

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

% *Date of decision: 21st December, 2022*

+ **CS(COMM) 21/2018 & I.A. 364/2018 (O-XXXIX R-1 & 2 of CPC), I.A. 17720/2019 (O-V R-20 (1A))**

M/S RPG ENTERPRISES LIMITED

..... Plaintiff

Through: Mr. Himanshu Deora with Ms. Sejal Tayal, Ms. Neeharika and Mr. Naqeeb Nawab, Advocates.

versus

RPG DEVELOPERS PRIVATE LIMITED
& OTHERS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CS(COMM) 21/2018

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks and copyrights of the plaintiff, passing off their goods as that of the plaintiff's and other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The case set up by the plaintiff in the plaint is as follows:

2.1 The plaintiff, M/s RPG Enterprises Limited is an Indian industrial conglomerate comprising of over twenty companies in the area of infrastructure, tyres, technology and speciality.

2.2 The plaintiff has been using the 'RPG' word mark since 1979.

2.3 The plaintiff is the proprietor of the registered trademark 'RPG',



and other related marks in Classes 5, 9, 12, 16 and 30 of the Trade Marks Act, 1999. The said marks have come to be exclusively associated with the plaintiff. Details of the trademark registrations of the plaintiff's 'RPG' marks have been tabulated in paragraph 5 of the plaint.

2.4 The said marks of the plaintiff are also registered by the plaintiff in various foreign countries, details of which have been provided in paragraph 6 of the plaint.

2.5 The plaintiff's 'RPG' marks have acquired the status of well-known trademarks within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999, which fact is recognised in the judgment of ***RPG Enterprises Limited v. Riju Ghoshal and Another***, (2022) 90 PTC 312.

2.6 The plaintiff is also the registered copyright owner of the RPG Enterprises Logo (Label) in India and has been using the same since 1987. The aforesaid label was granted registration on 30th June, 1988. The plaintiff also owns the domain names 'www.rpggroup.com' and 'www.rpg.in'.

2.7 The defendant no. 1, M/s RPG Developers is a company engaged in the selling and renting of properties in various parts of India. The defendant no. 2, Mr. Rampal Goswami, is the director of the defendant company.

2.8 Sometime in August, 2017, the plaintiff came across the infringing activities of the defendants. The defendants are deliberately using the trade name 'M/s RPG Developers' with an intent to misrepresent to the public that the defendants are associated with the plaintiff as an associate/joint venture/group company. The defendants have adopted the 'RPG' mark and



are using the mark

2.9 The defendants' website mentions various projects using the word mark 'RPG' titled as 'RPG Sathya Nagar,' 'RPG Metro City,' 'RPG Vel Nagar,' 'RPG Global City,' 'RPG Metro City,' 'RPG Swarna Boomi,' 'RPG Aravindar City' and 'RPG Rakkisha Bhoomi.'

2.10 Plaintiff issued cease and desist notices dated 10th August, 2017 to the defendants, *inter alia*, calling upon the defendants to stop selling/offering for sale their projects under the mark 'RPG', recall their finished infringing goods/promotional materials and give an undertaking to the effect that they shall not infringe the marks of the plaintiff in the future. However, despite service, no reply to the said letters has been received by the plaintiff.

3. Accordingly, the plaintiff filed the present suit seeking to restrain the defendants from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

4. This Court, vide order dated 10th January, 2018 granted an *ex parte* ad interim injunction in favour of the plaintiff under I.A. 364/2018, retraining the defendants from using the mark 'RPG'. The relevant portion of the said order is as under:

“Keeping in view the aforesaid, this Court is of the opinion that a prima facie case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, the defendants, directors/proprietors/partners, their principals, employees, agents, distributors, franchisees, representatives and assigns are restrained from giving any services, in any manner whatsoever and/or using the registered trademark RPG and/or RPG Developers and/or artistic work which is a colourable imitation of the plaintiff's artistic work or any other trademark/artistic work confusingly similar to the registered trade mark/copyright of the plaintiff.”

5. The matter was thereafter placed before the Joint Registrar for effecting service and completion of pleadings.
6. Even though the defendant no.4 was served through ordinary mode on 17th February, 2018, none appeared for the defendant no.4 on 16th March, 2018, 9th May, 2018 and 15th May, 2018. Further, no written statement was filed on behalf of the defendant no.4. Consequently, the defendant no.4 was proceeded against *ex parte* on 15th May, 2018.
7. Fresh service of summons was directed for the defendants no.1 to 3 and 5 on 3rd March, 2020 and 22nd September, 2021
8. On 12th January, 2022, the counsel for the plaintiff submitted that all the defendants, with the exception of the defendant no.4, have been duly served and that an affidavit of service has also been filed in this regard.
9. Thereafter, vide order dated 6th July, 2022 passed by the Joint Registrar, the defendants no.1 to 3 and 5 were deemed to be served on the basis of the affidavit of service filed on behalf of the plaintiff.

10. On 6th December, 2022, the Joint Registrar closed the right of the defendants no.1 to 3 and 5 to file written statement and the matter was placed before the Court.

11. In view of the above, the counsel for the plaintiff prays for a decree of permanent injunction and damages along with costs in the suit.

ANALYSIS AND FINDINGS

12. I have heard the counsel for the plaintiff and perused the record of the case.

13. At the outset, it may be relevant to note that the defendants no.1 to 3 and 5 has been served through speed post, courier and email. Despite this, the defendants no.1 to 3 and 5 have chosen not to enter appearance. The defendant no.4 has also been proceeded against *ex parte* on 15th May, 2018. Ample opportunity has been given to the defendants to appear before the Court and defend the case.

14. Since the defendants have failed to enter appearance or even take any steps requisite to contest the present suit, despite having suffered an ad interim injunction order, it is evident that they have no defence to put forth on merits.

15. At this stage, it may be relevant to note the comparison between the marks of the plaintiff and the defendants, which is as under:

PLAINTIFF'S MARK	DEFENDANTS' MARK
	

16. From a perusal of the competing marks above, this Court is of the view that the defendants' use of the 'RPG' marks is nothing but an attempt to ride on the goodwill and reputation of the plaintiff's well-known trademarks. This is further evidenced from the prominent use of the marks



'RPG' on the defendants' website "www.rpgdevelopers.in", screenshots of which have been annexed at pages 45 to 47 of the documents filed along with the plaint.

17. Based on the averments in the plaint and the discussion above, this Court is of the view that this is a fit case for granting relief of permanent injunction. The defendants are restrained from offering/rendering any services using the impugned trademark 'RPG' and/or 'RPG DEVELOPERS' and/or artistic work which is a colourable imitation of the plaintiff's artistic work or any other trademark/artistic work deceptively similar to the 'RPG' marks of the plaintiff.

18. Accordingly, the present suit is decreed in terms of prayer clauses 'a.', 'b.' and 'c.' of the plaint.

19. At this stage, counsel for the plaintiff does not press for the reliefs contemplated in prayer clauses 'd.' and 'e.' of the plaint.

20. Insofar as the relief of damages as sought in prayer clause 'f.' is concerned, the defendants are trading under the name 'M/s RPG DEVELOPERS' in order to dupe the general public into believing that the defendants are a subsidiary/group company/joint venture of the plaintiff, which is a reputed industrial conglomerate in the business of infrastructure. Projects of the defendants are being listed on their website using the 'RPG'

mark of the plaintiff. The defendants have also failed to respond to the legal notices dated 10th August, 2017 sent to them on behalf of the plaintiff, requiring them to cease and desist from their use of the 'RPG' mark of the plaintiff. Moreover, the defendants have also chosen to stay away from the present proceedings, despite service.

21. In view of the foregoing facts and circumstances, this Court is of the view that this is not a case of innocent adoption. The Court cannot ignore such flagrant misuse of the plaintiff's marks by the defendants. Therefore, considering the dishonest conduct of the defendant, the suit is decreed in favour of the plaintiff for Rs.3,00,000/- as damages. Additionally, Rs.3,00,000/- is awarded to the plaintiff as costs to be paid by the defendants.

22. The defendants shall pay the said amount to the plaintiff within eight weeks, failing which the plaintiff is permitted to commence execution proceedings against the defendants.

23. All pending applications are disposed of.

24. Decree sheet be drawn up.

AMIT BANSAL, J.

DECEMBER 21, 2022

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