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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 21st December, 2018
+ **CS(COMM) 1061/2018**
D.B. CORP. LTD. Plaintiff
Through: Mr. Rahul Malhotra, Advocate (M-9899218215)

versus

DAINIK DIVYA BHASKAR & ANR. Defendants
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Plaintiff has filed the present suit seeking permanent injunction in respect of the trademark 'DAINIK BHASKAR' and 'DIVYA BHASKAR'. The case of the Plaintiff is that it is a recognized media company and has several publications by the name 'DAINIK BHASKAR', 'DIVYA BHARTI', 'SAURASHTRA SAMACHAR', 'DNA' etc. The marks 'DAINIK BHASKAR' and 'DIVYA BHASKAR' have been in use since 1958 according to the Plaintiff. The Plaintiff also uses two domain names/trade name 'www.dainikbhaskar.com' and 'www.divyabhaskar.com'. The Plaintiff has several trademarks registered for various derivatives of the said marks i.e. 'DAINIK BHASKAR', 'DAINIK BHASKAR GROUP', 'DIVYA BHASKAR' in classes 16, 41, 42, 35 and 38. The detailed facts in respect of the sales and advertising figures have also been given in the plaint which show that the Plaintiff enjoys enormous goodwill and reputation.

2. The Plaintiff learnt of the use of the mark

'*www.dainikdivyabhaskar.com*' as a domain name/trade name by the Defendants. It was claimed in the said website that the use of the domain name/ trade name dates back to 2016. The Defendants are not only using an identical mark and domain name/ trade name which is a combination of the two marks '*DAINIK BHASKAR*' and '*DIVYA BHASKAR*' but also have copied the colour scheme of website which is in blue and black colour combination. A legal notice was issued by the Plaintiff on 8th June, 2018 and the only reply by the Defendants is that the domain name/ trade name was purchased by them from a registering authority called *www.godaddy.com*. The Defendants also claimed user of the impugned domain name/trade name since 2016. The use of the mark '*dainikdivyabhaskar.com*' coupled with the use of an identical layout and colour combination of the website shows that the usage is not *bona fide*. Accordingly, this Court on 3rd August, 2018 had granted an injunction in the following terms:

*"12. The Plaintiffs have made out a prima facie case. Balance of convenience is in favour of the Plaintiff. Irreparable harm would be caused if the Defendants change the status of the domain name. Accordingly, the Defendants are restrained from using the name "Dainik Divya Bhaskar" as a trade mark/service mark/trading style or the domain name *www.dainikdivyabhaskar.com* or any other mark/name deceptively similar to the Plaintiff's marks, either in relation to online news services or publications in the print/electronic media. The injunction, however, will come into operation w.e.f. 20th August, 2018 in order to enable the Defendants to move the contents to a different platform, should they wish to do so. The Defendants are further restrained, with immediate effect, from transferring, alienating or creating any third party interest in the domain name*

“www.dainikdivyabhaskar.com” or any other mark or logo which is similar with the Plaintiff’s mark. Compliance of Order XXXIX Rule 3 shall be done within 3 days.”

3. The Defendants had thereafter put in appearance and had made a statement on 19th September, 2018 that they are willing to settle the matter. However, no settlement took place and the written statement was also not filed.

4. It is now the settled position that if the Defendant chooses not to file the written statement, it is not necessary in every case to direct the Plaintiff to file its evidence. This has been held by this Court in ***Everstone Capital Advisors Pvt Ltd. & Anr v Akansha Sharma & Others CS (COMM) 1028/2016, Decided on 17th July, 2018.*** In the said decision, the Court had held as under:

“Under the extant provisions of the CPC, the Plaintiff is supported by an affidavit and in the absence of any rebuttal or challenge, the Court can take the averments in the Plaintiff to be correct. Moreover, the documents for eg. Registrations of trade marks being public documents, are easily verifiable and the so-called formality of filing affidavit in evidence for marking of exhibits can be dispensed with.”

A similar view has been taken by this Court in ***VRS Food Ltd. v Prem Chand CS (COMM.) 365/2016 Decided on 30th August, 2018.***

5. The Plaintiff has placed a large number of documents on record including from publicly available sources such as the Trademark Registry to show its rights in the marks ‘DAINIK BHASKAR’ and ‘DIVYA BHASKAR’. The newspapers of the Plaintiff are also published on a daily basis, a fact

which this Court can take judicial notice of. Moreover, the websites of the Plaintiff and Defendants are accessible and the infringement was clear. From the documents placed on record, there is no doubt that the Plaintiff owns the marks 'DAINIK BHASKAR' and 'DIVYA BHASKAR'. The use of the domain name/ trade name 'dainikdivyabhaskar.com' is in violation of both the statutory and common law rights of the Plaintiff. The website of the Defendants has already been pulled down. This was recorded on the last date i.e. 30th November, 2018.

6. Under these circumstances, the Plaintiff is entitled to a decree of permanent injunction in terms of paras (a) and (b) of the plaint. The Plaintiff has incurred legal costs in the present case including Court fee. The Defendants after putting appearance has stopped appearing and have also failed to file written statements. Under these circumstances, costs of Rs.5 lakhs are awarded to the Plaintiff.

7. The suit is decreed in the terms stated above. Decree sheet be drawn accordingly. All pending I.A.s are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 21, 2018

Rahul