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

% *Date of Decision: 20th July, 2022*

+ **FAO(OS) (COMM) 45/2020 & CM No.7632/2020**

PROVIDENT HOUSING LTD Appellant
Through: Mr. Rahul Goel, Mr. Shobhit Sharma &
Mr. Shubham Khanna, Advs.

Versus

CENTRAL PARK ESTATES PVT LTD
& ORS Respondents
Through: Mr. Peeyoosh Kalra, Mr. Kanishk Kumar,
Ms. Abiti Vachher & Mr. Priyansh Kohli,
Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. Provident Housing Limited (hereafter '**the appellant**') has filed the present appeal impugning an order dated 17.02.2020 (hereafter '**the impugned order**') passed by the learned Single Judge, whereby the respondents' application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 was allowed and the appellant was restrained from using its trade mark/name.

2. The appellant states in the month of December, 2018, it began promoting two residential blocks named 'Provident Central Park', at its real estate project 'Provident Park Square'. The appellant claims



that it had spent an amount of approximately ₹1.83 crores in promoting the aforesaid project and the two residential blocks in question. The appellant thereafter, adopted the marks “PROVIDENT



CENTRAL PARK” and “

3. The respondents state that in the year 1999, respondent nos. 3 and 4 conceptualised, conceived and adopted the residential project “CENTRAL PARK”, after obtaining a government license for development of the residential project at Golf Course Road, Sector-42, Gurgaon. The respondents claim that they are the proprietors of the

registered trademarks “CENTRAL PARK/  , “CENTRAL PARK RESORTS” and “CENTRAL PARK RESORTS & RESIDENCE”. The respondents claim that they have procured various registrations of trademarks in favour of respondent no. 1, wherein “CENTRAL PARK” is an integral and prominent feature. The respondents further claim that they have spent an amount of approximately ₹74.34 crores in advertisements and ₹145.31 crores as brokerage and marketing expenses for their various marks.

4. The respondents state that in the month of March 2019, they were served with an application, wherein the appellant had taken a plea that the words “CENTRAL PARK” formed a part of several real estate projects including the appellant’s residential units “PROVIDENT CENTRAL PARK”. Thereafter, the respondents claim



that they became aware of the mark “” and “PROVIDENT CENTRAL PARK” being used by the appellant.

5. Disputes have arisen between the parties with respect to their trademarks. The respondents claim that the appellant is using the mark

“” and “PROVIDENT CENTRAL PARK”, which is identical/deceptively similar to its mark of “CENTRAL PARK/”, “CENTRAL PARK RESORTS” and “CENTRAL PARK RESORTS & RESIDENCE”. The device marks of the parties are reproduced below:-

Appellant's mark	Respondents' mark
	

6. On 09.04.2019, the respondents filed a suit against the appellant under the provisions of the Trademarks Act, 1999 *inter alia* seeking permanent injunction against the appellant from infringing, passing off the relevant trademarks of the respondents.



7. The respondents state that on account of extensive use, high revenues, extensive publicity, trademark registrations and diligent enforcement of its rights, the mark “CENTRAL PARK/  Central Park,” is exclusively associated with the respondents and their services. Further, the said mark has acquired the status of a well-known mark.

8. The case of the respondents is that the marks “” and “PROVIDENT CENTRAL PARK” of the appellant are deceptively similar to their trademark as the words “CENTRAL PARK” are highlighted in a prominent manner. The respondents claim that since the appellant is engaged in a similar business, its marks are likely to cause confusion amongst the purchasing public and members of trade as to the origin of the services of the respondents. The respondents’ further state that the word “Provident” is not a distinguishing feature and thus, the appellant’s mark is, essentially, identical to their trademarks.

9. The appellant contends that the respondents acquired registration of the trademark “CENTRAL PARK/  Central Park,” on the basis that the same are unique labels and not on the basis of any distinctiveness acquired by prolonged use. The respondents are the proprietors of the device mark and word marks “CENTRAL PARK RESORTS” and “CENTRAL PARK RESORTS & RESIDENCE” and



not the exclusive owners of the words “CENTRAL PARK”. The appellant contends that the said term is generic and *public juris*. The appellant further states that it has invested significant resources in marketing and advertising its residential units, and the same was not done in a clandestine manner.

10. The learned Single Judge considered the rival submissions and *prima facie*, did not find merit in the appellant’s defence. The learned Single Judge came to a *prima facie* conclusion that the appellant had infringed the respondents’ trademark and the respondents’ case of passing off was merited. The learned Single Judge had considered a similar issue in ***CS COMM No. 152/2019*** captioned as “***Central Park Estates Pvt Ltd and Ors v. Godrej Skyline Developers Private Limited and Anr.***” and held as under:-

“20. Taking into account the trade mark as a whole, it is clear that the trade mark of the defendant can *prima facie* be said to be structurally and phonetically similar to that of the plaintiff. The essential feature of the plaintiff’s mark is CENTRAL PARK. The defendant has copied the essential feature of the trade mark of the plaintiff. There is *prima facie* an overall similarity in the marks of the defendant and that of the plaintiff. Adding the prefix GODREJ does not do away the likely deception/confusion. In my opinion, *prima facie* the above trade mark used by the defendant is deceptively similar to the mark of the plaintiff.

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32. I may now deal with the next contention of the learned senior counsel for the defendant. The defendants have sought to rely upon the judgment of the Division



Bench in the case of *Central Park Estates Pvt. Ltd. &Ors. vs. Keystone Realtors Pvt. Ltd. &Anr.*, FAO(OS) 179/2016 dated 06.09.2017 to plead that the Division Bench has permitted use of the term ‘Rustomjee Central Park’. It is pleaded that the facts of the present case are akin to that case and hence this court should also allow the defendant to use the mark “Godrej Central Park”.

33. However, a perusal of the facts of the aforementioned case would show that that the plaintiff therein had claimed user of the mark ‘Central Park’ since October 2001 whereas the respondent therein had also claimed user of the mark ‘Rustomjee Central Park’ in Mumbai since 2001. It was also pleaded by the respondent therein that the appellant had knowledge of the adoption of the mark ‘Rustomjee Central Park’ which has been used since 2001 the usage being in public domain. It was in those facts that the court did not interfere in the use of the mark ‘Rustomjee Central Park’ as an interim measure. The facts of this case are not similar to the facts of the judgment of the Division Bench to warrant such an order.

34. In view of the above, in my opinion, there is no merit in the contention of the defendants.”

11. Mr Rahul Goel, learned counsel appearing for the appellant, has assailed the impugned order on, essentially, three grounds.

11.1 First, he submitted that this Court had no jurisdiction to entertain the suit as the respondent did not carry out any activity in the National Capital Territory of Delhi. He submitted that the respondent had promoted real estate projects in Gurgaon and their main office is also located in that city. Although the respondents had claimed that its website was interactive, however, that is incorrect because one could



not conclude a transaction on the website. He emphasized that the respondents were in the business of developing and selling real estate and there was no provision in the website, whereby anyone could purchase any property from the respondents, online.

11.2 Second, he submitted that the impugned order is unreasoned as the learned Single Judge had referred to the decision in another case for deciding the respondents' application. He submitted that mere reference to another case would not fulfil the requirement of providing reasons for allowing the respondent's prayer for an interim injunction.

11.3 Third, he submitted that the respondents could not claim exclusive rights on any part of its trademark. The respondents were granted registration of the trademark as a whole and therefore, it was not permissible for the respondent to claim any exclusive right in respect of the words "CENTRAL PARK".

12. The contentions advanced on behalf of the appellant are unpersuasive. Admittedly, the respondents' registered office is located in the National Capital Territory of Delhi and its suit is to enforce the rights in relation to a registered trademark. Indisputably, a person can institute a suit for infringement of a registered trade make at its principal place of business. (See: *Ultra Homes Construction Private Limited v. Purushottam Kumar Chaubey and Ors.: 2016 SCC OnLine Del 376*).

13. The contention that the impugned order is unreasoned is also unmerited. The learned Single Judge had noted the broad contours of



the case. The Court, in a similar matter, had articulated the reasons of granting the interim injunction in favour of the respondent, albeit, against a third party [CS (COMM.) 152/2019]. It is apparent that the Court was of the view that the same reasons were equally applicable in the facts of the present case. Therefore, instead of repeating the same in extenso, the Court had referred to the reasons stated in the said order. Merely because the reasons that persuaded the Court were not articulated in detail but, in a manner of speaking, were sought to be incorporated by reference, cannot lead to the conclusion that the impugned order is unreasoned.

14. The contention that a proprietor of a registered trademark cannot dissect the said trademark to claim an exclusive right over a portion of it, is merited. However, the said proposition is not without exception. A registration of device mark protects the device mark as a whole and cannot be construed as a registration of a part of the said device. The registration of the device trademark “”, in favour of the respondent, confers rights in respect of that mark as a whole and not in respect of any constituent feature of the said mark. Therefore, the test to be applied is whether the allegedly offending mark, when viewed as a whole, infringes the registered trademark.

15. The question whether the marks are similar is required to be viewed by comparing the marks in question. It is obvious that copying a prominent portion of a device mark would also, in certain circumstances, constitute infringement.



16. In the present case, the learned Single Judge had found that the appellant's use of the trademark "", which highlights the word "CENTRAL PARK", is deceptively similar to the marks registered in favour of the respondent as the words "CENTRAL PARK" are a prominent feature of those marks.

17. This Court finds that the exercise of discretion by the learned Single Judge is informed by reason. This Court is unable to accept that the same is not in conformity with the settled principles of law regarding grant of interlocutory injunctions. In light of the principle as set out in *Wander Ltd. & Anr. v. Antox India P. Ltd.: 1990 Supp SCC 727*, no interference with the impugned order is warranted.

18. It is clarified that nothing stated in the impugned order or this order ought to be construed to mean that the respondent has any exclusive right in regard to the use of the words "CENTRAL PARK".

19. The appeal is dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 20, 2022
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