

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

% **Date of decision: 29th August, 2019**

+ **CS(COMM) 922/2016, IA No.13898/2013 (u/O XXXIX R-1&2 CPC), IA No.18159/2013 (u/O XXXIX R-2A CPC) & IA No.6077/2014 (u/O XXXIX R-4 CPC)**

LANDBASE INDIA LTD **..... Plaintiff**

Through: Mr. Sahil Sethi & Mr. Shivam Sharma, Advs. along with Mr. B. Hariharan, Managing of the plaintiff.

Versus

PRADEEP JAIN & ANR **..... Defendants**

Through: Ms. Anusuya Nigam & Ms. Vrinda Pathak, Advs. with defendant no.1 Mr. Pradeep Jain in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit to restrain the defendants, Pradeep Jain and Silver Glades Holdings Pvt. Ltd. from using the mark 'LABURNUM', 'THE LABURNUM', 'LABURNUM 2' or the



device or any other mark or device containing the word 'LABURNUM' and for ancillary reliefs.

2. The suit came up first before this Court on 3rd September, 2013 when the same was entertained and vide *ex parte* order dated 3rd September, 2013, the defendants restrained from using the trade mark 'LABURNUM' or any other confusing or deceptively similar mark in respect of their proposed residential project. The said *ex parte* order

continues till date and the application for interim relief has not been disposed of as yet.

3. On the pleadings of the parties, the following issues were framed in the suit on 18th November, 2016:

- i. Whether the plaintiff has exclusive rights over the trademark LABURNUM? OPP
- ii. Whether the defendants are infringing the trademark laburnum? OPP
- ii. Whether the project LABURNUM was developed and promoted jointly by the plaintiff and defendant No.1? OPD
- iv. Whether the factual representation of the association of defendant No.1 with the LABURNUM project results in violation of any alleged rights of the plaintiff? OPD
- v. Whether the plaint is liable to be rejected on the ground that the plaintiff has suppressed and concealed the material facts? OPD
- vi. Whether the plaintiff is entitled to damages for a sum of Rs.10 lakh as damages on account of loss of sales, business and reputation? OPP
- vii. Whether plaintiff is entitled to relief claimed?
- viii. Relief.

and cross-examination by the defendants of the witnesses of the plaintiff is underway.

4. The suit came up before the undersigned on 19th August, 2019, when the entitlement of the defendants to use the name/mark 'LABURNUM' of the residences developed by the plaintiff, was enquired.

5. The counsel for the defendants, on 19th August, 2019 stated that the defendants never used / do not intend to use 'LABURNUM' as a trade mark; that the defendant no.1 Pradeep Jain was a co-promoter of the plaintiff, of the project of construction of residences in the name of 'LABURNUM'; that the defendant no.1 Pradeep Jain is now carrying on business in the name and style of defendant no.2 Silver Glades Holdings Pvt. Ltd. and while carrying out the said business, calls himself 'LABURNUM MAN'.

6. On 19th August, 2019, it was enquired from the counsel for the plaintiff as to how the plaintiff can stop the defendant no.1 from claiming his provenance.

7. It was also enquired from the counsel for the defendants on 19th August, 2019, that the defendants having stood restrained for six years, whether not the umbilical cord even if any of the defendant no.1 Pradeep Jain with the 'LABURNUM' project stood broken and what was the need for the defendant no.2 to, in future, even if the suit failed, claim so.

8. On request, the matter was adjourned to today and the defendant no.1 and the officials of the plaintiff in a position to take a decision directed to remain present in the Court today.

9. The defendant no.1 Pradeep Jain and Mr. B. Hariharan, Managing Director of the plaintiff are present in Court.

10. The counsel for the plaintiff has drawn attention to Ex.D1 at page 259 of Part-III B file, being the brochure of the defendants and in which at page 266, the defendants have shown 'THE LABURNUM'

project of the plaintiff as one of the completed projects of the defendants. Attention is also drawn to page 268 of Part-III B file where details of the said Laburnum project of the plaintiff are given along with pictorial representation and device of 'LABURNUM'.

11. The counsel for the plaintiff has also drawn attention to Ex.P2 at pages 58 and 59 of Part-IIIA file, being the printout of the website of the defendants where also reference to 'LABURNUM' with the device of 'LABURNUM' is shown.

12. The counsel for the defendants has handed over in the Court the printout from the website of the defendants as on yesterday comprising of seven sheets and which has been tagged to Part-IIIB file and on which, for the sake of identification Ex.C1 has been put in today's date. In the said print out also, at page 1, the word 'LABURNUM' is shown. The counsel for the defendants states that while the defendants, on their website, were earlier claiming the defendant no.2 to be the promoter of the Laburnum project but now have disclosed that the said project was co-promoted by the defendant no.2 with ITC Ltd.

13. The counsel for the plaintiff, in response to the query made on 19th August, 2019 states that the plaintiff has no right to restrain the defendant from claiming his provenance qua the Laburnum project of the plaintiff. He however states that the defendant no.1 was only the Managing Director of the plaintiff who developed the Laburnum project and was not the co-promoter.

14. The counsel for the defendants has drawn attention to Ex.PW1/DX2 at page 9 of Part-III B file, being the Shareholder's Agreement dated 22nd December, 1994 between the defendant no.1, one Vijay Bhati and International Travel House Ltd. subsequently taken over by ITC Ltd., with respect to shareholding of the plaintiff. The counsel for the defendants states that initially the defendant no.1 held 70% shares in the plaintiff, which were subsequently reduced to 50% and yet subsequently to 30% and ultimately to nil.

15. Mr. Hariharan, Managing Director of the plaintiff present in Court confirms.

16. Once it is so, the plaintiff cannot take objection to the defendant no.1, as distinct from defendant no.2, claiming himself to be the co-promoter of the plaintiff who developed the Laburnum project.

17. The counsel for the defendants, under instructions states that the defendant no.1 is agreeable to not using the name / mark 'LABURNUM' as at pages 266 and 268 supra or as at page 1 of Ex.C1 and will only, in the brochure Ex.D1, at page 265, under the heading 'Silverglades Leadership' with photograph of the plaintiff no.1, in the same font as the rest of the text, state "Mr. Jain / Mr. Pradeep Jain was a co-promoter along with ITC Ltd. of the project 'The Laburnum' of Landbase India Ltd."

19. The same is acceptable to the plaintiff, provided it is so written in the same font, without any highlighting or not in bold.

18. The counsel for the defendants also states that the defendants, on their website and other advertisements or otherwise, will not make

any claim other than as aforesaid. It is specifically stated that the defendant no.2 Silverglades Holdings Pvt. Ltd. will not claim to have any connection with the Laburnum project.

20. Accordingly, IA No.13898/2013 under Order XXXIX Rules 1 and 2 and IA No.6077/2014 under Order XXXIX Rule 4 are disposed of by modifying the *ex parte* order dated 3rd September, 2013 in terms of above.

21. The aforesaid arrangement being for all times to come and not merely till the disposal of the suit, a decree for permanent injunction is also passed, in favour of the plaintiff and against the defendants, in terms of today's order.

22. With the said decree, the need for adjudication of issues no.(i) to (v) framed on 18th November, 2016 disappears and the said issues stand decided in aforesaid terms.

23. I have enquired from the counsel for the plaintiff, whether the plaintiff desires to proceed with the suit, as far as for the claim of damages of Rs.10 lacs for the violation alleged in the past by the defendants, and on which issues no.(vi) and (vii) were framed on 18th November, 2016.

24. The counsel for the plaintiff, under instructions states that the plaintiff would not press for damages if the defendants agree to token amount of damages.

25. Needless to state, the counsel for the defendants is not agreeable.

26. Considering the entirety of the facts and circumstances, it is not deemed necessary to keep the suit pending for adjudication of the claim for damages only.

27. The defendants however to carry out the changes aforesaid, within 48 hours hereof, on their website and otherwise.

28. The date already given of 3rd September, 2019 before the Joint Registrar is cancelled.

29. The parties are left to bear their own costs.

30. Decree sheet be drawn up. Today's order to form part of decree sheet.

AUGUST 29, 2019
'gsr'..

RAJIV SAHAI ENDLAW, J