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O.S.A. (CAD) Nos.76 to 79 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. P.B.Prasad

2. Progressive Business Partnership
rep. By its Partner, Prateek Prasad
Plot No.2, MF Royal Oak Enclave
6th Street, Senthil Nagar
Chennai – 600 096.

.. Appellants

Vs

Canadian Crystalline Water India Limited
rep. by its Authorised Signatory
O.7, Parivakkam Road
Leelavathy Nagar, Seneerkuppam
Poonamallee, Chennai – 600 056
also at No.14, Spur Tank Road
Chetpet, Chennai – 600 031.

.. Respondent

Prayer: Appeals under Section 13 of the Commercial Courts Act, 2015 against the judgment and decree dated 21.6.2023 passed by the learned Single Judge in O.A.Nos.437 to 440 of 2023 and A.Nos.2782 to 2785 of 2023 in C.S. (Comm.Div.) No.115 of 2023.



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For the Appellants : Mr.Krishna Srinivas
Senior Counsel
for M/s.S.Ramasubramaniam
and Associates

For the Respondent : Mr.M.S.Bharath

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The present appellants are the original defendants. The present respondent had filed the suit, bearing C.S.(Comm. Div.) No.115 of 2023, for permanent injunction restraining the defendants and all other persons claiming through the defendants from providing, offering, selling and marketing, advertising or issuing services under the mark "*Canadian Crystalline Water Ltd*" or any other trademark deceptively similar to that of the plaintiff's trademark "*Canadian Crystalline*" and/or  or any other identical mark amounting to passing off the plaintiff's trademark "*Canadian Crystalline*", so also using the plaintiff's logo  amounting to infringement of copyright in the original artistic work in the logo and further reliefs.



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2. For the sake of convenience, the parties are referred to as per their status in the suit.

3. The plaintiff filed four original applications in the said suit for temporary injunction pending disposal of the suit for the reliefs for which permanent injunction was sought. The plaintiff was granted ad interim injunction by the learned Single Judge. Subsequently, the defendants filed applications for vacating the same. The learned Single Judge, under the order dated 21.6.2023, allowed the original applications filed by the plaintiff seeking temporary injunction and rejected the applications filed by the defendants for vacating the interim order. The learned Single Judge made absolute the injunction order granted in favour of the plaintiff on 5.5.2023. The said order is assailed by the defendants in the present appeals.

4.1. Mr.Krishna Srinivasan, learned Senior Counsel appearing on behalf of the defendants, strenuously contends that the suit was for passing off/infringement of copyright. The only relevant factor



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to be considered is whether the defendants are passing off their goods as that of the plaintiff and/or the defendants are using the plaintiff's trademark or any other trademark deceptively similar to that of the plaintiff. However, under the impugned order, injunction is granted thereby prohibiting the defendants from dealing with its customers in whatsoever manner.

4.2. Learned Senior Counsel for the defendants submits that in the additional affidavit filed by the defendants, the defendants have made it abundantly clear that the defendants have not used the trademark or logo belonging to the plaintiff in any manner that is in contravention of law and shall not do so in future.

4.3. It is further submitted by learned Senior Counsel for the defendants that the logo under which the defendants do business is distinct and separate from that of the plaintiff. The hotels run by the Taj Group used to place orders with the defendants. The defendants, in turn, use to place it with the plaintiff, directing the plaintiff to directly supply the product to Taj Group of hotels.



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According to learned Senior Counsel, as there was delay on the part of the plaintiff in supplying the product, when once the order was placed by the Taj Group of hotels for supply of Canadian Crystalline product, the defendants procured the same through third party and supplied it to the consumer. However, the same was not supplied as a product of the plaintiff. There was no misrepresentation on the part of the defendants. The plaintiff cannot insist that the defendants should supply the products to the defendants' customers after purchasing from the plaintiff only. This aspect has not been considered. Learned Senior Counsel relies upon some of the invoices to substantiate his case.

5.1. Mr.M.S.Bharath, learned counsel for the plaintiff, submits that the defendants did not have an independent identity. Impressed by the plaintiff's experience in the industry, the Taj Group of hotels conducted due diligence of the plaintiff about its credibility, goodwill, reputation, the quality of the products supplied, the advancement of the technology used in its products, etc., with the plaintiff's raw material suppliers, bankers, creditors and other



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persons connected with the plaintiff. Taj Hotels across various locations started placing purchaser orders on the plaintiff directly for manufacture and supply of Canadian Crystalline Water Bottling Plant. During July, 2022, the first defendant indicated to the plaintiff that Taj Hotels had specifically informed him to supply Canadian Crystalline Water Bottling Plant by the plaintiff and not by anyone else. The first defendant had indicated to the plaintiff that Taj Hotels have agreed to the proposal that the second defendant shall be running and operating the Canadian Crystalline Water Bottling Plant installed by the plaintiff at Taj Hotels. The defendants further indicated that they shall be placing orders with and in the name of the plaintiff for the supply of Canadian Crystalline Water Bottling Plant on behalf of Taj Hotels. In consideration, the defendants indicated that they shall be entitled to a commission of 10% towards the advance amount paid by Taj Hotels. The plaintiff agreed to the same.

5.2. Learned counsel for the plaintiff further submitted that the defendants indicated that Taj Connemara is inclined to purchase



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Canadian Crystalline Water Bottling Plant and requested the plaintiff to conduct a visit to Taj Connemara for inspecting the placement and arrangements towards supply of the Canadian Crystalline Water Bottling Plant. The plaintiff agreed and conducted inspection and provided its opinion towards placement of the Canadian Crystalline Water Bottling Plant at Taj Connemara, Chennai. As the plaintiff did not receive any purchase order from the defendants, the plaintiff made a visit to Taj Connemara, Chennai, as a follow up on the inspection conducted by the plaintiff. The officials of the Taj Hotels at Connemara indicated that they had already placed orders with the defendants towards the supply of Canadian Crystalline Water Bottling Plant by the plaintiff. Subsequently, the plaintiff was informed by the officials of Taj Connemara that Canadian Crystalline Water Bottling Plant equipment has reached Taj Connemara. The plaintiff inspected the machines received by Taj Connemara and was shocked to notice that the Canadian Crystalline Water Bottling Plant supplied to Taj Hotels is from a third party and not from the plaintiff.



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5.3. Learned counsel for the plaintiff refers to the communication between the plaintiff and the defendants to suggest that the defendants had no independent right to supply Canadian Crystalline Water Bottling Plant from third party and that the defendants are only sub-contractors.

6. We have considered the submissions canvassed by learned counsel for the parties. We have also gone through the judgment delivered by the learned Single Judge.

7. The grant of temporary injunction pending suit is based on three principles, viz., prima facie case, balance of convenience, and irreparable loss. These temporary injunction orders are discretionary orders based on prima facie material and satisfaction. The learned Single Judge exercised his discretion while passing the impugned order and clamped injunction against the defendants pending the final disposal of the suit.



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8. As far as logo is concerned, the logo of the plaintiff and the defendants are distinct. The plaintiff's trademark is "Canadian Crystalline" and/or , whereas the logo of the defendant is . Passing off would arise if the defendants are intending to pass on the goods of the plaintiff as their own. If the same is prima facie established, then the court would be justified in granting injunction in favour of the plaintiff.

9. It is not in dispute that Canadian Crystalline Water Bottling Plants have been installed in the Taj Group of Hotels at about six places. At Taj Connemara, Chennai, the defendants have not procured the Canadian Crystalline equipment from the plaintiff, but have procured it from a third party. The learned Single Judge has observed that the defendants failed to enclose the purchase orders placed by the defendants with the plaintiff for supply of Canadian Crystalline equipment for installation at Taj Connemara, Chennai. The matter was heard at length on 6.6.2023. In order to give an opportunity to the defendants to produce the purchase order



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relating to the supply of equipment for installation at Taj Connemara, Chennai, the matter was adjourned to 14.6.2023. On the adjourned date, the defendants filed invoices pertaining to Taj Connemara, Chennai. In the standard purchase order issued by Taj Connemara, Chennai, dated 10.11.2022, the defendants were directed to supply Canadian Crystalline equipment. However, the defendants failed to file any purchase order in favour of the plaintiff to prove that they procured the Canadian Crystalline equipment from the plaintiff for installation at Taj Connemara, Chennai. We may further observe that the defendants have not placed on record the type of the equipment supplied to Taj Connemara, Chennai, i.e., the equipment other than Canadian Crystalline equipment. This propelled the learned Single Judge to pass the order of injunction against the defendants.

10. The defendants could have come clean and placed on record the name of the party from whom they purchased the equipment and the nature of the water bottling plant supplied for installation at Taj Connemara, Chennai. Non-production of



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document in that regard would lead to adverse inference. At this stage, the same was sufficient for the learned Single Judge to clamp injunction against the defendants.

11. As the learned Single Judge has taken a reasonable and probable view, it is not necessary to interfere with the said discretion exercised by the learned Single Judge.

12. The injunction order granted against the defendants by the learned Single Judge, as such, is not interfered with. However, the defendants are entitled to carry on their business in their own name. The injunction order does not prohibit the defendants from carrying on the business in their own name or supplying the products of some other manufacturers. The defendants are, however, restrained from using the trade mark or logo of the plaintiff  or dealing with the products of the plaintiff.

13. Save and apart from the above, the defendants are not prohibited by the learned Single Judge from doing the business in



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their own name and/or of their own products and/or products of the third parties, except that of the plaintiff in whatsoever manner.

The original side appeals are, accordingly, dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.15794, 15851, 15857 and 15875 of 2023 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

16.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Sub Assistant Registrar
Commercial Cases
High Court, Madras.



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AND
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

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