

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.Nos.122 & 125 of 2020

M/s. D.R.Raanka Bros.

Door No.151, 1st Floor, NSC Bose Road
Chennai 600 079

rep. by its Partner
Kapil Ranka

Appellant in
both OSAs.

Vs.

Om Prakash

Respondent in
both OSAs.

Prayer: Appeals filed under Order XXXVI, Rule 1 of O.S. Rules, read with Section 15 of Letters Patent, against the common order dated 17.12.2019 made in O.A.Nos.703 & 702 of 2019 respectively, in C.S.No.444 of 2019.

Prayer in OA.No.702 & 703 of 2019:

a) An order of interim injunctio restraining the respondent/Defendant by it self, its servant, agents or any one claiming thorough it from in any manner infringing the Applicants registered Trade Marks D.R.RAANKA and D.R. by using the identical and offending mark D.R.R or any other mark or marks which are in anyway identical deceptively similar to or a colorable imitation of the Applicants said registered Trade Marks either manufacturing or selling or offering for sale or advertising or in any manner using the same as or as part of its trademark/tradename/trading style/business name or in any other manner whatsoever pending disposal of the suit.

b) An order of interim injunctio restraining the respondent/Defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products or business or services under the offending ark DRR as and for the Applicant's products/business/services under the marks D.R.RANNKA/D.R./D.R.R.by use of the said offending mark as or as part of its Trade mark/Trade name/Trading style/business name or in any other manner what so ever pending disposal of the suit;

For Appellant : Mr.Rajesh Ramanathan

For Respondent : Mr.A.K.Rajaram

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeals are directed against a common interlocutory order passed in a suit for infringement and passing-off.

2. The plaintiff-appellant has the device mark registered which has "DR" written on top in a particular style and "D.R.Raanka Bros." written below in a stylised manner. However, it is the device as a whole, that is the plaintiff's trade mark. The plaintiff also enjoys the registration of a word mark "DR" and a further registration in "D.R.Raanka Bros."

3. The plaintiff is in the business of the sale of precious metal and jewellery. The plaintiff carries on business through a partnership firm bearing the name of D.R.Raanka Bros. and it is the device which incorporates the plaintiff's name and two word marks which incorporate the plaintiff's name in part and full, respectively.

4. There is no doubt that the defendant is in similar business. The defendant has been using the mark D.R.R in connection with several other words, mostly in Tamil script, though the letters D.R.R stand out in the advertisements and other material used by the defendant in connection with its products.

5. According to the plaintiff, the adoption of D.R.R or D.R with some other variation on the part of the defendant is dishonest, as those letters have nothing to do with the defendant's business or its product and the real intention is to trade on the goodwill of the plaintiff's market and filch the business of the plaintiff.

6. By the judgment and order impugned dated December 17, 2019, the learned Single Judge found that there was a distinction between the manner of use of the plaintiff's mark and the defendant's mark. The learned Single Judge did not agree with the plaintiff that the letters "D.R.R" stood out from the material used by the defendant in connection with the sale of its products and noticed that the other words used were in comparable size though in different fonts. On an overall impression, it does not immediately hit that the defendant's use

of the letters "D.R.R" bring about any association with the plaintiff's "DR" or "D.R.Raanka Bros." marks or the device mark.

7. When it comes to an interlocutory injunction, there is a considerable discretion which is at large. Once it is evident that the appropriate considerations were taken into account to apply the correct tests, the appellate Court would scarcely interfere with the relevant order if an element of discretion has been exercised one way or the other. In the present case, the discretion has been exercised against the plaintiff on the visual appreciation of the mark used by the defendant and the several marks over which the plaintiff enjoys exclusive ownership. However, it cannot be said that the exercise of such discretion shocks the conscience of the appellate Court or is perverse or contrary to established principles in this branch of law.

8. In fine, since the use of very mark of the defendant complained against does not appear to be similar or a copy of the plaintiff's mark, at least at the interlocutory stage, the injunction sought has been declined. There is no doubt that the plaintiff will have a better chance to establish the plaintiff's case in course of the trial and the matter will be looked into uninfluenced by the interlocutory order.

9. O.S.A.Nos.122 and 125 of 2020 are disposed of without interfering with the judgment and order impugned dated December 17, 2019 and by leaving the parties free to have the trial conducted at the earliest. Documents should be discovered by the parties within the next ten weeks; inspection completed forthwith thereupon and a prayer may be made before the trial Court for listing the matter for trial at the earliest convenience of such Bench.

There will be no order as to costs. As a consequence, CMP Nos.5927, 5930, 5977 and 5979 of 2020 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.Rajesh Ramanathan, Advocate SR.11032

O.S.A.Nos.122 & 125 of 2020

LN (CO)
CB(08/03/2021)



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