

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6645-2019

Date of Decision: April 06, 2021

JINDAL RECTIFIERS

..... PETITIONER(s)

Versus

JINDAL POWER AND ANOTHER

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S. Randhawa, Advocate and
Mr. Chanchal K. Singla, Advocate
for the appellant.

Mr. Vikas Chaudhary, Advocate
for the respondents.

LISA GILL, J.

Plaintiff-appellant has filed this appeal being aggrieved of order dated 29.08.2019, whereby its application under Order 39 Rule 1 & 2 CPC read with Section 151 CPC has been dismissed.

Brief facts of the case are that appellant-plaintiff filed a suit for permanent injunction alleging infringement of trademark, dilution of goodwill, unfair competition and rendition of accounts of profits/damages, against the respondents-defendants no.1 and 2, restraining them from using any trademark deceptively similar to the registered trademark of plaintiff or any other mark/name having 'M/s. Jindal' domain name and/or in any manner whatsoever in respect of any infringement or passing of goods of defendants as goods of the plaintiff. The suit was initially filed against the

three defendants. One of the defendants i.e. defendant no.3 – Satish Kumar, Proprietor of ‘Jindal Transformer Industries’ appeared and suffered a statement that he had surrendered his GST number before the Goods and Services Department, which was in the name of M/s. Jindal Transformer Industries. He further stated that he would not use the name of ‘M/s. Jindal Transformer Industries’ or ‘M/s Jindal’ for the purpose of his business. In this view of the matter, defendant was given up from the array of parties.

Appellant-plaintiff claimed to be a proprietorship concern, engaged in the business of manufacturing of power control devices since 1983, with sales, services representatives/offices all over India by the name and style of ‘Jindal Rectifiers’. Appellant-plaintiff got the trade mark registered bearing no.949619 in the year 2007 in class 9 in respect of Industrial Voltage Stabilizers, Silicon Rectifiers, Hydrogenation Rectifiers, Transformers, parts and Fittings thereof (Annexure P-2). It is further stated that defendant no.2 - Surender Kundu was an ex-employee of the plaintiff and worked with plaintiff as an electrician for six years since 01.06.2012 to 18.07.2017 and was closely associated with the affairs of the plaintiff. Defendant/respondent no.2 is the proprietor of defendant no.1, which is sole proprietorship concern. Respondent no.2 though having no relation whatsoever with the petitioner-firm or with the name of ‘Jindal’ started his own proprietorship firm under the name and style of ‘M/s. Jindal Powers’ dealing in manufacturing of power control devices and started operating from the same city as that of petitioner i.e. Faridabad. It is further alleged that by using the aforesaid name, respondent started targeting the same customers while giving a false and deceptive impression of being associated

with the petitioner-firm. It is further stated that trade name 'Jindal' has become a mark of identification of the products itself. The appellant has other sister concern/associate firms namely 'Jindal Electricals' and 'Jindal Electric and Machinery Corporation' with its proprietor Mr. Bharti Bhushan Jindal. Respondents, it is averred, started targeting the same customers giving a false and deceptive impression of being associated with the petitioner-firm. Deception on the part of the respondents, it is pleaded, is causing loss of work and tarnishing goodwill of the appellant-plaintiff which is primarily associated with the said trademark. When the respondents did not refrain from their illegal activities it is stated the suit was filed and an application under Order 39 Rule 1 and 2 CPC was also filed along with the suit claiming a prima facie case and balance of convenience in favour of the appellant besides an irreparable loss being caused to it, in case, respondents are not restrained from manufacturing and selling the power control devices identical to the power control devices of the appellants under the name and style of 'M/s Jindal Powers'.

Present respondents filed a written statement contesting the suit with contentions that the respondent/defendant was running his firm in the name and style of 'M/s. Jindal Powers', having its office at Faridabad and the plaintiff-appellant was running a firm in the name and style of 'M/s. Jindal Rectifiers' also having its office at Faridabad. However, respondent claimed to have a different logo of the brand for his products. It is further stated that merely because respondent no.2 had been an employee of the appellant and had started his own business, the appellant had ill-will against him. It is further pleaded that no rule or law had been violated and neither

any trademark of the plaintiff infringed. Respondent claimed to have registered his firm under the GST on 15.12.2017 and he had also applied for registration of the trademark. Dismissal of the suit was prayed and in reply to the application for interim injunction, it was alleged that no prima facie case or balance of convenience was made out in favour of the plaintiff-appellant and neither would it suffer any irreparable loss in case injunction is not granted.

Learned trial Court on considering the matter dismissed the application under Order 39 Rule 1 & 2 CPC, vide impugned order dated 29.08.2019, while observing that:-

- (i) Prima facie from perusal of the photographs it was revealed that products were not similar or identical.
- (ii) Logos of both the products are different.
- (iii) Merely because defendants-respondents have used word 'Jindal', it does not amount to infringement of trademark of the appellant.
- (iv) Surname of the proprietor of appellant-plaintiff is not 'Jindal' but 'Goyal' and it is nowhere prima facie proved that the plaintiff-appellant had acquired the trademark 'Jindal'.
- (v) Appellant-plaintiff it is held failed to prove a prima facie case or balance of convenience in its favour and it would not suffer irreparable loss as the plaintiff would have a remedy to file a suit for mesne profit in case plaintiff succeeds in proving its case on merits.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argued that learned Additional District Judge, Faridabad has grossly erred in dismissing the appellant's application under Order 39 Rule 1 and 2 CPC. It was submitted that first and foremost products manufactured and sold by the

appellant and respondents are the same. He referred to the photographs of the products of the appellant as well as that of the respondents. Learned counsel also referred to the logo to indicate the similarity between the two and the erroneous manner in which learned Addl. District Judge, Faridabad has proceeded. It was further submitted that the appellant has two associate firms as well, held by another family member namely Mr. Bharti Bhushan Jindal, the name of the firms being 'Jindal Electricals' and 'Jindal Electric and Machinery Corporation'. Learned counsel stated that all the above said firms use a common brand name for their electrical equipments namely 'Jindal's' which has been extensively advertised and promoted as such since the last over 50 years. Goodwill of the appellant, it is further submitted is primarily associated with the said trademark and the name 'Jindal's' has become the mark of identification of the products itself and purchase orders itself would reflect the usage of the phrase/term 'Jindal's make' to refer to the appellant's products.

Learned counsel for the appellant submitted that appellant in fact came to know of this deception when one of their old clients complained as to why two different price quotations have been received from two branches/units of 'Jindal's'. The third defendant who had initially been arrayed in the suit, on realizing his folly had surrendered the GST number, which was in the name of 'M/s. Jindal Transformer Industries' formed by him. Learned counsel for the appellant further argued that not only the appellant has a good prima facie case in his favour as well as the balance of convenience but it is apparent that the appellant shall suffer an irreparable loss in so far as its goodwill or reputation is concerned. It was submitted

that the respondents are resorting to unethical practices and causing grave loss to the appellant by using a trademark deceptively similar to the registered trademark of the appellant-plaintiff for sale of same/similar products.

It was further submitted that learned ADJ, Faridabad has grossly erred in observing that surname of proprietor of the plaintiff-appellant is not Jindal but Goyal. Learned counsel for the appellant submitted that Mr. Sharad Goyal is the name of the CEO of the firm and proprietor of the appellant-firm is Ms. Manju Jindal. This appeal, it was thus prayed, be allowed. Order dated 29.08.2019, passed by learned ADJ, Faridabad be set aside and application under Order 39 Rule 1 and 2 CPC, filed by the plaintiff be allowed.

Learned counsel for the respondents while refuting the arguments as above, submitted that learned ADJ, Faridabad has rightly passed the impugned order dated 29.08.2019. The appellant cannot claim to have exclusive rights to the use of the name 'Jindal'. Same is a surname and the appellant cannot claim exclusivity. The logo used by the respondents, it was submitted, is not similar. It is, however, not denied that the respondent is also engaged in the business of manufacture and sale of voltage stabilizers and transformers, electrical and electric rectifiers. Learned counsel prayed that impugned order dated 29.08.2019 be upheld.

Heard learned counsel for the parties and went through the file with their able assistance.

At this stage, it is useful to refer to the judgment of Hon'ble the Supreme Court in *Parle Products (P) Ltd. Vs. J.P. and Co., Mysore, AIR*

1972 (SC) 1359, wherein it has been held that the test to determine deceptive similarity is to consider broad and essential features of the two products. It is observed as under:-

“They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the color scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word "Gluko Biscuits" in one and "Glucose Biscuits" on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets to-day may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs goods, he might easily mistake the defendants' wrapper for the plaintiffs if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Holmes.”

A Division Bench of the Bombay High Court in ***Bajaj Electricals Ltd. Vs. Metals and Allied Products (Bombay), 1988 AIR (Bombay) 167***, did not permit the use of the word “Bajaj” as it was observed that the same had become synonymous with the product manufactured by the appellant therein. Reference was made by the Division Bench to a decision of the House of Lords in ***Parker Knoll Ltd. Vs. Knoll International Ltd., 1962, RPC 265***, wherein it is observed that:-

“A name may be used as a mark under which a person’s goods are sold so that the name comes to denote goods made by that person and not the goods made by anyone else or even made by anyone else who has the same name. So also a mark under which a person’s goods are sold may come to denote goods made by that person. The name or the mark will have acquired a secondary meaning.”

It is further observed that someone may, even by using his own name and using it innocently, make a representation that is untrue, which is a representation that goods, which in fact are his are the goods of someone else. The defendants in that case had claimed that surname of their partner was Bajaj, therefore, they were entitled to carry their trade in their own name and so also to use the mark Bajaj. The Division Bench had found the same to be impermissible.

The Hon’ble Supreme Court in ***Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra & Mahindra Ltd., 2002 AIR (SC) 117***, observed that the name ‘Mahindra & Mahindra’ had acquired a

distinctiveness and a secondary meaning in the business or trade circles and people have come to associate the term 'Mahindra' with a certain standard of goods and services. Any attempt by another person to use the name, business and trade circles, it is observed was likely to and in probability create an impression of a connection with the said group of companies. It may affect the plaintiff prejudicially in its business and trading activities.

In the present case, learned counsel for the respondents is unable to deny that the appellant and its sister/associate firms as mentioned in the foregoing paras have been carrying on their business since over the last 50 years. 'Jindal Electricals' has been operational since 1967. 'Jindal Electric and Machinery Corporation' has been operational since 1987 and the present appellant had got its trademark registered in 2007. Respondent no.2 had admittedly been working with the appellant for a number of years before starting his own establishment. It is further a matter of record that respondent no.2 does not bear the surname Jindal whereas the proprietors of the appellant and its sister associates indeed bear the said surname. Learned ADJ, Faridabad has clearly erred on facts as well in observing that even surname of the proprietor of the plaintiff is not Jindal but Goyal.

Learned counsel for the respondents relied upon the judgment of Hon'ble Supreme Court in *Skyline Education Institute (India) Private Ltd. V. S.L. Vaswani and another, 2010 AIR (SC) 3221*. However, a perusal of the decision reveals that same does have any application to the matter at hand. In the case of *Skyline Education* (supra), the respondent therein was sought to be restrained from using the name 'Skyline' as a part of their trade name in relation to their activities in the field of education

and/or as a trademark in relation to any printed matter, including the course material, literature, syllabus etc. The plaintiff in that case had sought an injunction solely on the ground that word 'Skyline' is a specific/distinct word and being a prior user, it was entitled to seek a restraint against the respondents from using the word 'Skyline' in the name of Institute of Engineering and Technology established by them. It was opined that the word 'Skyline' is a generic word because the same was being used by thousands of persons and institutions as a part of their trading name or business activities. At least 10 educational/training institutions in the United States of America and 2 in United Kingdom were mentioned to be using word 'Skyline' as the first word. It was thus held that the word 'Skyline' is a generic word.

The factual aspect in the present case is clearly to the contrary. There is no such material placed before the Courts to prima facie and at this stage to hold similarly. The dispute, at this stage, is regarding interim relief sought by the appellant during the pendency of its suit for permanent injunction for infringement of trademark, dilution of goodwill, unfair competition and rendition of accounts of profits/damages against the respondents. A perusal of the file reveals that both the appellant as well as the respondents are involved in manufacture of similar products i.e. voltage stabilizers, transformers, electrical and electric rectifiers. It prima facie appears from the documents before me, as are stated to be before the learned trial Court that similarity of the product manufactured by the appellant and the respondents is stark. Indeed goodwill of the plaintiff-appellant is associated with trademark in question. It is relevant to refer to a copy of the

trademark status of respondent-firm, attached as Annexure P-9, which is stated to be a part of the record before the learned trial Court. It is revealed that status of the trademark is mentioned to be 'objected'.

Another argument raised by learned counsel for the respondent is that merely because a separate conclusion may be possible on the basis of the material before this Court, at this stage, the appellant's prayer for temporary injunction should not be allowed.

In the factual matrix of the case, I find this argument untenable. It is a matter of record that the learned ADJ, Faridabad has first and foremost erred on facts in observing that the surname of the proprietor of the appellant is not 'Jindal'. Furthermore, it has failed to take into account that associate/sister concerns of the appellant have been in the business of electrical equipments over the past 50 years. A bare perusal of the documents reveal the similarity in the products as well. Thus the appellant-plaintiff has made out a prima facie case for temporary injunction to be issued against the respondents. At this stage it would be useful to refer to the judgments of the Hon'ble Supreme Court in *Bangalore Woolen Cotton & Silk Mills Co. Ltd. Vs. B. Dasappa*, AIR 1960 SC 1352, *V.C. Shukla Vs. State (Delhi Administration)*, AIR 1980, SC 1382 and *Dalpat Kumar Vs. Prahlad Singh*, AIR 1993 SC 276, to conclude that for determining whether a prima facie case is made out or not, relevant consideration is whether from the material on record, it was possible to arrive at the conclusion in question and not that it was the only conclusion which can be arrived at. Learned ADJ, Faridabad has clearly erred in dismissing application under Order 39 Rule 1 and 2 CPC filed by the appellant. Balance of convenience is clearly

in favour of the appellant, who would necessarily suffer irreparable loss, specifically in terms of loss of goodwill and reputation, in case interim relief is not made available.

This appeal is accordingly allowed and impugned order dated 29.08.2019 is set aside. Respondents-defendants including their agents, affiliates, partners, representatives, assignees, servants or any other persons so authorized by the defendants, are restrained from directly or indirectly using any mark having ‘Jindal’ either in whole, as a part thereof, either as a trademark, trade name, domain name, in any manner whatsoever in respect to goods services and/or any other activity.

It is clarified that observations made in this order are limited for the purpose of adjudication of this appeal and will have no effect whatsoever on the proceedings before the learned trial Court, which shall be adjudicated upon on the basis of the evidence to be led by the respective parties.

April 06, 2021
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No