

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

% Order delivered on: 2nd September, 2015

+ **CS (OS) 4060/2014**

ASHIANA HOUSING LTD. Plaintiff
Through Mr. M.K.Miglani, Adv.

versus

M/S TOTAL PROPERTY SOLUTIONS ... Defendant
Through Defendant is *ex-parte*.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit for permanent injunction restraining infringement of registered trademark, infringement of copyright, passing off, damages, rendition of accounts etc. against the defendant.
2. The defendant is *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 defendant.
3. The brief facts of the case are that 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 and commercial complexes etc. for the past several years.

4. The plaintiff was incorporated in the year 1986 as Ashiana Housing and Finance (India) Limited and subsequently in 2007 the name of the plaintiff Company was changed to Ashiana Housing Limited and a fresh certificate of incorporation consequent to such change of name was issued on 4th May, 2007.

5. The plaintiff has been in the housing development sector for over the last three decades and it has established its reputation as a Real Estate Developer providing quality construction. The plaintiff commended its operations under the mark 'ASHIANA' in the year 1986 and since then the mark 'ASHIANA' forms a part of plaintiff's trade name/style and company name. It is stated that since its inception it has engaged itself in the field of housing and development throughout India with development and construction of residential/group housing projects.

6. The plaintiff is the registered proprietor of the registered proprietor of the mark 'ASHIANA' in various classes in India; the details of the plaintiff's registrations of the trademark has been mentioned in para 9 of the plaint.

7. It is averred that by virtue of extreme hard-work, dedication and passion of the plaintiff company for revolutionizing the construction, development and infrastructure industry in India, the plaintiff received many prestigious accolades and recognitions for best affordable housing in India.

8. It is stated that the popularity and success of the plaintiff's services is also demonstrated by the fact that the revenue turnover of the plaintiff has steadily increased over the years, the details of the plaintiff's turnover under the trademark 'ASHIANA' has been provided in para 11 of the plaint. The details of expenditure incurred by the plaintiff on advertisement and publicity of the trademark 'ASHIANA' has been provided in para 12 of the plaint.

9. It is further stated that the plaintiff also operates a fully functional and interactive website being www.ashianahousing.com which is freely accessible and has served in making customers worldwide aware of the real estate and housing projects launched by the plaintiff and the services provided by it under the trademark 'ASHIANA'.

The case of the plaintiff against the defendant

10. The defendant is a sole proprietorship firm engaged in the business of providing a real estate consultancy, brokerage and general selling agency/services.

11. The plaintiff was informed on 29th October, 2014 about the defendant's impugned websites who had not only slavishly imitated and reproduced the plaintiff's trademarks ASHIANA and ASHIANA ANMOL but had also replicated the artistic representation of the plaintiff's house mark ASHIANA, the literary content, deceptively artistic view of the floor plans and site plans etc. on its website www.newlaunchsohna.in.

12. The plaintiff on gaining knowledge of the aforesaid unlawful activities addressed an e-mail dated 29th October, 2014 to the defendant to *inter- alia* cease the use of the information and/or the proprietary content including the trademarks of the plaintiff on its website, however, no reply was received by the defendant. Thereafter, the plaintiff issued a cease and desist notice dated 6th November, 2014 upon the defendant which was returned back by the postal department with some illegible comments on 25th November, 2014.

13. It is alleged that the use of an identical trademark ASHIANA and ASHIANA ANMOL by the defendant has been causing confusion and deception among the public and trade. The defendant is also using logos, identical to the plaintiff's on the impugned websites and even imitated the literary content from the brochures/pamphlets of the plaintiff, such use of the defendant is without due cause and with a view to take illegal and unfair advantage of and is detrimental to the distinctive character and repute of the plaintiff's well-known trademark ASHIANA. The effect, idea and impression of defendant's 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. The plaintiff is much prior in point of time to adopt, use and register the said trademark "ASHIANA". 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 defendant. Thus, by use of the said

trademark, the defendant is likely to pass-off their services and business as those of the plaintiff.

14. It is alleged that the manner in which the plaintiff's trademarks, logos and literary content of the plaintiff have been published on the defendant's website it is to deceive the members of trade and public to believe that the services provided by the defendant are in some manner connected with the plaintiff and/or are affiliated/endorsed by the plaintiff and/or is the authorized agent/channel partner of the plaintiff for the upcoming project ASHIANA ANMOL of the plaintiff.

15. The plaintiff submits that on account of defendant's 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 defendant is restrained immediately by the order of injunction from misusing the plaintiff's well-known and registered trademark ASHIANA. 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 members of the public and trade 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 defendant is also liable to pay punitive damages on account of deliberate infringement of plaintiff's registered mark "ASHIANA".

16. The suit as well as the application under Order 39 Rules 1 and 2 CPC was listed before Court on 24th December, 2014 when an *ex-parte* order was passed restraining the defendant from using the trademark/logo ASHIANA, ASHIANA ANMOL as well as from publishing or displaying the literary content, or any other mark identical or deceptively similar to the registered trademark ASHIANA of the plaintiff, in connection with its business of real estate, property consultancy, brokerage and other cognate or allied services. The defendant was also restrained from reproducing, publishing and displaying the information/literary content/artistic work and logo as similar to the plaintiff.

17. Despite service of summons, the defendant did not enter into appearance nor has the written statement been filed and consequently the defendant was proceeded *ex-parte* vide order dated 6th May, 2015. By the same order, the interim order dated 24th December, 2014 was made absolute.

18. In *ex-parte* evidence, the plaintiff filed affidavit dated 16th July, 2015 of Mr. Vipin Kumar Marya, authorized signatory of the plaintiff company as Ex. PW1/X reiterating the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex. PW 1/47 in support of its case. The documents exhibited are as follows:

- Original Board Resolution from the plaintiff in favour of Mr. Vipin Kumar Marya has been exhibited as Ex.PW-1/1;

- Copies of Incorporation Certificates of plaintiff company dated 1st June, 1986 and 4th May, 2007 have been exhibited as Ex. PW-1/2 and Ex.PW-1/3;
- Original trade brochures pertaining to various ASHIANA projects of the plaintiff have been exhibited as Ex.PW-1/4 (colly);
- Copy of the brochure setting out the awards and accolades conferred upon the plaintiff has been exhibited as Ex.PW-1/5 (colly);
- Copies of trademark registration certificates pertaining to the trademark of the plaintiff has been exhibited as Ex.PW-1/6 to Ex.PW-1/26;
- Copy of certificate of the Chartered Accountant of the plaintiff company has been exhibited as Ex.PW-1/27;
- Computer printouts of the plaintiff's website www.ashianahousing.com have been exhibited as Ex.PW-1/28 (colly);
- Computer printouts of few representative press releases, advertisements issued by plaintiff company have been exhibited Ex.PW-1/29 to Ex.PW-1/44;
- Computer printouts of the impugned webpage www.newlaunchsohna.in have been exhibited Ex.PW-1/45 (colly);

- Copy of the e-mail dated 29th October, 2014 sent by the plaintiff to the defendant has been exhibited as Ex.PW-1/46;
- Copy of the cease and desist notice dated 6th November, 2014 sent by the plaintiff to the defendant along with envelope as returned has been exhibited as Ex.PW-1/47.

19. The ex-parte evidence was closed vide order dated 31st August, 2015. 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.

20. Thus, a decree for permanent injunction is passed in terms of para 27(i), (ii) and (iii) of the plaint in favour of the plaintiff and against the defendant restraining the defendant, its directors, partners, proprietors, their servants, agents, associates, franchises, licensees, representative and/or all other persons acting on its behalf from providing real estate, property consultancy, brokerage and other cognate or allied service under the trademark ASHIANA, ASHIANA ANMOL or any other trademark which may be identical with and/or deceptively similar to the registered trademark ASHIANA as it may amount to infringement of the plaintiff's said registered trademark and passing off. They are also restrained from reproducing, publishing and displaying the information/ literary content/artistic works and logo(s) proprietary as similar to the plaintiff.

Punitive damages

21. 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.”

22. 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.”

23. 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 defendant in terms of para 27(iv) of the plaint. Ordered accordingly.

24. Decree for cost of the proceedings is also passed against the defendant as claimed in prayer clause 27(vi) of the plaint. The other reliefs are not pressed by the plaintiff.

25. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 2, 2015