

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1533 of 2022(O&M)
Date of Order: 08.04.2022

Bharat Bhushan

..Appellant

Versus

Devraj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhanshu Makkar, Advocate
for the appellant.

Mr. Ajay Kumar Gupta, Advocate
for the caveators.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the order passed by the Additional District Judge, Bhiwani, defendant no.3 has come up in appeal. The learned Additional District Judge has injuncted the defendants from using the trade name “Vimal Saree Palace” at their shop till the final disposal of the suit.

The plaintiff claims to be doing business for the last 40 years at a place which is 4 shops apart under the trade name of “M/s Bimal Saree Centre”. He filed a suit along with an application under Order 39 Rule 1 & 2 CPC complaining passing off. The Court has granted an injunction.

After arguing for some time, the appellant has stated that he shall change his trade name from “Vimal Saree Palace” to “Vimal Wadhwa Saree Palace”. He has also undertaken that he will not prominently display

Vimal as compared to other words. He has also undertaken that the display board would have a different colour, design and appearance from the display board of the plaintiff.

The learned counsel representing the respondents contends that previously the defendant was working under the trade name of “Dharampal Di Hatti”. He submits that the defendant has changed the name in order to give an impression of Sarees of his shop belonging to the shop of the plaintiff.

Per contra learned counsel representing the appellant (defendant) submits that under the trade name of “Dharampla Di Hatti”, his father was doing the business of hosiery which cannot be continued for trading in sarees. It has been further submitted that previously the shop was in the name of his father and recently it has been transferred to Bhushan Kumar.

The learned counsel representing the respondents submits that the intentions of the appellant are bad.

While granting an injunction, the Court is required to examine as to whether a party is trying to pass off his goods to be that of other or not? If the Court finds that the trade name has been deceptively set identical to mislead the customers, the Court may pass an appropriate injunction order. As per the undertaking given by the appellant (defendant) he will not only change the name in order to make distinction but also change the design, art work and scheme of the display board. In view of the undertaking given by the learned counsel representing the applicant, the impugned order is modified.

Further, the suit is still pending.

The trial court is requested to decide the suit within a period of six months, from today.

Needless to observe that the plaintiff will have liberty to file a fresh application, if he has any other grievance.

All the pending miscellaneous applications, if any, are also disposed of.

April 08, 2022
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(ANIL KSHETARPAL)
JUDGE

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