

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2015

CORAM
THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

C.S. No. 432 of 2015
and
O.A. No. 561 of 2015
and
A. No. 3523 of 2015

Tube Investments of India Limited
(Unit: TI Cycles of India),
Dare House, No. 234, N.S.C. Bose Road,
Chennai 600 001. ...Petitioner

Vs.

Ravi Industries
8-R, Industrial Area-B,
Ludhiana - 141 003
and also at
Opp. Raja Vanaspati,
G.T. Road, Dhandari Khurd,
Ludhiana-141010. ...Respondent

Plaint filed under Order VII Rule 1 CPC read with Order IV Rule
1 O.S. Rules and Section 27 & 135 of the Trade Marks Act,
1999.

For Petitioner : M/s.Arun C. Mohan
For Respondent : Mr.Madhan Babu for
M/s. Satish Parasaran.

JUDGMENT

The suit is filed seeking for the following reliefs;

a) a permanent injunction restraining the defendants by themselves, their men, servants, agents, partners, heirs, legal representatives, successors in business, assigns, distributors, stockists, dealers, whole sellers, retailers or any one claiming through or under them from manufacturing, distributing, marketing, selling, offering for sale, advertising or in any manner directly or indirectly using the mark **H logo** or any mark deceptively similar thereto in any manner whatsoever, thereby infringing the registered trademark of the plaintiff.

b) a permanent injunction restraining the defendants by themselves, their men, servants, agents, partners, heirs, legal stockists, dealers, wholesalers, retailers, or any one claiming through or under them from manufacturing, distributing, marketing, selling, offering for sale, advertising or in any manner using the mark **H logo** in respect of any business goods or services, which is identical to plaintiff's mark **H logo** as trademark, trading style corporate name, name of partnership or proprietary concerns, whether as a part thereof or in entirety or in any other manner whatsoever amounting to passing off the business, products and services as and for the plaintiff's business, products and services, in any manner whatsoever;

c) The defendant be ordered to deliver up for destruction all the articles, instruments, cartons, pouches, labels, packaging materials, advertising materials, seals, dies, blocks, screen prints, pamphlets, brochures, stationery materials, hoarding, name boards, signage and such other materials which contain the impugned trademark **H logo**.

d) A preliminary decree be passed in favour of the plaintiff to render true and faithful accounts of profits earned by the defendant by using the trademark **H logo** and a final decree be passed in favour of the plaintiff's for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts.

e) The defendant be ordered to pay a sum for Rs. 1,00,000/- being compensatory and punitive damages for committing the act of passing off in the manner as narrated in the plaint.

f) for costs of the suit.

2. Today a memorandum of compromise dated 16.09.2015 entered into between the plaintiff and the defendant is filed before this Court. The said memorandum is signed by both the parties as well as their respective counsels. Both the parties are also present before this Court. Thus, it is prayed that the above suit may be decreed in terms of the above

memorandum of compromise.

4. The terms of the above memorandum of compromise reads as follows:

The terms the plaintiff and the defendant shall mean and include their heirs, executors, administrators, successors and assigns of each party.

1. The defendant agrees and acknowledges that the plaintiff is the registered proprietor of the trademark **H logo** and has exclusive statutory rights by virtue of the registrations and proprietary rights on account of prior, long and extensive use of the trademark **H logo** therein to the exclusion of others. The said **H logo** of the plaintiff is filed herewith as Annexure-A. The plaintiff is also the owner of another trademark **H logo**, which is filed herewith as Annexure -B.

2. The defendant has been using a trademark **H logo**, filed herewith as Anneuxre -C, and the plaintiff is aggrieved by the use of the said logo. In order to put a quitus to the dispute, the defendant hereby undertakes not to manufacture, sell, stock, distribute, advertise or otherwise deal with any other business in which they are directly or indirectly involved/associated in respect of bicycles, or any other product bearing the identical trademark **H logo** (Annexure C).

3. The defendant hereby undertakes to exhaust/destroy all

goods, cartons, labels, pouches, name cards, hoardings, pamphlets, other stationery materials or any other advertisement material bearing the infringing mark **H logo** (Annexure -C) and the almost identical and/or deceptively similar mark therein within a period of 3 months from the date of execution of this memorandum of compromise. The defendant has amended its label and the amended label is annexed herewith as Annexure -D.

4. The defendant agrees to subject themselves to a judgment and decree in the following terms of:-

a) a permanent injunction restraining the defendants by themselves, their men servants, agents, partners, heirs, legal representatives, successors in business, assigns, distributors, stockists, dealers, wholesalers, retailers or any one claiming through or under them from manufacturing, distributing, marketing, selling, offering for sale, advertising or in any manner directly or indirectly using the mark **H logo** (Annexure -C) or any mark deceptively similar thereto in any manner whatsoever, thereby infringing the registered trademark of the plaintiff. (Annexure -A).

b) a permanent injunction restraining the defendants by themselves, their men, servants, agents, partners, heirs, legal representatives, successors in business, assigns, distributors, stockists, dealers, wholesalers, retailers or any

one claiming through or under them from manufacturing, distributing, marketing, selling, offering for sale, advertising or in any manner using the mark **H logo** (Annexure -C) in respect of any business goods or services, which is identical to plaintiff's mark **H logo** (Annexure - A & B) as trademark, trading style, corporate name, name of partnership or proprietary concerns, whether as a part thereof or in entirety or in any other manner whatsoever amounting to passing off the business, products and services as and for the plaintiff's business, products and services, in any manner whatsoever;

5. The defendant hereby acknowledges that the trade mark applied for registration for the mark **H logo** under No. 2608804 in class 12 is deceptively similar to that of the plaintiff's mark **H logo**, and agrees and undertakes to withdraw the said application No. 2608804 pending before the Trademarks Registry immediately and communicate to the plaintiff with documentary evidence regarding the withdrawal.

6. The defendant hereby undertakes not to apply for fresh registration of any mark identical and/or deceptively similar to the plaintiffs trade mark **H logo** Annexure - A & B in future.

7. In view of the above undertakings given by the

defendant, the plaintiff agrees to give up other reliefs as claimed by them in the plaint.

The parties pray that this Hon'ble Court may be pleased to pass a judgment and decree in accordance with the terms set out above. The parties shall bear their own costs.

5. Considering the above stated facts and circumstances, the suit is decreed in terms of the above memorandum of compromise. The memorandum of compromise shall form the part of the decree. Considering the fact that the parties have entered into compromise, there will be no order as to costs. Consequently, Original Application No.561 of 2015 and Application No.3523 of 2015 are closed .

16.09.2015

K.RAVICHANDRABAABU.,J.
rms/vsi

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