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

+ CS(COMM) 64/2018 & I.A. 927/2015

GRASIM INDUSTRIES LIMITED Plaintiff
Through: Mr.Ajay Sahni with Ms.Kritika
Sahni, Advocates.

Versus

GRASIM ELECTRICALS AND
SWITCH GEAR PVT. LTD. Defendants
Through Ex parte

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Date of Decision: 06th February, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, passing off, dilution, damages etc. The prayer clause in the suit is reproduced hereinbelow:-

"29. The Plaintiff prays:-

(i) For an order for perpetual injunction restraining the Defendant, its directors, principal officers, associate/sister firms/companies, licensees, franchisees, distributors, stockiest, agents, sub-agents, servants, representatives, etc. from using the impugned trade mark/ trade name 'GRASIM' or any other trade mark/name which incorporates the prior adopted, prior used and registered trademark 'GRASIM' of the Plaintiff

amounting to infringement of the Plaintiff's aforesaid registered trade marks in respect of its goods and/or services;

(ii) For an order for perpetual injunction restraining the Defendant, its directors, principal officers, associate/sister firms/companies, licensees, franchisees, distributors, stockiest, agents, sub-agents, servants, representatives, etc. from using the impugned trade mark 'GRASIM' or any other trade mark deceptively similar thereto as part of their corporate name.

(iii) For an order for perpetual injunction restraining the Defendant, its directors, principal officers, associate/sister firms/companies, licensees, franchisees, distributors, stockiest, agents, sub-agents, servants, representatives, etc. from using the impugned trade mark/ trade name 'GRASIM' or any other trade mark/name amounting to dilution of the prior adopted, prior used and well known trade mark/trade name GRASIM of the plaintiff.

(iv) For an order for perpetual injunction restraining the Defendant, its directors, principal officers, associate/sister firms/companies, licensees, franchisees, distributors, stockiest, agents, sub-agents, servants, representatives, etc. from using the impugned trade mark/ trade name 'GRASIM' or any other trade mark/name amounting to passing off its trade and business as and for the trade and business of the Plaintiff;

(v) For an order for Rs. 15 lacs as damages suffered by the Plaintiff on account of the illegal trade activities of the Defendant by suing the impugned trade mark 'GRASIM' as a mark / park of its trade name.

(vi) For an order for Rs. 5 lacs as punitive damages against the Defendant for knowingly and deliberately indulging in illegal trade activities by carrying on its business by incorporating/using the impugned trade mark GRASIM.

(vii) For an order for delivery for purpose of destruction of all goods including advertising materials, packaging, blocks, dies, stationery, etc. and any of the infringing copies or media used by the Defendant in connection with its illegal activities.

(viii) For an order directing the Defendant to disclose on oath and by way of filing unimpeachable documentary evidence the details about its franchisees, agents/sub-agents, etc. and the extent of business carried out by the Defendant including the details of its various movable and/or immovable assets including its bank account(s).

(ix) For costs in the proceedings;

(x) For such further relief/reliefs to which the Plaintiff be entitled looking into the facts and circumstances of the case.”

2. At the outset, learned counsel for plaintiff gives up prayers (v)-(viii) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 16th January, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendant. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

“Accordingly, the defend, its directors, associates etc are restrained by way of an ex parte ad interim injunction from using trademark mark GRASIM or any other trademark deceptively similar to the impugned trademark till further order”

4. In the plaint, it has been averred that the plaintiff is a part of the business house Aditya Birla Group’ which is a US \$ 40 billion corporation and is in the league of Fortune 500 companies. It is contended that the plaintiff was incorporated on 25th August, 1947 under the name and style of ‘Gwalior Rayon Silk Manufacturing (weaving) Company Limited’ and continued with the same name till 21st July, 1986. It is stated that in the year 1986, the plaintiff went through a name change from

‘Gwalior Rayon Silk Manufacturing (weaving) Company Limited’ to ‘Grasim Industries Limited’. The prefix Grasim was coined from its earlier name and is unique, inventive and inherently distinctive. It is further stated that the plaintiff is ranked at 1380 in the ‘Forbes 2000 best Companies’ and Forbes also ranks the plaintiff as among the fabulous 50 companies in Asia.

5. Plaintiff has also acquired statutory registrations in the mark GRASIM in India in various classes. Plaintiff has also extracted the sales figure of its products under its trade mark/ trade name GRASIM in the plaint. It is also stated that to advertise its goods plaintiff adopted the website www.grasim.com on 26th December, 1997 which provides information about various products and details. It is stated that the plaintiff has been advertising its products/ services under the trademark Grasim on satellite television channel, in newspapers, trade journals etc.

6. Learned counsel for the plaintiff states that the defendant is engaged in the manufacture and marketing of electrical and switch gear products under the name of ‘Grasim Electrical & Switch Gear Pvt. Ltd’.

7. Learned counsel for plaintiff further states that defendant has adopted the trademark of the plaintiff to project a nexus and affiliation with the Plaintiff. He also states that the defendant has no justification for adoption of the impugned trademark.

8. The plaintiff has filed its *ex parte* evidence by way of affidavit of Mr. Dhrubajyoti Basu (PW1) an authorised representative of the Plaintiff’s company. The plaintiff has also examined Mr. Vinay Kumar, an official of the trademark registry.

9. The plaintiff’s witness (PW1) has proved registration of plaintiff’s mark Grasim and Grasim family marks as PW1/6. The plaintiff’s witness

has also proved certified copies of certificates of chartered accountants showing sales and advertisement expenses as exhibit PW1/16 and advertisement of plaintiff's mark in various magazines as PW 1/5.

10. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive use over substantial period of time, the plaintiff's Grasim mark has acquired reputation and goodwill in the marks globally as well as in India.

11. From the evidence on record, it is apparent that without any explicit permission or authorisation to use the plaintiff's trademark and trade name, the defendant had malafidely copied the trademark GRASIM of the plaintiff.

12. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33.In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

13. Consequently, the allegation that the trademark, GRASIM used by defendant amounts to infringement of plaintiff's trademark is correct. The use of the impugned mark by the defendant was bound to cause incalculable losses, harm and injury to the plaintiff and immense public harm.

14. Accordingly, present suit is decreed in accordance with the paragraph 29 (i), (ii), (iii) and (iv) of the plaint along with the actual costs incurred by the plaintiff. The cost shall amongst others include the lawyers' fees, local commissioner's fee as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

**FEBRUARY 06, 2018
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