

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6283 of 2015(O&M)
Date of decision : September 23, 2015

M/s Sagar Ratna Restaurants Private Limited

..... Appellants

Versus

M/s Aakash Restaurant & Foods Private Limited

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jahaan Singh Dhaliwal, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 28.7.2015 (Annexure P-6) whereby the application filed by the petitioner-plaintiff for framing additional issues between the parties over and above already framed one has been dismissed.

Mr. Jahaan Singh Dhaliwal, learned counsel appearing on behalf of the petitioner-plaintiff submits, that the suit for declaration, permanent injunction and for infringement of Trademark of the petitioner-plaintiff and passing off the goods and services by the respondent-defendant and as well as for recovery of unpaid Franchisee fee, much less rendition of true accounts/damages has been filed. In paragraph 42 of the plaint (Annexure P-1) and prayer clause of the suit, the trial court, on the

basis of variance between the parties to the *lis* on 2.7.2015 framed the following issues:-

Present: Mr. J. S. Dhaliwal, Advocate for plaintiff

Shri Pradeep Bedi, Advocate for defendant.

Replication filed. Copy supplied. From the pleadings of the parties following issues are framed.

- 1. Whether the plaintiff is entitled to the relief of declaration that the defendant has committed infringement of trademark "Sagar Ratna", "Sagar Rattnam", Ratnam and other intellectual property of the plaintiff?OPP*
- 2. Whether the plaintiff is entitled to relief of permanent injunction restraining the defendant, their employees, successors, executors, agents, administrators, representatives from using, appropriating, exploiting, displaying, dealing with intellectual property etc.in any manner whatsoever?OPP.*
- 3. Whether the plaintiff is entitled for recovery of Rs. 35 lakhs as damages for infringement of intellectual property of the plaintiff; unlawful usage and exploitation of trade secret, conditional information; business strategies etc. along with pendent-lite and future interest @ 18%?OPP*
- 4. Whether the plaintiff has conceal the material information from the court by not disclosing the pendency of the suit at Delhi?OPD*
- 5. Whether the present suit is hit by Provisions of Section 17(2) of Trade Marks Act, 1999?OPD*
- 6. Relief."*

He further submits that the aforementioned issues does not take care of the recovery part and as well as rendition of

accounts and the breach of franchisee agreement and an occasion arose to move application.

I have heard learned counsel for the petitioner and appraised the paper book.

Paragraph 42 and prayer clause of the plaint reads thus:-

42. That the value of the suit for the purpose of court fee and jurisdiction is Rs.14,58,836/- as recovery of the amount due to the plaintiff and Rs.35,00,000/- as damages for passing off, infringement and breach of the terms and conditions of the Agreement on which the plaintiff has paid requisite court fee of Rs. 50,800/-.

Prayer clause:

In view hereof, the petitioner prays that the Hon'ble Court may graciously be pleased to:

- i) Pass a decree of recovery of an amount of 14,58,836/- along with 24% per annum from the date the amount became payable till the date of payment by the Defendant;
- ii) pass a decree of declaration that the Defendant has committed infringement of trademark "SAGAR RATNA", "SAGAR RATNAM", "RATNAM" and other intellectual property of the plaintiff; and
- iii) pass a decree of declaration that defendant has unlawfully used the proprietary/confidential

information,; data base, technical know-how;
trade secrets etc.causing thereby great damage
to the Plaintiff and

iv)pass permanent injunction restraining the
defendant, their employees, successors,
executors, agents, administrators, representatives
from using, appropriating, exploiting, displaying,
dealing with Intellectual Property, trade secret,
confidential data, recipes, technical know-how,
business format, etc.in any manner whatsoever;
and

v)pass permanent injunction restraining the
defendant from running and operating the
restaurant business under the brand name' Shree
Rathnam' on the patterns, format, knowledge,
trade secrets etc.of the plaintiff company; and

vi)pass ex-parte ad interim orders in terms of prayer
clause (iii) &(iv); and

vii)pass a decree for a sum of Rs.35,00,000/- as
damages for infringement of Intellectual property
of the plaintiff;unlawful usage and exploitation of
trade secret, confidential information;business
and strategies and planning; technical know-how
etc.of the plaintiff in favour of the plaintiff and
against the defendant, and

viii)pass a decree awarding pendente lite and future

interest @ 18% per annum in favour of the plaintiff and against the defendant.

ix) Grant cost of the suit in favour of the plaintiff company and against the defendant and

x) pass such other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances and in the interest of justice.”

In view of the aforementioned prayer, I deem it appropriate to mention that the proposed issues (a) (c) and (e) noticed in the impugned order would be essential and necessary for the adjudication of the *lis* between the parties.

In my view, there is no specific prayer with regard to rendition of accounts, but in case, the suit is decreed, the plaintiff would be entitled to rendition of accounts to the profit earned by the respondent as a consequential relief.

In order to lend support he has relied upon Section 135 of the Trade Marks Act, 1999. The same reads thus:-

135. Relief in suits for infringement or for passing off.—

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1)

may include an ex parte injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—

(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or

(b) where in a suit for infringement the defendant satisfies the court—

(i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or

(c) where in a suit for passing off, the defendant satisfies the court—

(i) that at the time he commenced to use the trade

mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and (ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.

In view of what has been observed above, the impugned order is set aside. The additional issues Nos. (a), (c) and (e) are accordingly directed to be framed.

I deem it appropriate to dispose of the petition at this stage as the case is listed at the plaintiff's evidence and in my view, no pre judice would be caused to the respondent as the onus to prove the aforementioned issues is on the petitioner-plaintiff.

In view of what has been observed above, with the aforementioned modification the impugned order is set aside.

The revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

September 23 , 2015
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