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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 20.04.2015

+ CS(OS) 924/2002

M/S LIVING MEDIA INDIA LTD. Plaintiff

Through Mr.Angad Dugal Singh, Adv.

versus

M/S STV ENTERPRISES LTD. Defendant

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. Arguments have been heard in the suit. The issues in the suit were framed vide Order dated 21.03.2006. Thereafter, the Court on 09.01.2014 noted that the defendant has remained unrepresented right from 15.02.2013, thus they are proceeded ex parte vide Order dated 09.01.2014.

2. The present suit is filed by the Plaintiff for permanent injunction restraining the defendant from using in any manner the name “Punjab Today” and/or broadcasting its channel/service under the name, style and title of “Punjab Today” and to change the name of its channel from “Punjab Today” to any other name, style and title not similar to the suffix “Today”.

3. It is the contention of the Plaintiff that the plaintiff is an incorporated Company and is engaged in the business of publication of fortnightly Magazine “India Today” since 1975. The plaintiff contends that their

trademark “India Today” is registered since January 27, 1982. The Plaintiff also contends that it is also the publisher of other magazines in the name and style of “Business Today”, “Books Today” etc.

4. It is also contended by the Plaintiff that it has been operating the popular news channel “Aaj Tak” and an online newspaper under the name “The Newspaper Today”. The plaintiff contends that they also own the website www.indiatoday.com and has title of various regional magazines like “Mumbai Today”, “Chennai Today” across the country.

5. The plaintiff states that the word “Today” is closely associated with the Plaintiff in several forms over the last two decades in relation to news/media business, whether in print, satellite or internet. The plaintiff states that the Company has established tremendous goodwill and that the combination of the words “India” and “Today” has become synonymous with the plaintiff. The circulation of magazines, viewership of news channel and Turnover of the plaintiff Company has been detailed in para 4 of the plaint.

6. It is the contention of the plaintiff that in February, 2002 it became aware of the infringing news channel “Punjab Today” launched by the Defendant.

7. It is contended by the Plaintiff that the Defendant Company deliberately chose the infringing name “Punjab Today” for its channel with malafide purpose of encashing the saleable name and the goodwill of the Plaintiff. The plaintiff further contends that in fact the impugned name “Punjab Today” had generated a large number of queries and congratulatory letters from various customers and advertisers of the Plaintiff Company

under the bonafide belief that the channel “Punjab Today” was owned by the Plaintiff Company.

8. It is also submitted by the Plaintiff that the Defendant’s adoption of the name “Punjab Today” is creating confusion and deception in the minds of the general public as the public is bound to assume nexus between the Defendant’s news channel “Punjab Today” and the Plaintiff’s news channel “India Today”.

9. The plaintiff contends that the plaintiff sent a legal notice to the Defendant on 18.03.2002 calling upon the Defendant to change the name of its channel. The plaintiff did not receive any response to the legal notice issued. Hence the present suit is filed.

10. The Plaintiff contends that any unauthorized use thereof or any other identical or similar name by any unauthorized broadcast news channel “India Today” would inevitably lead to erosion of distinctiveness of the registered trade mark suffix “Today” which has been utilized and broadcasted by the Plaintiff for over two decades. It is also contended by the Plaintiff that the use of the impugned trade name suffix “Today” by the Defendant’s constituted act of misrepresentation and passing off Defendant’s unauthorized business activity.

11. The defendant filed a written statement. In the written statement the defendant has averred that a word like “Today” is a completely generic term in relation to news and current events and the same cannot be monopolised by any party. It is stated by the Defendant that use of such words is common in the print and electronic media as is clear from various titles which exist i.e. Times of India, New York Times, The Times, Financial Times, etc. It is

stated that the Defendant adopted the name “Punjab Today” during September/October, 2001 and the channel “Punjab Today” was launched in January, 2002.

12. After completion of pleadings issues were framed on 21.3.2006 which reads as under:-

“1. Whether the registration of the mark INDIA TODAY in Class 16 gives exclusive right to the plaintiff to use the word TODAY? OPP

2. Whether the word TODAY has become a distinctive trademark of the plaintiff by user over a period of time? OPP

3. Whether the use of the trademark PUNJAB TODAY amounts to passing off to the defendant’s channel as that of the plaintiff or that having association with the plaintiff? OPP

4. Whether the word TODAY as used by the plaintiff is descriptive of news and current affairs? If so, its effect? OPD

5. Whether the use of the word TODAY by the defendant is bona fide and protected under section 34 of the Trademarks Act 1958? OPD

6. Whether the plaintiff is indulging in issuing any groundless threats to the defendant? If so, its effect? OPD

7. Relief.”

13. Mr. Anil Mehra, Constituted Attorney of the Plaintiff has led evidence on behalf of the Plaintiff as PW1. He has stated that trademark “India Today” has been registered under certificate no.385723 in January 1982 and the said mark has been renewed from time to time and is subsisting on the Register of the Registrar of Trade marks. He states that the plaintiff has established tremendous goodwill which is closely associated with the word “TODAY” as used by the plaintiff company in various forms in relation to its news and media business for over three decades now. PW1 has also filed

his additional affidavit marked as PW-1/1. It is stated in the additional affidavit that the plaintiff is also publisher of various other widely circulated magazines, namely, 'Business Today', 'Books Today', etc. Copy of Certificate of Registration for India Today, Books Today and Computer Today is placed on record as PW-1/A to PW-1/C respectively. He states that combined circulation of 'India Today' in English & Regional languages is 10 lacs copies per week, the website newspaper 'The Newspaper Today' publishes

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Editions per day and has estimated readership of 2 lacs per day. The annual turnover of the plaintiff company for the financial year 2000-01 is stated to be Rs.16081.48 lacs. He further states that the word 'Today' is closely associated with the plaintiff company in several forms in relation to news and media business and that the Defendant Company deliberately chose the name of "Punjab Today" for its news channel for encashing on the goodwill of the Plaintiff Company. He states that the plaintiff got to know about the Defendant's news channel in February, 2002 when he received letters and job applications in relation to the defendant's company. Congratulatory letter for the launch of "Punjab Today" from various advertisers and job seekers who believed that the impugned news channel "Punjab Today" was associated with the Plaintiff Company has been placed on record and marked as Ex. PW1/D to PW1/L. He states about 29 trademarks registered in favour of the Plaintiff Company have the suffix "Today" which are brought on record from Exhibit PW1/M to PW1/OO. He further states that the plaintiff company issued a legal notice dated 18.03.2002 to the defendant company calling upon them to change the name of its channel.

14. In compliance with order dated 05.08.2014 of this court the Plaintiff has filed another affidavit stating as to how many persons are using the mark “Today”. Thereafter, Manoj Madhavan, Constituted Attorney of the Plaintiff has filed an affidavit declaring 63 such trademarks using the suffix “Today” with regard to news channels and websites of the Plaintiff Company.

15. I will now take up issue nos. 1, 2 and 3. It is clear that the plaintiff is a prior user of the trademark INDIA TODAY. It is stated that the said trademark is a registered trademark. It is clear that the defendant has copied the word TODAY which has become distinctive trademark of the plaintiff by user over a period of time, which is also shown by the 63 trademarks using the suffix “Today” with regard to news channels and websites of the Plaintiff Company.

16. Regarding issue nos.4, 5 and 6, the onus to prove these issues was on the defendant. As no evidence has been led by the defendant the issues are decided against the defendant.

17. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiff, the Plaintiff has established that it is the registered proprietor of the said trademark “Today”, thus has a statutory right to exclusive use of the same. The Plaintiff has also proved that the use of the mark by the Defendant “Punjab Today” constitutes violation of the Plaintiff’s statutory right. The impugned mark is structurally, visually and phonetically identical to the registered trademark of the Plaintiff and the act of the defendant in using the trademark “Punjab Today” is an infringement of the plaintiff’s trademark. The acts of the Defendant also appear to be lacking bonafide.

18. Accordingly, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant restraining the defendant, its employees, servants, agents, etc. from in any manner howsoever and whatsoever using the name “Punjab Today” or broadcasting its channel/services using the name “Punjab Today” or in any other name which is deceptively similar to the plaintiff’s trademark “India Today” or any part thereof. The Plaintiff shall also be entitled to costs.

19. The present suit is disposed of.

JAYANT NATH, J

APRIL 20, 2015
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