

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Miscellaneous Appeal No.414 of 2018

ORDER :

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, 1908 challenging the order dt.09.03.2018 passed in I.A.No.4268 of 2010 in O.S.No.729 of 2010 on the file of XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (**for short, ‘the impugned order’**).

2. The appellant herein is defendant in the above suit.
3. The respondent filed the suit for a perpetual injunction restraining the appellant from using *‘the distinctive feature of the Plaintiff’s name, HYDERABAD PUBLIC SCHOOL as a part of their tradename and also its abbreviated form, HPS or with any combination thereof viz., HPS, Hyderabad Public School Pvt. Ltd, HPS-FUN SCHOOL, HPS PLAY SCHOOL, HPS PRE SCHOOL, HPS-HPS KIDS, HPS International School, HPS Academy, HPSE-Hyderabad Public School of Excellence and HPS Hyderabad Public School or any other mark / name, which is same or identical with or similar to or confusingly similar to or deceptively similar to that of the Plaintiff’s trade name or trade mark’*.
4. It was alleged in the plaint that the respondent-Institution had been in vogue from 1923 onwards under different names and is using the name ‘Hyderabad Public School’ as also its abbreviation ‘HPS’;

and the appellant, a private limited company, is publishing in the general public that it has established infrastructure in maintaining and running educational institutions, and that it is running a pre-primary school under the name and style 'HPS Kids'. It is alleged that there is a similarity with the respondent's-Institution's name inasmuch as the appellant had indicated its company by taking the respondent's entire trade name, i.e., 'HPS' as a distinctive feature thereof. It is stated that an apprehension exists in the public mind that there is an understanding between the parties which is not true, and the action of appellant amounts to passing off its activities as those of the respondent, and it is earning profits by taking advantage of the goodwill of respondent. It is also stated that the appellant intended to usurp the common law rights of respondent to the expression 'HPS' and its abbreviated form 'HPS', and had made applications for registration of several trademarks using the words 'HPS' only to reap the benefits of hard-earned goodwill and reputation of respondent; and so, it is compelled to file the suit invoking Section 134 of the Trademarks Act, 1999.

5. Along with the suit, the respondent filed I.A.No.4268 of 2010 invoking Order XXXIX Rules 1 and 2 of Civil Procedure Code for grant of a temporary injunction restraining appellant from using respondent's name, i.e., 'Hyderabad Public School (HPS)' as a part of their name, and also its abbreviated form 'HPS' or making any paper publication pending disposal of the main suit. The sum and substance

of respondent's claim is that from the inception of respondent's school, its name was publicized in general public under the abbreviation 'HPS' and that the general public recognizes the said abbreviation as that of respondent.

6. This pleading of respondent was denied by appellant, both in the written statement and in the counter-affidavit filed in I.A.No.4268 of 2010.

7. It is contended by appellant that nowhere in any of the documents filed before the Court is it shown that the school run by the respondent-Society were published in general public under the abbreviation 'HPS', and the respondent is trying to contend before the Court for the first time this fact. It is also pleaded that respondent is not identified by any such abbreviation, as is sought to be claimed, and such abbreviation was never used by respondent or by the general public at any point of time. It is also contended that the abbreviation does not go with any particular concept or any particular name, and it is not the property of anyone. It is also pointed out that the abbreviation 'HPS' can relate to Harvard Public School, Haryana Public School, Hindu Public School, etc., and respondent cannot claim monopoly on the abbreviation when it does not have any right, and cannot prevent others from using the abbreviation, more so, when the said abbreviation is not registered with any statutory body.

8. Before the Court below, the respondent marked Exs.P.1 to P.29, and the appellant marked Exs.R.1 to R.65.

9. By the impugned order, the Trial Court granted interim injunction on 09.03.2018 as prayed for by respondent.

10. In its order, after referring to the contentions of the parties and the provisions of the statute, the Court below relied on Exs.P.1, P.2, P.3, P.7 and P.21 to come to the conclusion that respondent's school is also used in the abbreviated form as 'HPS'; that it is a prior user though it does not have a registered trademark, and it can still maintain the action for passing off. It concluded that appellant is using dishonestly the respondent's name, and so it was entitled to grant temporary injunction.

11. The documents referred to in the order being Exs.P.1, P.2, P.3, P.7 and P.21, the said documents' description in the appendix of evidence is as under :

“Ex.P.1 – Search report obtained through Google.

Ex.P.2 – Search engine for the abbreviated form HPS.

Ex.P.3 – Wikipedia.

... ..

*Ex.P.7 – Letter addressed to Commissioner, Tribal Welfare Department
dt.21.12.1989.*

... ..

Ex.P.21 – Challans issued for the fees paid by the students.”

12. Assailing the same, the present Civil Miscellaneous Application is filed.

13. The counsel for petitioner, Sri Vedula Venkataramana, Senior Counsel, appearing for Sri D. Madhava Rao, sought to contend that the essence of an action for passing off according to respondent is the general public recognizing the abbreviation 'HPS' as that of the respondent, but Exs.P.7 and P.21 do not fall in that category and search reports from Google and Wikipedia (Exs.P.1 to P.3), cannot be taken into account.

14. The counsel for respondent refuted the said contentions and pointed out that apart from these documents there are several other documents (29 in number) filed by respondent which are on record and which establish the respondent's case that the general public also recognizes the abbreviation 'HPS' as relating to the respondent only.

15. I have noted the submissions of both sides.

16. In the instant case, though the suit had been filed in the year 2010 and I.A.No.4268 of 2010 is also filed along with suit, for the first time injunction has been granted in favour of respondent by the Trial Court on 09.03.2018. Several documents have been filed by both sides, viz., (29 documents on respondent's side, and 65 documents on appellant's side).

17. It cannot be disputed that when respondent claims that the appellant is passing off its trade name as that of the appellant and

making profits taking advantage of the goodwill of respondent, it has to establish, as contended by it, that the general public recognizes the abbreviation 'HPS' as that of respondent.

18. In my considered opinion, Exs.P.1 to P.3 or P.7 and P.21 relied upon by the Court below are not sufficient to establish the said contention of respondent. When there are several documents also filed by both sides in support of their respective contentions, the Court below should have at least considered the same also; and in particular, such of those documents which are relevant to consider whether the general public also recognizes the abbreviation 'HPS' as referring only to the respondent's school. The Court below seems to have been focussed only on the prior user of the name 'HPS' by respondent and not on the aspect whether the general public recognized the abbreviation 'HPS' as referring to respondent.

19. Therefore, the impugned order is set aside. The Civil Miscellaneous Appeal is allowed; and the order dt.09.03.2018 passed in I.A.No.4268 of 2010 in O.S.No.729 of 2010 on the file of XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad is set aside; the said I.A. is remitted back to the said Court with a direction to the said Court to focus on the material produced by both parties, and in particular, the material dealing with the contention of respondent that the general public recognizes the abbreviation 'HPS' as that of respondent and the contrary material produced by appellant in that regard; and pass a fresh reasoned order in accordance

with law within three (03) weeks from the date of receipt of copy of this order. It shall also decide the said I.A. uninfluenced by any observations made by it in initial order dt.09.03.2018.

20. It is made clear that this Court has not expressed any opinion either way on the merits of contentions of either parties.

21. Accordingly, the Civil Miscellaneous Appeal is allowed as above. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in this Civil Miscellaneous Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.03.2019

Ndr/*

