

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 18th September, 2015
Judgment delivered on: 25th January, 2016

+ **FAO(OS) 280/2015 & CM Nos.9540/2015, 9542/2015**

SHRI RAM EDUCATION TRUST

....Appellant

versus

SRF FOUNDATION & ANR.

.... Respondents

Advocates who appeared in this case:

For Appellant: Mr. Pravind Anand with Ms Vaishali Mittal, Ms D. Neha Reddy and Mr. Siddhant Chamola, Advocates.

For Respondents : Mr. Sudhanshu Batra, Sr Advocate with Ms Anuradha Salhotra, Mr. Sumit Wadhwa and Mr. Zeeshan Khan, Advocates.

+ **FAO(OS) 340/2015 & CM No.11577/2015**

SRF FOUNDATION & ANR.

....Appellant

versus

SHRI RAM EDUCATION TRUST

.... Respondents

Advocates who appeared in this case:

For Appellants : Mr. Sudhanshu Batra, Sr Advocate with Ms Anuradha Salhotra, Mr. Sumit Wadhwa and Mr. Zeeshan Khan, Advocates.

For Respondent. : Mr. Pravind Anand with Ms Vaishali Mittal, Ms D. Neha Reddy and Mr. Siddhant Chamola, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. These cross appeals arise out of judgment dated 11.05.2015 in CS(OS) 1980/2014 whereby the learned Single Judge has permitted the defendant (Shri Ram Education Trust) to continue the schools under the mark 'SHRI RAM' as on the date of the judgment with a disclaimer that they have no connection or relation with the plaintiffs' schools and has restrained the defendant from using the mark 'SHRI RAM' in relation to running of schools which are under construction. Since these are cross appeals, the appellant and respondent in the present judgment are being referred to as the Plaintiffs and Defendant to avoid any confusion. SRF Foundation and Shri Educare Limited are the original Plaintiffs and Shri Ram Education Trust is the Defendant.

2. By the impugned order dated 11.05.2015 the learned single judge has directed as under:

“76. By disposing of interim application, the following orders are passed:

- i) The defendant is allowed to continue the schools under the mark SHRI RAM as of today's date, however the defendant shall within the period of six months display/use the disclaimer in their signboard and all stationary material that they have no connection or relation with the plaintiffs' school.
- ii) They are forthwith restrained from using the mark SHRI RAM in relation to running of schools which are under construction under the Contract to be opened from the 1st September, 2015 to 1st April,

2020 as per the details provided by the defendant. However, it is clear that for future school which are yet to be run, the defendant would be entitled to give bonafide description in the nature that the school is run by [Vivek] (*sic*) Bharat Ram under the legacy of his grandfather Shri Ram.

- iii) The trial in the matter is expedited.
- iv) The order passed in the application shall have no bearing when the matter would be finally decided after trial and the finding arrived on the issue of delay would not be binding on other cases pending against the third parties as the interim orders for existing schools are not passed in view of peculiar facts and circumstances of the matter.”

3. The subject suit has been filed by SRF Foundation and Shri Educare Limited against Shri Ram Education Trust. It is alleged that the plaintiff foundation has been set up by Sh. Arun Bharat Ram and the defendant trust has been set up by Mr. Vivek Bharat Ram and both of whom are sons of Bharat Ram and grandsons of Sir Shri Ram.

4. It is contended by the Plaintiffs that they had established the school ‘THE SHRI RAM SCHOOL’ in the year 1988 in Vasant Vihar, New Delhi. It is contended that thereafter they added further schools under the same trade-name i.e. ‘The SHRI RAM SCHOOL’ in Gurgaon. It is contended that the schools under the name ‘THE SHRI RAM SCHOOL’ have carved out a unique space as institutions of excellence and are well known for their value based education. The schools of the Plaintiffs have been ranked very

high in order of merit and in certain surveys ranked as number one school in India.

5. It is contended that the plaintiffs are the prior adopter of the mark 'The Shri Ram School' and the defendant for the first time in June 2011 has opened a school by the name of 'Shri Ram Global Pre School'. It is contended that to bank upon the reputation of the plaintiffs, the said school was opened right next to The Shri Ram School, Aravali, Gurgaon. Thereafter, it is contended that the defendant has opened several schools and is in the process of opening several more with the name Shri Ram. It is contended by the plaintiffs that the defendant has no right to use the mark of the plaintiffs for any school, either existing or proposed to be opened.

6. Per contra, the contention of the defendant is that the plaintiffs are guilty of suppression and concealment. It is contended that when the plaintiffs had applied for registration of their mark 'THE SHRI RAM EDUCARE', the Trademark Registry in the search report had pointed out that there were several trademarks already registered with the word 'SHRI RAM'. The plaintiffs in response thereto by their letter dated 08.06.2012 had categorically taken a stand that the word 'SHRI RAM' was the name of a Hindu deity and no one could claim proprietorship to such a name and further that the word 'SHRI RAM' was common to trade. It is contended that having taken such a stand, the plaintiffs could not have then filed the present suit claiming proprietorship of the mark 'SHRI RAM'. It is contended that the plaintiffs after replying to the objections raised by the

Trademark Registry by letter dated 08.06.2012, claim to have issued a letter dated 15.04.2014 to the Trademark Registry withdrawing the letter dated 08.06.2012. It is contended that the response by letter dated 08.06.2012 is fatal to their case. It is contended that the objections raised by the Trademark Registry, response by the plaintiffs and the alleged withdrawal of the response were not disclosed in the plaint and, as such, the same amounted to the concealment and misrepresentation and, as such, the plaintiffs were disentitled to grant of a discretionary relief of an injunction. It is further submitted that letter dated 08.06.2012 has made positive statements of facts and the plaintiffs are now estopped from now taking a completely contrary stand.

7. It is contended by the Defendant that the suit filed was delayed in as much as the plaintiff was aware of the defendant's trade mark Sri Ram School of Business with label at least since 13.01.2009 as the said mark was pointed out by the trade mark registry to the plaintiffs along with the examination report. It is contended that even this fact was concealed from the court.

8. It is further contended that the Defendant is entitled to use SHRI RAM for its schools owing to common family lineage shared between the parties. The respective chairpersons of the Plaintiffs and the Defendant are real brothers, being the sons of Late Dr. Bharat Ram and the grandsons of Late Sir Shri Ram. The goodwill and reputation vested in the family name SHRI RAM was first created by the massive efforts of Late Sir Shri Ram,

who established premier educational institutions such as Shriram College of Commerce, Lady Shriram College for Women, Shriram Institute for Industrial Research etc, This legacy was furthered by successive generations of the family who adopted the family name SHRI RAM in relation to their respective endeavours.

9. It is contended that the goodwill and reputation in SHRI RAM has always been shared equally by all members of the family. It is submitted that the Single Judge erred in holding that the adoption of the family name SHRI RAM by the Defendant was not bona fide. The goodwill and reputation in the name SHRI RAM was always shared equally and in parallel by all members of the family. Reliance is placed on letters addressed by members of the family, Shri Bansi Dhar and Lala Charat Ram, who, it is alleged, stressed upon maintaining unity in the family and upon sharing the family name SHRI RAM for their respective endeavours. It is contended that the chairman of the Defendant, Mr. Vivek Bharat Ram was an equal contributor in the activities of SRF Limited, the holding company of the Plaintiff No. 1. He was the Managing Director in the company until his resignation in 2002. His wife, Ms. Sukanya Bharat Ram served on the Governing Council of the Lady Shriram College for Women for over 10 years until 2012 and was instrumental in furthering the goodwill vested in the family name SHRI RAM. Thus, the Plaintiffs are not justified in claiming sole and exclusive rights in SHRI RAM in the field of education.

10. It is further contended that the Plaintiffs are not the prior users of SHRI RAM for educational institutions in India. It is submitted that the Single Judge had erroneously held that the Plaintiffs were the only faction, which was running schools amongst the Shri Ram family. The Shriram College of Commerce was established as a school in the year 1920 and it was only later elevated to a degree college. Moreover, another faction of the family had adopted the family name for their school in Mawana, Uttar Pradesh as early as 1974, i.e. 14 years prior to that of the Plaintiffs. In fact, the family members had established at least six educational institutions making use of the SHRI RAM name prior to the Plaintiffs. Moreover, education cannot be bifurcated separately into schools, colleges and other higher institutions. Even the NICE classification only mentions education in class 41 without any such bifurcation. It is contended that the Single judge erred in holding that the existence of the school in Manawa was not sufficient, as it had restricted commercial activity and limited goodwill. Even a single instance of prior use of a trademark is sufficient to defeat the Plaintiffs' claim for sole and exclusive use of the trademark.

11. It is contended that the manner of use of the trademarks of the Defendant and the Plaintiffs are materially different from one another.

12. With regard to the contention of the defendant that there is concealment and misrepresentation and an admission on the part of the Plaintiffs that the word 'SHRI RAM' is the name of a popular figure and deity in Hinduism and no one proprietor can claim exclusive rights on the

mark 'SHRI RAM' and that the mark 'SHRI RAM' is common to trade and several 'SHRI RAM' formulative marks are peacefully co-existing on the register of trademark, we have in FAO (OS) 531 of 2014 S.K. Sachdeva & another Versus Shri Educare Limited & another by Judgment dated 25.01.2016 held that the plaintiffs are not entitled to grant of an injunction at this stage. The plaintiffs would have to establish that the word 'SHRI RAM', by extensive use, in respect of schools is only associated with the plaintiffs and none else and this can only be done at trial. By parity of reasoning, the same also applies in the present appeal.

13. Additionally in the present case, we are of the view that the plaintiffs have failed to show a strong prima facie case in their favour for grant of an injunction.

14. Prima facie, the suit filed by the Plaintiffs is delayed, the Plaintiffs were aware of the adoption of the mark by the defendant if not in the year 2008 at least since 13.01.2009 when it was brought to their notice by the trade mark registry along with the examination report.

15. The Plaintiffs have not been able to prima facie show that they are entitled to use the family name to the exclusion of the Defendant. Both the brother having common lineage, prima facie have common rights and cannot exclude the other. It is not disputed that the name SHRI RAM was first used by Late Sir Shri Ram, who established educational institutions such as Shriram College of Commerce, Lady Shriram College for Women, Shriram

Institute for Industrial Research etc. The name SHRI RAM was adopted by the family in relation to their respective endeavours.

16. When the name SHRI RAM has admittedly been first adopted by the grandfather of the parties, the plaintiffs cannot appropriate the same to the exclusion of the defendant. The goodwill and reputation in the trademark adopted by the grandfather shall enure to the benefit of all the heirs, unless something to the contrary is shown so as to exclude the other heirs. One member of the family cannot, without something more being shown to the contrary, claim exclusive ownership of the mark. All the heirs of the person who first adopted a mark and put the same to use and earned goodwill and reputation shall, prima facie, have equal rights to adopt and use the same. Something more than mere prior adoption by one of the heirs would have to be shown so as to extinguish the rights of the other heirs.

17. We are, thus, not in agreement with the view formed by the learned single judge at this stage that the adoption of the mark SHRI RAM by the Defendant was not bona fide.

18. Furthermore, the defendant has prima facie shown that the plaintiffs are not the prior users of the mark SHRI RAM for educational institutions. Not only other members of the family but third parties have adopted the said mark for education institutions prior to the plaintiffs. On this ground also, the plaintiffs in our view are not entitled to an injunction at this stage. The plaintiffs would have to establish that the word 'SHRI RAM' by extensive

use in respect of schools is only associated with the respondents and none else and they are entitled to use the said mark in respect of schools to the exclusion of all other family members. This can only be done at trial.

19. In view of the above, the impugned order is modified. The restraint imposed on the defendant by para 76(ii) of the impugned order is vacated. The defendant however shall comply with the directions given in para 76(i) and 76(ii) to the effect that it shall display/use the disclaimer in its signboard and all stationary material that they have no connection or relation with the plaintiffs' schools and would be entitled to give bonafide description in the nature that the school is run by Vivek Bharat Ram under the legacy of his grandfather Shri Ram.

20. The appeal filed by the defendant (FAO (OS) 280/2015) is allowed in the above terms and the appeal filed by the Plaintiffs (FAO (OS) 340/2015) is dismissed. The parties shall bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

JANUARY 25, 2016
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