "MISSTEENINDIA".

There is absolutely no scope for confusion in the minds of the participants, who are predominantly teenagers. The defendants would further submit that the plaintiff cannot claim a right to a common word/generic term "MISSTEENINDIA," and that there is no infringement of the mark by the defendants.

4. ISSUES:

The following issues were framed by orders of this Court dated 11.12.2019.

“1. Whether "MISSTEENINDIA" is a generic term/universal term used in the field of beauty pageants?

2. Whether the Plaintiff has any registration of trademark "MISS TEEN INDIA" in Class 41 of the Trademarks Act?

3. Whether the Plaintiff's registration of trademark "MISS TEEN INDIA" in Class 9, 16 and



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28 will also give any protection to the term "MISS TEEN" in respect of beauty pageants?

4. Whether the Defendants have infringed the Plaintiff's registered trade mark, "Miss TeenIndia"?

5. Have the Defendant Nos.1 & 2 have acknowledged the Plaintiff's ownership and rights over the Trademark 'Miss TeenIndia'?

6. Did the 1st Defendant apply for registration of the trademark Miss Teen India' in Class 41 [Appln. No.3318277] and subsequently abandon the application?

7. Whether the Plaintiff is entitled to a permanent injunction, restraining the defendants, their men, servants, agents from infringing the plaintiff's registered trademark 'Miss TeenIndia'.

8. Whether the plaintiff is entitled to a permanent injunction, restraining the defendants, their men, servants, agents or any other person(s) or entity(ies), claiming or action through or under them from in any manner passing-off their website, web pages, domain names, ad-word, keyword,



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shows, beaut pageants, events, advertisements, publicity materials, signs, boxes, package-advertisements, posters, programs, circulars, brochures, publicity release magazines, stationery, audio or video recordings, either directly or indirectly, or any other mark / name/ style which is identical with or deceptively similar to the plaintiff's registered trademark “

5.Although the defendants had cross-examined the plaintiff's witness, P.W.1, the defendants have not entered the box to adduce the evidence and on 07.03.2023 the learned counsel for defendants 1 and 2 had reported “No instructions”. The plaintiff had filed a Memo dated 26.06.2023 stating that they are not pressing the suit as against the third defendant and this has been recorded in the order of this Court dated 28.06.2023 and the suit is dismissed against the third defendant. The defendants 1 and 2 have not engaged another counsel despite the second defendant, the Director of the first defendant being served with



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their erstwhile counsel's letter. A Memo dated 01.02.2023 has been filed setting out the above details by the counsel for the defendants 1 and 2. The defendants 1 and 2 are therefore set *ex-parte*. The plaintiff, on their part, had marked Exhibits P1 to P29.

6.The records would show that originally, the plaintiff's proof affidavit had referred to the Exhibits from the typed set of papers which was filed by the plaintiff along with the suit thereafter on 30.03.2021, the documents have been marked by the learned counsel for the plaintiff as Exs.P2 to P29. The originals of the documents appear to have been compared and Xerox copies have been filed.

7. SUBMISSIONS:

(i) It is the contention of Mr.Bijesh Thomas, learned counsel who had appeared on behalf of the plaintiff, that the trademark "*MISSTEENINDIA*" has been used by the plaintiff's predecessors-in-



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interest since 2000, and they had applied for registration of this trademark in the year 2000 itself. Thereafter, in the year 2001, the plaintiff had acquired this business and they had processed the registration of the trademark and got the same in the year 2004. He would submit that the plaintiff is the absolute owner and proprietor of the trademark "*MISSTEENINDIA*," which is not only their trade and service mark but also their corporate name and domain name. Further, the plaintiff had given wide publicity about the beauty contest that is being conducted by them as well as advertising the brand name, which is evidenced by Exs.P7 to P10. He would also submit that they had given an Intellectual Property Rights Auction Notice wherein the trademark had been predominantly displayed in one issue of Indian Express dated 18.03.2009, which has been marked as Ex.P20. He would also submit that even in the written statement filed by the defendants, they have clearly contended that it was only in the year 2013 that the company had been incorporated and applications filed for



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registering their trademark, whereas the plaintiff's trademark has been registered was way back in the year 2000 itself. He would draw the attention of this Court to Exs.P12, P13, and P14, which are the registrations in class Nos. 16, 9, and 28. He would submit that neither the plaintiff nor the defendants have any registration in Class 41. The plaintiff would also submit that they are conducting classes in the said field since their usage of the trademark has been from 10.08.2000. The subsequent user has clearly infringed the mark and has definitely passed off its product as that of the plaintiff. He would submit that the only defence to the suit is that the word trademark is a generic term and the registration is under Class 41. To this, the learned counsel for the plaintiff would submit that even in their application filed for registration, the defendants have only sought registration of the very same trademark "MISSTEENINDIA" under Class 41. He would also take the court through the following judgments:



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(ii) With regard to issue of passing off, the learned counsel for the plaintiff would rely on the judgements of the Hon'ble Supreme Court reported in ***(2001) 5 SCC 73 [Cadila Health Care Ltd Vs Cadila Pharmaceuticals Ltd]*** and ***(2002) 3 SCC 65 [Laxmikant V.Pael Vs Chetanbhai Shah and Another]***.

(iii) In support of his argument that even if the trademark consisted of descriptive words, there is no absolute bar and protection could be granted. He would rely on the judgment of the Hon'ble Supreme Court reported in ***(2004) 5 SCC 257 [Godfrey Philips India Ltd Vs Girnar Food and Beverages (P) Ltd]*** and the judgment of the Bombay High Court reported in ***2020 (82) PTC 529 [Bennet, Coleman and Company Ltd and Others Vs. Global India Entertainment Production and Another]***. The Delhi High Court, in the judgment reported in ***AIR 1986 Delhi 245 [Globe Super Parts v. Blue Super Flame Industries]***, was called upon to consider the adoption of the



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word "SUPERFLAME" by the defendants therein, which word mark was registered in the name of the plaintiff therein. The defendants therein had taken out a defence that the name is generic and there cannot be any exclusive right claimed to this name. The learned Judge, after referring to various judgements, held that though the word was generic / descriptive, however the same had acquired as secondary consequence. The learned Judge had observed as follows:

“45. Words whether descriptive or coined/invented/fancy have all along been capable of being exclusively appropriated, as stated above, not only as marks or trade marks but also as names/titles of books, magazines, plays, Motion Picture etc. To determine whether the words, whether descriptive, coined, fancy, or invented, have been exclusively appropriated, the legal tests are the same in Trade Mark Law, as in the Copyright law. Thus, even in the case of Copyright law, what is required to be shown is, whether the word is a word of ordinary language, or whether the word is a fancy, invented, or coined word. In the case of the former, as in



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trade mark law, what is required to be further established is whether the common word or phrase has acquired secondary significance or not. In case, it has, then the same is protected as the name/title of book, newspapers, magazines, plays motion pictures etc., as it has acquired a name and reputation in the market place where such vendible commodities are bought and sold. In case of fancy, invented, coined word the case is much easier, as a reference to the authoritative dictionaries of the language would clearly establish whether the word in question, exists in the language dictionaries, if not, it is a coined, fancy, invented word which is not a part of the language. Such word must be found to be owned by the person who has so devised the word, by applying the skill and labour test, laid down in inter alia in AIR 1924 PC 75; (1960) 1 Mad LJ 53 : (AIR 1961 Mad 111), which test is applicable in all copyright cases. The test being based on the principle that what is protected is what has originated from the author (1964) 1 All ER 465 Ladbroke Football, relying upon (1894 AC 335). What originates from the author as a result of exercise of his skill and labour, is his “expression” which is protected by the law of copyright.



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The “skill and labour” does not depend upon the time taken by the author as greater is the skill of the author less will be the time taken what would be relevant would be whether what has originated from the author is new, or distinctive, even a successful adaptation from another language”.

(iv) The plaintiff has also brought to the notice of the Court that the defendants have themselves taken out an application for registering the mark “MISSTEENINDIA” and had subsequently abandoned the application. In this regard, the learned counsel for the plaintiff would rely on a judgment of the Delhi High Court reported in **2008 SCC Online Del 1758 [The Indian Hotels Company Ltd and Others Vs Jiva Institute of Vedic Science and Culture]**. He would therefore submit that the suit should be decreed as prayed for.

8. DISCUSSIONS:

(i) The plaintiff has obtained registration of the mark



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“MISSTEENINDIA” as evidenced by Ex.P2. A perusal of the same would show that the registration is under Class 16 and is both a device as well as the word mark. The word "MISSTEENINDIA" has an artistic depiction of a woman's face, preceeding the work mark "MISSTEENINDIA". The mark was originally granted to M/s. Nicholi's Transworld Exports Private Limited, which was subsequently renewed in the name of the plaintiff. The said trademark has also been registered under Classes 16, 28, and 9, as evidenced by Exs.P13 and P14. Ex.P15 would show that the trademark has been registered with the United States Patent and Trademark Office on 07.12.2004. The certificate issued by the United States Patent and Trademark Office specifies that no claim has been made to the exclusive right to use TEEN INDIA and the portrait of the women does not identify a particular living individual. The condition and limitation prescribed in respect of the Trademark No.974847 and in Class 16 are that the plaintiff cannot claim an exclusive right to the word India and the



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device lady. A similar condition and limitation is also provided in respect of the renewal certificate of trademark No.974847 marked as Ex.P13. As regards the certificate issued under Ex.P14, since it is not accompanied by a renewal certificate, it is not clear as to whether such a condition and limitation has been provided for this trademark registration. The certificates-Exs P12 to P14 would clearly indicate that the trademark is being used by the plaintiff since 10.08.2000. Exs.P7 to P11 and Exs.P28 and P29 would indicate that the plaintiff is continuing to hold the beauty pageants under the name “MISSTEENINDIA” even as late as on 15.11.2019 pending the suit. The plaintiff has filed Exs.P16 to P19 to prove the legal actions initiated by the plaintiff against others who have attempted to use the plaintiff's trademark “MISSTEENINDIA” for holding their beauty pageants and these exhibits also prove that the parties have entered into a Memo of compromise in and by which the defendants had agreed to change the name from “MISSTEENINDIA” altogether into “MISS



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TEEN INTERNATIONAL (INDIA)”. The defendants therein had also admitted that they had no right or claim to the trademark “MISSTEENINDIA” to the associated logo or to the domain name “www.misteenindia.com” and had agreed to withdraw all applications filed by them before the Trademark or any other Registry. Exs.P16 to P19 are dealing with C.S.No.230 of 2008 and C.S.No.447 of 2009 and Memo of Compromise (Ex.P19) in C.S.No.230 of 2008 and in C.S.447 of 2009, the plaintiff herein had obtained an injunction against the defendants therein from holding a beauty pageant title “MISSTEENINDIA”, which is evidenced in Ex.P18. A perusal of Ex.P20 would also indicate that the plaintiff has given an Intellectual Property Caution Notice in the Indian Express dated 18.03.2019. All these would go to show that the plaintiff has been in continuous use of the mark “MISSTEENINDIA”. A perusal of Exs.P21 and 22, which are the face book pages of the defendants posted on 26.05.2016 and 20.06.2016, would show that they are proposing to hold a



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"MISSTEENINDIA" beauty pageant, which they in their face book page posted was the first of its kind. The face book pages would further show the information about the defendants, and a perusal of the same would show that "MISSTEENINDIA" is claimed to be a property of Glamanand, and the e-mail address given is the same as that of the plaintiff. Under these exhibits, they had also called for interested parties to register for the pageant. The screen shots of WhatsApp messages between the plaintiff and the first defendant have been marked as Exs.P24 to P27 dated 29.12.2017, 23.09.2018, 26.09.2018 and 07.08.2018 respectively. The defendants have not objected to any of these documents. Though the words "MISSTEENINDIA" are generic the plaintiff has continued these words and coined a mark.

(ii) From the perusal of Exs.P22 and P23, it is clearly evident that the defendants have infringed the trademark of the plaintiff since they have adopted the entire mark "MISSTEENINDIA" and that apart



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have also adopted the very same domain the name of the plaintiff, but from a different website. The defendants clandestinely and with an ulterior motive have led the people to believe that the proposed beauty pageant is being held by the plaintiff. The defendants have adopted the identical trademark as the plaintiff. Even after coming to know about the plaintiff's mark, they have not pulled down their site. The defendants, who taken out a defence that the plaintiff cannot claim any proprietary right to the mark, which is descriptive in nature, did not deem it fit to enter the box and prove their defense.

(iii) In the judgment of the Hon'ble Supreme Court reported in ***(2004) 5 SCC 257 [Godfrey Philips India Ltd Vs Girnar Food and Beverages (P) Ltd]***, it has been observed in paragraph 4 as follows:

“4.... A descriptive trade mark may be entitled to protection if it has assumed a secondary meaning which



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identifies it with a particular product or as being from a particular source.”

(iv) Further, the Bombay High Court, in the judgment reported in **2020 (82) PTC 529 [Bennet, Coleman and Company Ltd. and Others vs. Global India Entertainment Production and Another]**, was called upon to grant an injunction in respect of the usage of the words "Miss India" and "Mr.India. The defence that the words are generic had been raised by the defendants. The Hon'ble Court proceeded to grant the injunction and while doing so, has observed as follows:

“ 6. It is no answer to the Plaintiffs' case that the words are generic. The words “Mr.”, “Miss” and “India” are all generic, but a combination of these words is certainly not generic. Delhi High Court decision in the case of Three-N-Products Pvt. Ltd. v. Kairali Exports is clearly distinguishable on facts. In that case, the right claimed was with respect to the mark “Ayur” in respect of various goods. Prima facie the Court was of the view that the word “Ayur” per se was a generic or descriptive word,



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which was a Sanskrit word meaning life or vital power, derived from Sanskrit religious texts of Vedic Puranas, and the plaintiff could not claim exclusive right to its use. These facts are clearly distinguishable, since the marks here are not 'Mr.' or 'Miss' or 'India' in itself, all of which are generic or descriptive words; the marks here are a combination of these words and that lends a certain distinction or uniqueness to them. The condition in some trademark registration of the Plaintiff, concerning want of exclusive right to use the words "Miss India" and "Mr. India" does not imply that for a similar event, i.e. a beauty or fitness pageant, a rival operator can use the very trademarks "Miss India" or "Mr. India" to sell or promote his services..."

Therefore, in light of the above, the plaintiff cannot be denied the relief on the ground that the trademark of the plaintiff is generic and does not require protection. That apart, the defendants, by adopting the entire word mark of the plaintiff, are attempting to pass off their product as that of the plaintiff. This assumes significance, since the defendants



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are operating in the very same line of business as the plaintiff. To buttress this contention of the plaintiff regarding passing off reliance can be placed on the judgment of the Hon'ble Supreme Court reported in **(2001) 5 SCC 73 [Cadila Health Care Ltd Vs.Cadila Pharmaceuticals Ltd]** that there is passing off. The Hon'ble Supreme Court has observed as follows:

“10....Sub-section (2) of Section 27 provides that the Act shall not be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. In other words in the case of unregistered trade marks, a passing-off action is maintainable. The passing-off action depends upon the principle that nobody has a right to represent his goods as the goods of somebody.”

The Hon'ble Judges had relied upon the earlier judgements of the Hon'ble Supreme Court reported in **AIR 1963 SC 449 [Amritdhara Pharmacy V Satya Deo Gupta]** and **AIR 1965 SC 980 [Durga Dutt Sharma V Navaratna Pharmceutical Laboratories]**, where the



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Hon'ble Supreme Court had observed that *in an action for infringement, the plaintiff has to establish that use of the defendants' mark is likely to deceive the consumer into believing that the mark is that of the plaintiff.* Where the marks are identical, there is no further question to be asked since it is clearly proven that there is an infringement.

(v)Applying the above dicta to the instant case, the mark used by the defendants is the very same mark which is used by the plaintiff. Therefore, there is a clear case of passing off, particularly taking into consideration the fact that the plaintiff and defendants are both involved in the very same business. Therefore, issue Nos.1 to 6 are held in favour of the plaintiff. In the light of the above discussions, issue Nos. 7 and 8 are also answered in favour of the plaintiff.

9. In fine, the suit is decreed as prayed for with costs.



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Index : Yes/No

Speaking order/non-speaking order

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