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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on 20.07.2016

+ CS(OS) 1566/2011 & IA Nos.10095/2011 & 12980/2011

KAILASH BABU GUPTA

..... Plaintiff

Through: Mr R.K. Aggarwal and Mr Parul
Singh, Advocates.

versus

LOKESH KUMAR SRIVASTAVA & ORS

.....Defendants

Through None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J

1. The present suit has been filed by the plaintiff, *inter alia*, praying as
under:-

- “(i) For permanent injunction restraining the defendant by himself, his servants, agents, representatives, etc./ and all other persons on his behalf from passing off his services by using the trading style IITP Edutrain Pvt. Ltd., website www.indianiitp.com and other publicity material which may have significant alphabets IITP of the Plaintiff's trading style, in any manner and/or any other trading style/website consisting of the alphabets IITP which is identical with and/or deceptively similar to the plaintiff trading style

“IITP Resource Development Pvt. Ltd.” and website www.indianiitp.com.

- (ii) For permanent injunction restraining the defendant by himself, his servants, agents, representatives, etc. an all other persons on his behalf from passing off, his services as those of the plaintiff herein by using similar/identical trading style/website and publicity material etc., which are identical with and/or deceptively similar to the plaintiff’s trading style/website etc.
- (iii) For delivery upon Affidavit by the Defendant to the Plaintiff all the offending/counterfeit, labels, brochures, hand bills and other incriminating material bearing the offending trading style/website etc. of which “IITP forms principal part and are in possession and/or control of the defendant for destruction.
- (iv) A decree for damages of Rs.20,01,000 (Rupees Twenty Lakhs and one thousand only) be passed in favour of the plaintiff and against the defendant.”

2. The plaintiff is a Director of a Private company, namely, IITP Resource Development Pvt. Ltd. (hereinafter the ‘Company’). The plaintiff is, *inter alia*, engaged in the business of placement, staffing, training in engineering and automation, learning resources, and corporate services.

3. The plaintiff states that he has by application No.1996467, applied

for registration of the mark 'IITP' in Class 41 in relation to education, training and placement services as also for registration of logo under the Indian Copyright Act, 1957.

4. It is stated that defendant no.1 was also a Director of the Company. However, he resigned from the Company on 04.04.2011. The plaintiff has further asserted that alongwith his resignation letter, defendant no.1 also executed a declaration-cum-undertaking, *inter alia*, undertaking not to use the name and style of the Company or its Logo and particularly, the word 'IITP'. He further undertook to desist from carrying on identical or similar business in direct competition with the Company within the vicinity of 1 km.

5. The plaintiff states that he came to know about the adoption and use of the mark 'IITP' by defendant no.1 on 30.05.2011, when some of the students of plaintiff's institute contacted the plaintiff and informed that the said defendant had opened his own institute under the name and style 'IITP Edutrain Pvt. Ltd.', offering the same services in the field of education and placement services as were being offered by the Company. On further investigation, the plaintiff found out that the visiting cards and prospectus of defendant no.1's institute as well as the website adopted by defendant no.1 were also similar to that of the Company. The visiting card of defendant

no.1's institute and the prospectus mentions the Company's address as the registered office address. Further, the plaintiff states that he requested defendant no.1 to discontinue using the name 'IITP' for his Institute as the same amounts to passing off, however, defendant no.1 has not ceased to do so.

6. The plaintiff asserts that the use of the name 'IITP' by defendant no.1 in the name of his institute, visiting cards, prospectus and website is bound to create confusion in the minds of general public and specifically among the students, leading to serious damage to the business of the plaintiff.

7. By an order dated 22.06.2011, summons were issued in this suit and an *ex parte* ad interim injunction was granted restraining defendant no.1 from using the trading style 'IITP Edutrain Pvt. Ltd.', website www.indianiitp.com or any other publicity material or the mark 'IITP' in any manner whatsoever as a trademark or part of the trading style.

8. By an order dated 17.08.2011, the matter was directed to be listed before the Joint Registrar for admission/denial of the documents. The order dated 07.02.2012 records that defendant no.1 conducted the admission/denial in-person and admitted eight documents which were

marked as Ex.P-1 to Ex.P-8.

9. During the course of the proceedings, the plaintiff filed an application being IA No.12980/2011, *inter alia*, alleging that despite an order of injunction ,defendant no.1 was still running the institute under the name and style of 'IITP Edutrain Pvt. Ltd.' and offering the same services in the field of education and placement as were being offered by the institute being run by the Company. Notice was issued on the said application but defendant no.1 did not appear. Consequently, by an order dated 15.05.2012, bailable warrants were directed to be issued to ensure the presence of defendant no.1. Defendant no.1 appeared before the Court on 06.07.2012 pursuant to the warrants and stated that he had resigned from M/s IITP Edutrain Pvt. Ltd. on 04.07.2011 and was not connected with the said Company and its day to day functioning.

10. In the light of the aforesaid statement made by defendant no.1, the plaintiff filed an amended plaint which was duly taken on record on 01.11.2012 and defendant nos.2 to 5 were also arrayed as parties to the present suit.

11. On 30.07.2013, this Court directed that the interim order dated

22.06.2011 be also applicable on all the defendants as it was alleged that the other defendants were also related to defendant no.1 and were continuing to carry on the business under the trade name of 'IITP Edutrain Pvt. Ltd.' and were thus, violating the directions issued by this Court. This Court also noted that the defendants had not been appearing since several dates and, therefore, directed that they be proceeded *ex parte*.

12. Thereafter, the plaintiff has led his evidence *ex parte*.

13. Defendant no.1 has filed a Written Statement. In his Written Statement, defendant no.1 has taken a stand that defendant no.1 had acquired the business of industrial automation which was being run by one Mr Dinesh Kaul under the name and style of 'ITTP- Placement' which was a Division of Indian Institute of Trained Professionals. It is further claimed by defendant no.1 that after the acquisition of the said business, defendant no.1 registered several domain names such as www.iitpplacement.com and www.iitpinfo.com. According to the defendant No.1 , the above-mentioned business was being run by him. He leased the premises belonging to the plaintiff on 23.05.2008 for the purposes of the said business. Subsequently, the Company was incorporated to carry on the business but defendant no.1 did not transfer any assets or the trade/domain names in favour of the

Company.

14. Defendant further admitted his resignation from the Company and also the execution of the 'declaration-cum-undertaking' dated 04.04.2011. However, defendant no.1 contends that execution of the undertaking was not of his free will and he had been coerced into signing the said declaration.

15. As stated earlier, defendant no.1 stopped appearing in the present suit and the defendants were also proceeded *ex parte*. In the circumstances, there is no dispute that the declaration-cum-undertaking dated 04.04.2011 had been executed. It was for defendant no.1 to establish that the said declaration-cum-undertaking was invalid or that the plaintiff and/or his son had exerted undue influence upon the defendant. Defendant No.1 has failed to do so. In the circumstances, it is apparent that defendant no.1 would not have any right to use the trade name/trademark 'IITP' or any other name incorporating the aforesaid name. The other defendants also cannot claim any right to use the trademark/trade name 'IITP'.

16. Although, the plaintiff has claimed that he has suffered losses. The same have not been established. The plaintiff has not produced any evidence as to the extent of damage or loss suffered and, therefore, although, the

plaintiff is entitled to a decree of permanent injunction restraining the defendants from using the trade name/trademark 'IITP' and or domain names incorporating the word 'IITP', the plaintiff is not entitled for a decree of damages as prayed for.

17. Accordingly, the present suit is decreed in terms of prayer nos.(i), (ii) & (iii) as quoted above. The pending applications stand disposed of.

18. The decree sheet be drawn up.

JULY 20, 2016
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VIBHU BAKHRU, J