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

% *Date of Decision: 1st September, 2022*

+ **FAO (COMM) 130/2022, CM APPL. 38356/2022, CM APPL. 38357/2022 & CM APPL. 38358/2022.**

APAAR HOMEZ MART PVT. LTD Appellant

Through: Mr. Harish Kumar, Mr. Mukund Yadav, Mr. Christopher, Ms. Radhika, Mr. Yasheswini, Mr. Dishank & Mr. Diptambhu, Advs.

versus

M/S. CENTURY WORLD Respondent

Through: Mr. Rajat Aneja, Mr. Anmol Chadha, Mr. Mayank Maini, Mr. Biman Sethi & Mr. Mritunjay Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

1. Apaar Homez Mart Pvt. Ltd. (hereinafter '**the appellant**') has filed the present appeal impugning an order dated 09.06.2022 (hereinafter '**the impugned order**') passed by the learned Commercial Court, whereby the application preferred by M/s Century World's (hereinafter '**the respondent**') under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter '**the CPC**') was



allowed and the appellant was restrained from using its trade mark/name.

2. The appellant (defendant) states that in the year 2018, it commenced the business of manufacturing and sale of “*bolts of metal, closures of metal for containers, cloth hooks of metal, door fittings of metal, door closer, door handles of metal, screw of metal, roller blinds of steel, roller doors of metal, locks of metal, stays of metal, tower bolt, tubes of metal, valves of metal, water pipes of metal, wardrobe rail fittings of metal and household or kitchen utensils and containers*”.

3. Thereafter, the appellant registered its trademark ‘SEPAL’ under Class 21 (trademark application no.3845684) on 28.05.2018; and, under Class 6 (trademark application no.5110415) on 30.08.2021.

4. The appellant also applied for the registration of its device mark  under Class 6 (trademark application no. 5306044) and Class 21 (trademark application no. 5306043) on 31.01.2022 on ‘proposed to be used basis’. However, the applications in respect of the aforesaid device marks were opposed by the respondent on 21.03.2022.

5. The respondent opposed the aforesaid applications as it claims the same to be deceptively similar to its registered trademarks.

6. The respondent (plaintiff) claims that it is engaged in the business of manufacturing and marketing all kinds of “*Hardware*



Goods, Kitchen Hardware and Cabinet Hardware including Lock of Metal, Nut, Bolts, Screw, Washer of Metal, Springs(Metal), Clips(Metal), Chains (Metal), Hook (Metal), Hinges (Metal), Brass, Hose Clamps (Metal), Metal Handles, Latches, Knobs, Hanger, Gate Hooks (Metal), Door Stopper, Door Safety (Metal), Telescopic Slider, Fasteners of Common Metal, Metal Frame for Door and Window, Metal Brackets, Metal safes, Household utensils, Kitchen utensils, Kitchen Accessories including Steel Glass Stand, Kitchen Racks, S.S. Kitchen Basket, Plant baskets, Waste baskets, Wire baskets for grilling, Baskets for household purposes, Litter Basket, Towel Baskets, Wire Baskets For Grilling, Wire Baskets (Cooking Utensils), Shopping Baskets For Domestic Use, Metal baskets for household purposes, Pot Handler, Soap dishes, Trays Ice Boxes, Casseroles Porcelain ware”.

7. The respondent uses its registered trademarks ‘CWPL



CENTURY’, ‘CPCENTURY’, ‘CENTURY’ and ‘CENTURY’, in respect of the goods manufactured and sold by it. These trademarks are registered in favour of the respondent under various classes.

8. Further, the respondent claims that it has registered copyrights in respect of the following works/marks in its favour:-

Diary No	Artistic Work	Registration no.	Proprietor
A-135144/2020	CWPL CENTURY	8005/2020- CO/A	M/s CENTURY WORLD



A-135699/2020	CP CENTURY	18328/2020-CO/A	M/s CENTURY WORLD
A-136175/2021	CENTURY	19137/2020-CO/A	M/s CENTURY WORLD

9. The respondent claims that the appellant is using the mark/label/packaging/ trade dress ‘SEPAL CENTURY’ in relation to same products, which is identical/deceptively similar to its mark of ‘CP CENTURY’ and ‘CWPL CENTURY’. The device marks of the parties are reproduced below: -

Appellant's trademark	Respondent's trademark
	

10. The appellant claims that on 28.04.2022, it filed rectification in respect of the respondent's device mark ‘CP CENTURY’ and word mark ‘CPCENTURY’, by application nos. 3812151 and 4394564 under Class 6 and 35 respectively.



11. Thereafter, on 07.05.2022, the respondent filed the suit against the appellant under Sections 134 and 135 of the Trademarks Act, 1999 seeking permanent injunction against the appellant from infringing, passing off, *inter alia*, the relevant trademarks of the respondent.

12. The case of the respondent is that since the appellant is engaged in a similar business, its trademark/label/packaging/trade dress 'SEPAL CENTURY' is phonetically identical and/or deceptively and confusingly similar to its trademarks, thereby causing confusion and deception amongst the customers and traders. The respondent claims that its trademarks are distinctive and associated with the said business on account of its long, continuous, extensive and exclusive use. The respondent further claims that on account of such extensive use and quality control, the goods under its trademark/label have acquired vast reputation and goodwill amongst the public and members of trade. The respondent also claims that it has spent a substantial amount of money in advertising its products and thus, its trademarks enjoy "*solid and enduring reputation*" and have thus, acquired the status of a 'well known trademark'.

13. The appellant contends that the term 'Century' is a generic word and used by various companies for products falling under Classes 6, 21, and 35. The appellant further states that the word 'Century' is a common dictionary word and thus, the respondent cannot claim exclusive right to use the said term.



14. The appellant contends that the marks of the respondent have to be read as a whole, that is, ‘CP Century’ and ‘CWPL Century’ and the respondent cannot monopolise the word ‘Century’. Further, the font and style used by the parties in their device marks were distinctive and therefore, customers could easily distinguish between the products offered by both the companies. The appellant also contends that the domain names, design and colour combination of its website pages were also distinctive from that of the respondent.

15. The learned Commercial Court considered the rival submissions *prima facie*, found merit in the respondent’s case. The learned Commercial Court was of a *prima facie* view that the appellant had infringed the respondent’s trademark and the appellant had passed off its goods as those of the respondent. The relevant extract of the impugned order is set out below: -

“24. The cited judgments relied upon by counsel for defendant, however, distinguishable from the facts of the present case in hand as word ‘Century’ is not common to the trade and he has failed to establish on record that it is common to trade in respect of kitchenware, therefore user of the same with ‘Sepal’ does not infringe trade mark of the plaintiff in any manner. The mark of the plaintiff is read with ‘Century’ word and it cannot be segregated. It is well settled law that trade mark as a whole can be seen and judgment relied on by plaintiff in case of Ireo Pvt. Ltd. (supra) is applicable to the facts of case. Defendant has also failed to show as to how he had coined word ‘century’ with ‘sepal’ which plaintiff has been using and therefore adoption of word is dishonest as plaintiff is prior user and registered proprietor of the same. Although it is true that plaintiff has no exclusive right over the



word 'century' as same is English word having specific meaning yet as against the plaintiff, the defendant cannot use the same in the absence of evidence on record that 'century' word has acquired generic meaning in respect of trade in question.

25. Indisputably the plaintiff has registration of trade mark 'CP Century' and 'CWPL Century'. Defendant had only registration in word 'Sepal' and other application for registration of word mark and device mark 'Sepal Century' is either opposed or objected to meaning thereby the defendant has no registration in respect of 'Sepal Century' as on today.
26. Word 'Century' is prominently written in the mark of the plaintiff and being used for modular kitchen items and kitchen hardware, unwary customers can be easily misled by believing that goods under the trade mark 'Sepal Century' are also coming from the house of 'CWPL Century' as in the mark of plaintiff 'Century' is prominent and 'CPWL' is phonetically similar to 'SEPAL'.
27. In view of the aforesaid discussion, this Court is of the opinion that a *prima facie* case of infringement of trade mark, copyright and passing off is made out in favour of the plaintiff and balance of convenience also rests in its favour as it has substantial turnover. It can also be foreseen that irreparable loss not only in terms of money but also in term of goodwill and reputation would be caused to the plaintiff if no interim injunction is passed in its favour.
28. For the forgoing reasons and till disposal of the suit, the defendant and all other acting on his behalf are restrained from using trade mark/ label / packaging / trade dress 'SEPAL CENTURY' or any other mark/ label / packaging / trade dress, which is identical and /or



deceptively and confusingly similar to the registered trademarks/label/ packaging of plaintiff ‘CPWL CENTURY’ and ‘CP CENTURY’ in relation to similar goods which amounting to infringement of the Plaintiff’s registered trade mark, copyright and passing of its goods as that of plaintiff.”

16. The appellant, essentially, assails the impugned order on two grounds. First, that the respondent cannot monopolise the word ‘Century’ as it is a common dictionary word/generic word; and second, that the trademark (device mark) used by the appellant is distinctive from the trademarks of the respondent and therefore, customers could easily distinguish between the products offered by both the companies.

17. Undisputedly, the respondent is not the proprietor of the word mark ‘Century’. The respondent is the owner of the device marks, which includes the word ‘Century’ as a prominent feature. However, common dictionary words may also acquire secondary meaning and serve as a source identifier. The question whether the word ‘Century’ has acquired any secondary meaning is a matter of evidence.

18. It is material to note that the word ‘Century’ is neither descriptive nor has any nexus with the trade of modular kitchen hardware, wire baskets, hinges, locks etc., being the products in relation to which the respondent has adopted its trademark.

19. The question whether the trademark adopted by the appellant infringes the respondent’s registered trademark is required to be



determined by examining the trademarks adopted by the parties as a whole. There is merit in the contention that the grant of a registration in respect of a device mark cannot be construed as registration of a part or a feature of the trademark. In that view, the respondent does not have an absolute right to use the word ‘Century’ to the exclusion of all others. The learned Commercial Court has also accepted the said proposition. However, on examination of the trademark adopted by the appellant, the learned Commercial Court had found the same to be deceptively similar to the trademarks adopted by the respondent.

20. This Court finds no infirmity with the view that the appellant’s use of the trademark ‘Sepal Century’ has a propensity of confusing consumers to believe that the respondent is the source of the said goods.

21. As noted above, *prima facie*, the respondent appears to have established itself in the said trade in question. The respondent’s claim is that although it had adopted the trademark in the year 2018, it was earlier being used by one of its promoters Mr Pradeep Kumar, who was carrying on the business under the name and style of M/s Aggarwal Trading Company. However, the sales turnover as disclosed by the respondent does support the view that the respondent’s business under the said trademarks has increased manifold.

22. On examination of the trademarks of the respondent, that are,

‘CWPL CENTURY’, ‘CPCENTURY’, ‘’, and ‘



, it is fairly obvious that the word ‘Century’ is prominent part of the aforesaid trademarks. As noted above, the word ‘Century’ is also a prominent part of the appellant’s trademark. However, the word ‘Sepal’ is in a smaller font compared to the word ‘Century’ in



the appellant’s trademark (). The learned Commercial Court had also found ‘CPWL’ is phonetically similar to ‘Sepal’ and thus, *prima facie* adoption of the said mark was dishonest.

23. In the aforesaid circumstances, this Court is unable to accept that the learned Commercial Court’s *prima facie* conclusion that the trademarks used by the appellant are likely to cause confusion of its source and would amount to passing off, warrants any interference.

24. It is also pertinent to mention that it is the respondent’s case, as noted in Paragraph 11 of the plaint [being CS (COMM) no. 392/2022], that its gross turnover has increased from ₹90,050/- in the Financial Year 2017-2018 to ₹16,96,96,599.83/- in the Financial Year 2021-2022 (unaudited). Further, as stated earlier, the appellant had applied for the registration of its device mark on ‘proposed to be used basis’ and therefore, the appellant has adopted the impugned trademark recently, and at the time when the respondent’s gross turnover increased to over ₹16 crores.

25. Considering that the appellant has been unable to *prima facie* establish a plausible reason for including the word ‘Century’ in its



trademark, *prima facie*, the respondent's contention that the appellant adopted the said trademark to benefit from the respondent's goodwill and reputation, is merited.

26. The law regarding the nature and scope of appeals and the limitation of powers of an appellate court is well settled. In ***Wander Ltd. and Another. v. Antox India P. Ltd.: 1990 Supp SCC 727***, the Supreme Court had held as under:

“14...the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial courts discretion.”

27. This Court is unable to accept that the learned Commercial Court has exercised its discretion arbitrarily, capriciously or perversely or has otherwise ignored the settled principles of law regarding grant of interlocutory injunctions.



28. For the reasons stated above, the appeal is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 1, 2022
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