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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 711 OF 2016
IN
SUIT NO. 186 OF 2015

Manish M. Turakhia and Another

...Applicant /
Plaintiffs.

Versus

Neerav N. Turakhia

...Defendant

Mr. A. Davar, i/b K.R. Parekh for the Plaintiffs.
Ms. Kadambari Surve, for the Defendant.

CORAM: G.S. PATEL, J
DATED: 12th August 2016

PC:-

1. This is an action in trade mark infringement and passing off. The application is for interim relief. No ad-interim reliefs were granted.

2. The Plaintiffs are a partnership firm. They say do business as opticians in the name and style of “Turakhia Opticians” at Vile Parle. They say that they have obtained registration of the word **TURAKHIA** as a word mark under Class 9 under Serial No. 846352 dated 26th February 2007 for optical goods and contact

lenses. This registration is valid and subsisting. There are photographs annexed that show the Plaintiffs' outlet.¹ This uses the word **TURAKHIA** in bright blue italics or on a blue background. There is also some sort of a device or a logo of a bespectacled creature on the signboard. The use is as *Turakhia Opticians* and *Turakhia Vision Care*.

3. The plaint does not contain any corroborated details of the Plaintiffs' sales evidencing use or reputation to any degree. There is a mere statement in paragraph 5 that there two showrooms at Irla and Goregaon generated a turn over of Rs. 2.8 crores. There is nothing to show this. There are no invoices. There are no statements certified by the Chartered Accountants. There is not even a tabulation authenticated by the Plaintiffs themselves.

4. The Plaintiffs say that in May or June 2014, they came upon the Defendant's retail shop in Kandivali with the name and style **TURAKHIA VISION**. The use by the Defendant is shown in a photograph annexed to the Plaint.² It is entirely distinct. Where the Plaintiffs use a primary colour background of blue, the Defendant use red or orange. The lettering style, placement and logo are entirely different. Geographically these are at two different places.

5. Turakhia is a common surname in the Gujarati community, especially in Mumbai. The submission made by Ms. Surve on behalf of the Defendant is that Defendant is saved by Section 25 of the Trade Marks Act, 1999. The Defendant uses his own surname for

1. Plaint, Exhibits "F", "F1", "F2" and "F3", pp. 25-26.

2. Plaint, Exhibit "G", p. 27.

his proprietorship business. He cannot, therefore, be restrained from using the same in the manner he does.

6. Mr. Davar for the Plaintiffs relies upon a decision of a learned Single Judge of this Court in *Kirloskar Diesel Recon Private Limited & Another v Kirloskar Proprietary Limited & Others*.³ I do not think this decision even remotely assists the Plaintiffs. There, the Court took cognizance of a specific submission that there was evidence before the Court of reputation being established to an extent that the name *Kirloskar*, either as a trade name or as a trade mark had come to be exclusively associated with the Kirloskar Group of Companies. It was also argued there that the protection as regards the use of a name was unavailable to a limited company. Here, the Defendant is a sole proprietorship concern, and the consideration in *Kirloskar* is, therefore, inapposite. I do not believe that the argument from *Kirloskar* can be extended to any and every time of business. A person is indeed entitled to use his own name for a business he does personally in that name, as the proprietor of that business. For the Plaintiffs to cite *Kirloskar* or put themselves at the same level as the Kirloskar Group is at the very least perhaps getting a little ahead of themselves.

7. Mr. Davar's argument that since he has a registration, therefore, none can use the name (or more accurately the surname Turakhia) is a submission that only needs to be stated to be rejected. This can hardly prevent an individual from running a proprietary business in his own name. That is precisely the purpose of Section

3. AIR 1996 Bom 149.

25. If his submission is to be accepted, that statutory provision would be rendered otiose.

8. There is inadequate material in this Notice of Motion on which to base a *prima facie* opinion that the Plaintiffs have made out any case for grant of interim relief. The balance of convenience also does not favour the Plaintiffs.

9. The Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)