

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL IP SUIT NO.27 OF 2008

Hubtown LimitedPlaintiffs

V/s.

Aakruti Estates Pvt. Ltd.Defendants

Mr. Abhijit Singh i/b. Mr. Anil R. Mishra for plaintiffs.

None for defendants.

CORAM : K.R.SHRIRAM,J

DATE : 14th JUNE 2019

P.C.:-

1 This suit is filed to restrain defendants, their directors, partners, agents and servants by a permanent injunction from using the corporate name containing the word “Aakruti” and/or any other deceptively similar name, in relation to their construction activities and/or as part of their corporate name, etc. so as to infringe plaintiffs registered trademark no.1249984 in class 37 of the Fourth Schedule to the Trade Mark Rules, 1999.

2 By an order dated 21st January, 2014 the suit was directed to be placed for ex-parte decree. Infact this Court had also on an application made by plaintiffs passed an ad-interim order in the notice of motion restraining defendants from using the name “Aakruti”. Defendants though served the notice of motion did not come forward

to defend. Defendants have not filed any written statement either, though served.

3 Under Order 8 Rule 5 of the Code of Civil Procedure, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. Rule 5 of Order 8 also provides that where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability. There is nothing on record to show that defendants are under any disability.

4 In the circumstances, the suit is decreed in terms of prayer clauses – (a) and (b), which read as under :-

“(a) that the defendants, their directors, partners, agents and servants be restrained by a permanent order and injunction of this Hon'ble Court from in any manner using the corporate name containing the word “Aakruti” and/or any other deceptively similar name, in relation to their construction activities and/or as part of their corporate name and/or their services or otherwise, whatsoever so as to infringe the plaintiffs registered trademark no.1249984 in class 37 of the Forth Schedule to the Trade Mark Rules, 1999;

(b) that the defendants, their directors, partners, agents and servants be restrained by a permanent order and injunction of this Hon'ble Court from in any manner using the corporate name containing the word “Aakruti” and/or any other deceptively similar name, in relation to their construction activities and/or as part of their corporate name and/or their services or otherwise, whatsoever so as to pass off and/or enable others to pass off the

defendants construction activities and/or company and/or services as that of the plaintiffs or as has been connected with and/or authorized by and/or licensed and/or agency of the plaintiffs.”

5 Prayer clause - (c) of the plaint is for damages in the sum of Rs.25 lacs against defendants. There is no evidence whatsoever as to how plaintiffs have arrived at this figure of Rs.25 lacs. Therefore, this prayer cannot be granted.

6 The decree be drawn up accordingly.

7 The suit stands disposed. Interim application, if any, also stands disposed.

(K.R.SHRIRAM,J)