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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th April, 2018

+ CM (M) 283/2016

M/S KHUSHI RAM BEHARI LAL Petitioner

Through: Mr. S.K. Bansal, Mr. Vinay
Kumar Shukla & Mr. Ajay
Amitabh Saran, Advs.

versus

M/S WHITEFIELDS INTERNATIONAL PVT. LTD.

& ANR.

..... Respondents

Through: Mr. Akhil Sibal, Sr. Adv. with
Mr. Akhil Schar, Mr. Nikhil
Chawla & Ms. Gayatri
Nandwani, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the plaintiff of the civil suit (TM 07/2013) which was filed sometime in 2013 initially against the first respondent for reliefs in the nature of permanent injunction for restraint order against passing off or infringement of the trademark and the copyright of the plaintiff besides other reliefs in the nature of delivery up, rendition of accounts etc., the cause of action claimed being with regard to the use of trademark/label "Taj Mahal" with device of Taj Mahal of copyright whereof the plaintiff claims to be the owner. As per the pleadings set out in the plaint, the plaintiff had come across trading by the respondent in the impugned goods under the trademark/

device of Taj Mahal sometime in the week of April, 2013, its inquiries having revealed the respondent having started the impugned activity “recently”, such use being clandestine, surreptitious, sporadic restricted and minimal.

2. The petition at hand has been filed against the order dated 20.10.2015 whereby the application of the plaintiff seeking permission to amend the plaint invoking the provision contained in Order VI Rule 17 of the Code of Civil Procedure, 1908, was dismissed.

3. Some background facts need to be noted briefly at this stage. On 14.09.2006, the first respondent had filed a trademark application bearing application no. 1487304 for registration of the trademark “India Crown” (label). The said application was advertised in the trademark journal no. 1402 on 16.10.2008. The petitioner submitted an opposition to the said application for registration of trademark on 29.01.2009. On 06.07.2010, the petitioner had issued and served on the first respondent notice to “cease and desist” against use of the impugned device Taj Mahal.

4. In the suit from which the present proceedings arise, instituted on 26.05.2013, the petitioner had prayed for *ad interim* injunction. The trial court by its orders dated 27.05.2013 and 03.07.2013, had granted such *ad interim* injunction. Meanwhile, the second respondent had also come to be added as the second defendant in the suit. On an application moved on 03.08.2013 by the second respondent under Order XXXIX Rule 4 CPC, the matter was reconsidered and by order dated 10.09.2013 the *ad interim* injunction was vacated. Pertinent to note, the second defendant had pointed out

to the trial Court at that stage, the suppression of certain facts by the petitioner/plaintiff of the suit, the same concerning the opposition to the application of the first respondent for registration of trademark, as submitted on 29.01.2009, and the notice to cease and desist issued and served on 06.07.2010.

5. It is immediately after the vacation of the stay by the aforementioned order that the petitioner moved the application for amendment under Order VI Rule 17 CPC. The application proposed certain additions to existing paras 34 and 35 of the plaint. Though the application would state that the petitioner wanted the existing paras to be “substituted”, it has been confirmed at the hearing that the existing pleadings in the corresponding paras are intended to be retained, facts concerning the trademark application of the first respondent and the notice of opposition filed by the petitioner are proposed to be added to para 34 and similarly retaining the existing pleadings in para 35, the petitioners seek to bring on record the service of cease and desist notice dated 06.07.2010 explaining background facts concerning therewith.

6. The trial Judge has rejected the prayer for amendment on the ground it would introduce “new facts” which are not “subsequent events”, the absence of such pleadings at the inception creating doubts about the intent of the plaintiff. In the view of the trial Court, the permission to amend would add a “new cause of action”, the effort to fill in lacunae after “substantial decision by the court” being impermissible.

7. The learned senior counsel for the respondents has placed reliance on judgments titled as *Surinder Kumar & Ors. vs. Swarn Singh* 150 (2008) *Delhi Law Times* 294 (DB) and *Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.* 2009 (13) *SCALE* 241 to argue that the amendment has been rightly rejected by the trial court and this Court ought not interfere. The thrust of his arguments was that the amendment is an abuse of the process and that it does not pass the muster to hold the amendment being necessary for determination of the real dispute between the parties.

8. It does appear that the petitioner has been found guilty of suppression of material facts at the time of adjudication on the application under Order XXXIX Rule 4 CPC and resultantly has already been denied the benefit of *ad interim* injunction. But, it is inherent in the order whereby the application under Order XXXIX Rule 4 CPC was allowed that the facts concerning notice of opposition to the application for registration of the trademark and the notice to cease and desist are material to the controversy. In this view of the matter, it is not correct on the part of the respondents to now take an about turn and argue that the facts sought to be added are not necessary for determination of the real dispute between the parties. The relevancy of such facts has been demonstrated by the respondents themselves and they cannot be allowed to now speak otherwise.

9. It is not that the petitioner is withdrawing the existing pleadings so as to create the impression that the cause of action with reference to the impugned activity, noticed in the first week of April, 2013, is effaced. The existing pleadings are being retained and alongside the

same, the facts of the earlier period, as brought to the notice of the trial court by the defendants, are being brought on record. The application for amendment does not make out a new case not the least to bring a new cause of action. The amendments would not alter the nature of the suit and there is no substantive decision taken by the trial court yet. The issues are yet to be framed and the case is yet to enter the stage of trial.

10. The apprehension of the respondents that the petitioner, after this amendment, would be in a position to re-claim the *ad interim* injunction by creating an impression that there has been no suppression of facts is wholly misplaced. The previous proceedings would always be there for the defendants to show to the trial court the chronology of events in proper light.

11. In the opinion of this Court, the amendments are necessary for effectual and complete determination of the controversy raised by the suit and, therefore, the impugned order cannot be upheld.

12. Thus, the petition is allowed. The impugned order is set aside. The permission to amend the plaint is granted. The amended plaint shall be taken on record by the trial Court. The respondents have the liberty to file a written statement in answer to the amended plaint for which the trial court will give appropriate opportunity.

R.K.GAUBA, J.

APRIL 11, 2018

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