

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

% Order delivered on 13th July, 2015

+ **C.S. (OS) No. 2140/2013**

HERO REALITY LIMITED Plaintiff
Through Mr. M.K.Miglani, Adv. with
Mr. Gaurav Miglani, Adv.

versus

MR. BRAJESH NAGAR & ANR. Defendants
Through Defendants are ex-parte.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the suit for permanent injunction, infringement of trademark, passing off, damages and rendition of account against the defendants.
2. The defendants are ex-parte. Ex-parte evidence is filed by the plaintiff by way of affidavit. Learned counsel for the plaintiff has made his submissions. He is also pressing for relief of punitive damages and cost apart from the relief of permanent injunction against the defendants.
3. The brief facts of the case are that the plaintiff is a company incorporated and registered under the Indian Companies Act, 1956, having its registered office at E-2 Qutub Hotel Complex, Shaheed Jeet Singh Marg, New Delhi-110016.
4. The plaintiff belongs to the world-renowned Hero group which is one of the most respected business houses in India, an industrial

conglomerate with interest in diverse businesses such as automotives, real estate, infrastructure, financial services. Information Technology etc. and has been carrying on businesses as aforesaid since the past more than 5 decades in India.

5. The plaintiff was incorporated in the year 2006 as Arrow Infra Limited and subsequently in 2012 the name of the plaintiff company was changed to Hero Realty Limited and a fresh certificate of incorporation consequent to such change of name was issued on 19th October, 2012.

6. The plaintiff is engaged in the well-known and well-established business, *inter alia*, of real estate development, construction and maintenance of properties, residential/housing complexes, etc. (hereinafter referred to as the 'said services') for the past several years. It has offices in New Delhi, Gurgaon and Haridwar, the said plaintiff has developed several Industrial Parks in the state of Uttarakhand to house large and mid-sized manufacturing units. These Industrial Parks have state-of-the-art infrastructure with high specifications internal roads, complete area lighting, storm water drainage system, commercial hub and landscaped areas.

7. In the year 2006 itself, for their residential housing project, the plaintiff adopted a mark HARIDWAR GREENS after carefully inspecting the records of the Registrar of Trade Marks.

8. The plaintiff on 20th July, 2009 filed the following applications for the registration of the trademark/label HARIDWAR GREENS (hereinafter referred to as the 'said trademark') with the Registrar of Trade Marks; the details of which has been given in para 4 of the plaint.

9. The said residential housing project under the mark HARIDWAR GREENS, situated in Village Aneki Hetampur, Tehsil Haridwar, Distt Haridwar, near SIDCUL, is spread across 52 acres of land. With more than 1300 housing units and 325 plots including and 2-4 bedroom apartments being built in Haridwar, the said project under the name "HARIDWAR GREENS" is one of the most premier housing projects undertaken by the plaintiff. The project is being built with all modern facilities including school, nursing homes, banks, shopping arcade, etc. The said housing complex and township of the plaintiff has been designed by a leading Canadian architect firm and is deliberately structured to promote safety and beauty of the built environment, vibrancy in the public place, spatial diversification and the pursuit of an economically and environmentally sustainable ambience.

10. The aforesaid project of the plaintiff has not only been promoted through, various means but it has also received widespread unsolicited media reporting and the said trademark "HARIDWAR GREENS" has acquired and established enviable goodwill and impeccable reputation among the public and trade. The plaintiff has sold more than 1000+ apartments to its various customers which includes some of the prestigious customers like ITC Limited and BHEL and the plaintiff is also taking this project forward to include development of plots. The trade and public associate and identify the services bearing the trademark "HARIDWAR GREENS" exclusively with the plaintiff and no one else. The plaintiff has spent considerable amount in making the aforesaid project under the mark "HARIDWAR GREENS" popular amongst the members of public.

11. The plaintiff has also maintained a website www.haridwargreens.com. The said website is a further extension of our plaintiff's intellectual property rights in the said trademark "HARIDWAR GREENS". This website is freely accessible to one and all and has served in making customers worldwide aware of the real estate and housing projects launched by the plaintiff and the services provided by them under the said mark "HARIDWAR GREENS".

12. It is the case of the plaintiff that the defendants have recently started offering for sale of freehold plots to the public under an identical/deceptively similar name/mark - "HARIDWAR GREEN CITY". In the last week of August, the representatives of the plaintiff noticed a few bill-boards on the Roorkee - Dehradun Highway, wherein the said defendants are offering freehold plots under the trademark HARIDWAR GREEN CITY. On becoming aware of the defendants' aforesaid infringing and unlawful activity, the plaintiff immediately on 5th September, 2013 issued a cease and desist notice to the defendants requiring them, *inter alia*, to forthwith stop using the said trademark HARIDWAR GREEN CITY as the same is virtually identical and deceptively similar to the plaintiff's said mark and incorporates the whole of the plaintiff's mark HARIDWAR GREENS.

The aforesaid cease and desist notice sent by Registered Post A/D has been returned back to the plaintiff's counsels by the postal department with some illegible comments. However, on acknowledgment card the signatures have been scribbled and even the envelope containing the letter appears to have been opened and then stapled back again. The plaintiff apprehends and have reasons to believe that the said defendant had first accepted the service of

cease and desist notice and after reading the contents therein has somehow managed to return it back. The signatures on the acknowledgement card filed herewith are an evidence of the same.

13. It is alleged that the adoption of the said trademark by the defendants is completely dishonest and the defendants have deliberately adopted a name/mark "HARIDWAR GREEN CITY" that completely incorporates the plaintiff's mark "HARIDWAR GREENS". The services being provided by the defendants under the said name are also of the same description as provided by the plaintiff. The effect, idea and impression of defendants' trademark is such that it can be easily mistaken as and for the plaintiff's trademark and is likely to cause confusion and deception amongst members of public and trade. In any case, the impugned trademark "HARIDWAR GREEN CITY" is likely to be taken as another trademark or extension/series of the plaintiff's said trademark "HARIDWAR GREENS". The plaintiff is much prior in point of time to adopt, use and register the said trademark "HARIDWAR GREENS". Hence there is bound to be confusion and deception among the public and trade by use of such deceptively similar trademark and name by the defendants. The consumers and members of trade would wonder whether (i) the plaintiff has set up its new extension; (ii) the plaintiff has given a license or franchise to the defendants for the use of the impugned trademark for the same and similar services; (iii) the defendants have some affiliation, sponsorship, association or nexus with the plaintiff. Thus, by use of the said trademark, the defendants are likely to pass-off their services and business as those of the plaintiff.

14. The plaintiff being the registered proprietor of the mark HARIDWAR GREENS has exclusive rights in law to use the said trademark and by use of an identical/deceptively similar mark HARIDWAR GREEN CITY the defendants are guilty of infringing the registered trademark HARIDWAR GREENS of the plaintiff.

15. The plaintiff submits that on account of defendants' aforesaid unlawful and unjust activities, the plaintiff has suffered damages to the well known and well established business and reputation and further damages to the business and reputation are inevitable unless the defendants are restrained immediately by the order of injunction from misusing the plaintiff's well-known and registered trademark HARIDWAR GREENS. The plaintiff submits that the pecuniary compensation will not afford adequate remedy to safeguard the rights and interests of the plaintiff and also of unwary and innocent customers of plaintiff's goods/services who are being deceived. The resulting losses to the goodwill, image, reputation and business are calculated to be to the tune of Rs. 20,00,000/- however the accurate amount can only be determined after rendition of accounts by the defendants. The plaintiff further submits that the defendants are also liable to pay punitive damages on account of deliberate infringement of plaintiff's registered mark "HARIDWAR GREENS".

16. Despite of service, the defendants failed to appear and no written statement was filed. Thus, they were proceeded *ex-parte*.

17. Ex-parte evidence by way of affidavit of Mr. Kalyan Ghosh, S/o Sh.N.C.Ghosh who is the authorized signatory of the plaintiff company, Hero Realty Limited was filed.

18. The Board Resolution dated 10th October, 2013 in favour of deponent from plaintiff has been exhibited as Ex.PW-1/1.

19. A certified true copy of the Certificate of Incorporation and the Memorandum and Articles of Association of plaintiff has been exhibited as Ex.PW-1/2 (collectively).

20. Copies of Registration Certificates have been exhibited as Ex. PW-1/3 to Ex.PW-1/5.

21. It is established that one of the said project of plaintiff being built with all modern facilities including school, nursing homes, banks, shopping arcade, etc. The said housing complex and township of plaintiff has been designed by a leading Canadian architect firm and is deliberately structured to promote safety and beauty of the built environment, vibrancy in the public place, spatial diversification and the pursuit of an economically and environmentally sustainable ambience. The original application form, brochure and specimen buyer's agreement of plaintiff for the project under the mark HARIDWAR GREENS has been exhibited as Ex. PW-1/6 to Ex.PW-1/8.

22. The plaintiff has sold more than 1000 apartments to its various customers which includes some of the prestigious customers like ITC Limited and BHEL and that plaintiff is also taking this project forward to include development of plots. The plaintiff has spent considerable amount in making the aforesaid project under the mark "HARIDWAR GREENS" amongst the members of public. The original list of customers as on 28th October, 2013 who have been allotted flats in the project HARIDWAR GREENS has been exhibited as Ex. PW-1/9.

23. The computer print outs of various third party listings and advertisements of plaintiff has been exhibited as Ex.PW-1/10 (collectively).

24. The plaintiff has maintained a website www.haridwargreens.com. The said website is a further extension of plaintiff's intellectual property rights in the said trademark "HARIDWAR GREENS". The said website of plaintiff is freely accessible to one and all and has served in making customers worldwide aware of the real estate and housing projects launched by plaintiff and the services provided by them under the said mark HARIDWAR GREENS. The computer print outs of the said website of plaintiff has been exhibited as Ex.PW-1/11 (collectively).

25. A few photographs of the defendants hoarding has been exhibited as Ex.PW-1/12 (collectively).

26. The cease and desist notice and the signatures as appearing on the acknowledgement card has been exhibited as Ex.PW-1/13 and Ex.PW-1/14 respectively.

27. The evidence filed by the plaintiff has gone unrebutted as no cross-examination of the plaintiff's witness was carried out. Even otherwise, the plaintiff has been able to prove its case.

28. Thus, a decree for permanent injunction is passed in terms of para 19(i) and (ii) of the plaint in favour of the plaintiff and against the defendants restraining them, their servants, agents, proprietor, partners, representatives and/or all other persons acting on their behalf from selling/offering for sale plots/houses/residential or commercial accommodation or providing any other cognate or allied goods/services under the trademark "HARIDWAR GREEN CITY" or

any other trademark which may be identical and/or deceptively similar to the registered trademark "HARIDWAR GREENS" as it may amount to infringement of the plaintiff's said registered trademark and passing off.

Punitive damages

29. With regard to the relief of damages as claimed by the plaintiff, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In ***Time Incorporated Vs. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del.) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that "time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

30. Further, this Court in ***Microsoft Corporation Vs. Rajendra Pawar & Anr.***, 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 has held "Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans

must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.”

31. In view of the facts of the present case, this Court is of the opinion that in the present case Rs.3 lac as punitive damages be granted in favour of the plaintiff and against the defendants in terms of para 19(iii) of the plaint. Ordered accordingly.

32. Decree for cost of the proceedings is also passed against the defendants as claimed in prayer clause 19(v) of the plaint. The other reliefs are not pressed by the plaintiff.

33. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

JULY 13, 2015