

Court No. - 10

Case :- FIRST APPEAL FROM ORDER No. - 1387 of 2023

Appellant :- Smt. Saroj Verma

Respondent :- M/S Jay Chemical Works

Counsel for Appellant :- Gautam

Counsel for Respondent :- Brijesh Kumar Singh

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Gautam, learned counsel for the defendant-appellant and Sri G.K. Singh, learned Senior Counsel, assisted by Sri Brijesh Kumar Singh, learned counsel for the plaintiff-respondent.

2. The present appeal, under Section 13(A) of Commercial Courts Act 2015 read with Order 43 Rule 1(r) of CPC, has been filed by the defendant-appellant challenging the order dated 06.06.2023 whereby the court below has allowed the application seeking temporary injunction filed by the plaintiff-respondent in Original Suit No.12 of 2021 (M/S Jay Chemical Works through its Proprietor Shri Jay Kumar Vs. Smt. Saroj Verma, Proprietor M/S S.V. F.M.C.G. Products) and restrained the defendant-appellant from manufacturing, selling, advertising, directly or indirectly carry out any business by using the trademark "Lal Patta" qua its products.

3. Briefly stated facts of the case are that the aforesaid suit was filed mainly with the grievance that the plaintiff-respondent being registered owner of the trademark "Hara Patta" and the copyright label since 1996 has been manufacturing and selling the product i.e. washing power, soap etc and is carrying business in entire India on a very large scale. It has been pleaded that the business is carried out under the licence granted on 07.01.1996 and that the defendant-appellant has been found misusing the same trademark with a little difference that in place of "Hara Patta", the defendant was using "Lal Patta", all other contents and designs etc being deceptively similar to the one manufactured, used and sold by the

plaintiff-respondent. In the aforesaid background of facts, injunction was sought, which has been granted by the court below.

4. The defendant-appellant filed objection against the injunction application mainly contending that the two designs and logo etc being not similar or identical, the customers were not going to be misled by the selling activity. The defendant-appellant also contended that not even a single incident of deception has come into notice and that the defendant being a registered owner of the trademark since 15.06.2018, the plaintiff has no case.

5. The court below, after discussing the three necessary ingredients for grant of injunction, i.e. prima facie case, balance of convenience and irreparable loss and by placing reliance upon several authorities, has found that the plaintiff-respondent being a registered trademark owner since 07.08.2002 and the defendant-appellant having come into the business operations since 2018, the two logos, designs, colour scheme and other features being deceptively similar, there are clear chances of deception and mislead considering the nature of product.

6. Assailing the order impugned, it has been vehemently argued by Sri Gautam that the court below has fallen into the grave error in interpreting various provisions of Trademarks Act, 1999, particularly Section 29 thereof. He has referred to the finding recorded at the end of the impugned order whereby the court below has observed that the plaintiff-respondent fulfills all the three requirements mentioned under Section 29(4) of the Act and he submits that the said provision has no application inasmuch as it applies when a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with or similar to the registered trade mark and

7. The submission is that the defendant-appellant already being registered proprietor of the trademark "Lal Patta", the said provision could not be read or applied against the defendant-appellant. He further submits that a search certificate has been issued by the Assistant Registrar of Trademarks on 10.02.2003 which clearly certifies that on the basis of search from the records, no trademark except the defendant owned trademark has been registered or applied for registration under the Trademarks Act, 1999. He, therefore, submits that when the department itself has recorded in the certificate that there is no similarity in between the two trademarks, the order granting injunction is erroneous. He has also referred to Section 31 of the Act and submits that the registered trademark being a prima faice evidence of its validity in all legal proceedings, the restraint order is unsustainable and would cause irreparable loss to the defendant. He has referred to various aspects placed by him before the court below regarding the huge volume of business which the defendant carries in relation to trademark "Lal Patta".

8. Per contra, Sri G.K. Singh, learned Senior Counsel, submits that there being no dispute that the plaintiff-respondent was registered since August, 2002 and was otherwise prior user of the trademark "Hara Patta" since 1996, the subsequent registration of a trademark which is deceptively similar to the one the plaintiff possess with would certainly be contrary to the scheme of the Act 1999 and, hence, the trial court was justified in injuncting the defendant-appellant. He has shown to the Court the coloured photographs appended with the memo of appeal itself and has tried to establish that except the colour change from green to red, there is no other distinction in between the two logos, designs etc. He has also placed reliance upon the judgment of the Apex Court in the case of **Parle Products (P) Ltd. Vs. J.P. and Co., Mysore: (1972) 1 SCC 618**, with special reference to paragraph no.9, which reads as follows:-

"9. It is therefore clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluko Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets to-day may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the Bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it."

9. Further reliance has been placed on a judgment of Delhi High Court in the case of **Pernod Ricard India Private Limited Vs. A B Sugars Limited and another** in CS (COMM) 371 of 2019, decided on 31.10.2023.

10. Having heard the learned counsel for the parties, the Court finds that there being no dispute regarding prior user of the plaintiff-respondent since 1996 or its registered ownership concerning the trademark "Hara Patta" since 07.08.2002, what was required to be seen by the court below at the time of consideration of injunction

application was as to whether the customers would be misled by the designs, colour scheme, logo and other features of the same product in relation to the packing. Apart from the interpretation of Section 29 in one or other way, the Court finds that the Commercial Court has recorded specific findings on all the three ingredients in favour of the plaintiff-respondent and has also found that the two trademarks were deceptively similar and were sufficient to mislead the customers.

11. In so far as the certificate issued by the trademarks department on 10.02.2023, admittedly, the same was not before the court below. It has been annexed for the first time along with the paper book of the appeal and, therefore, the court cannot take cognizance on the same unless the said document is admitted in the trial proceedings at appropriate stage after satisfying the requirements of law. It is well settled that at the stage of considering the injunction application, mini trial cannot be held and the adjudication is confined to analyse the three ingredients. Ignoring the interpretation of Section 29(4) of the Act, this Court is otherwise satisfied that the order granting injunction in the peculiar facts and circumstances of the case does not suffer from any perversity or illegality.

12. The appeal has no merit and is, accordingly, **dismissed**.

13. The trial court is directed to decide the suit within a period of **one year** from the date a certified copy of this order is produced before the court below.

14. While deciding the suit, the trial court shall not be influenced by any observation made in this order as the instant appeal has arisen from the stage of only temporary injunction and substantive rights of the parties based upon admissible evidence are yet to be adjudicated upon by the court below.

Order Date :- 30.11.2023

AKShukla/-