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

+ **CS(COMM) 251/2021 & I.A. 13333/2022**

CROSS FIT LLC

..... Plaintiff

Through: Mr. Saif Khan, Mr. Shobhit Agrawal and Mr. Prajjwal Kushwaha, Advocates.

versus

MR RENJITH KUNNUMAL & ANR.

..... Defendants

Through: Mr. Akash Vajpai, Advocate
Mr. Sudheesh K.K. for D-1 with Defendant
1 in person

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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05.09.2023

CS(COMM) 251/2021

1. Alleging that SFC Crossfit, which was the name under which a gym was being run in Calicut, Kerala, amounted to infringement of its registered trade mark, the plaintiff, a company incorporated in the US and holder of registration of the mark "Crossfit", both as a word mark and a device mark, instituted the present suit before this Court, seeking a decree of permanent injunction, restraining the defendants, as well as all others acting on their behalf, from using, in the course of trade, the mark "Crossfit" and any other mark or label which was deceptively similar thereto, as well as to take down the website www.sfccrossfit.com and domain name sfccrossfit.com as well as all



representations of the words/marks “Crossfit”, both physical as well as on the internet.

2. It may be noted that the defendants in the present case are Mr. Renjith Kunnumal and Mr. Rohit M., both of whom have been stated, in the memo of parties, to be “trading as SFC Crossfit”.

3. Summons were issued in the suit, by this Court, on 1 June 2021. On 8 July 2021, this Court, holding that the plaintiff had succeeded in making out a *prima facie* case against the defendants, enjoined the defendants from using, in the course of trade, the mark “Crossfit” or any other marks/logos which were identical or deceptively similar to the said mark. The defendants were also directed to immediately take down from the website and domain name www.sfccrossfit.com as well as all listings, posts, pictures, etc. which mentioned the words/marks “Crossfit” from all sites on the internet including social media web pages.

4. On the ground that the defendants were disobeying the afore-noted order of interim injunction dated 8 July 2021, the plaintiff filed IA 13333/2022 before this Court under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC), praying that proceedings be initiated against the defendants for having committed contumacious disobedience of the court orders.

5. It was alleged that the gym, under the name “SFCCrossfit” was continuing to run at the premises indicated in the memo of parties,



even after the order of injunction was passed.

6. Photographs of the premises were also provided in the application, indicating use of the mark “Crossfit”, *inter alia*, by way of signage, hoardings and the like.

7. This court, vide order dated 24 August 2022, appointed an Advocate as a Local Commissioner to visit the premises of the defendants and to remove any infringing hoardings, billboards, display boards, advertisements, stationery, and signage etc., bearing the name/mark “SFC Crossfit” or any other mark which was deceptively similar to the plaintiff’s registered mark “Crossfit”.

8. The local commission was executed on 31 August 2022. The learned Local Commissioner, in his report, stated that certain hoarding, as well as other material bearing the mark “Crossfit” was found in the said premises, which he inventorised and seized.

9. Though the final report of the learned Local Commissioner does not specifically so say, the record of proceedings drawn up by the learned Local Commissioner, at the time of execution of the commission, seems to indicate that at the time of visit by the learned Local Commissioner, a class was running in the said premises. There is also reference, in the report of the learned Local Commissioner, to information, provided by a person in the premises, referring to one Renjith as the person for anything to be done in respect of the said premises, along with the phone number of Defendant 1. The following



paras from the on-the-spot report merit reproduction:

“8. I called up on the number “8943142187” as this was the number written on the boards and enquired from the gentleman who picked up the phone as to when the premises will open. I was told that it would open at 05.00 pm as the morning session closed at 11.00 AM.

12. On seeing us, a bearded gentlemen who did not reveal his name, walked up to the spot and asked us about the purpose of our visit. He stated that he is a person known to the Defendant Mr. Renjith. I stated that I have come from Delhi in relation to an ongoing case in Delhi High Court and that I needed to meet Mr. Renjith. At that point, the bearded gentlemen dialled a number and made me speak to a person who claimed to be Mr. Renjith. Mr. Renjith informed me that he is not in station and will contact his lawyer to reach the spot. He also informed me that he has stopped usage of “CROSSFIT” in any of his materials.

15. At this time Mr. Sreejith Cherote, Advocate reached the premises. He informed me that he was the counsel for SFC and had reached the premises since Renjith informed him that a commission is being executed at the premises. I requested him to accept a copy of the contempt petition as well as the order and sign in acknowledgment. He however, refused stating that he was not Mr. Renjith's Advocate and has no instructions to receive any document on his behalf.

17. Mr. Sreejith also informed me that the present premises are also being shut down by SFC in two months' time. At this time Boxing classes were being held at the premises. He provided his mobile number 9349110721 to me and stated that he is available for any information, as his office was nearby.

22. At that time a class was still going on and was being conducted by one person who said his name was “DADU” and mobile number was 8593912936. He said that he would be closing the premises for today and carrying the keys with him. He also confirmed, on being asked for Mr. Renjith's number that it is



8943192187.”

10. Neither of the defendants has chosen to file any written statement in response to the present suit. The assertions in the plaint have, therefore, gone untraversed. Even otherwise, the assertions in the plaint clearly make out a case of infringement, by the use of the mark “Crossfit” of the registered mark of the plaintiff.

11. In the aforesaid premises, in exercise of jurisdiction vested in this Court by order dated VIII Rule 10 of the CPC, I am of the opinion that a clear case exists for decreeing the suit in terms of the prayers contained therein.

12. As such, the suit is decreed in the following terms:

(i) There shall be a decree of permanent injunction restraining the defendants as well as all others acting on their behalf from using the mark “Crossfit” or any other mark/logo, which is identical or deceptively similar to the mark “Crossfit”, physically or virtually, as the name of a gym or in connection with any goods or services which are analogous thereto.

(ii) There shall also be a decree of permanent injunction restraining the defendants from using the domain name sfccrossfit.com or the website www.sfccrossfit.com or any other name domain name or website which is deceptively similar thereto.

(iii) The defendants shall also stand restrained from using



“Crossfit” or any other mark or word which is deceptively similar thereto on all posts, listings, pictures, promotional material etc. on any website or any other sites on which their presence exists on the internet.

(iv) The material seized by the learned Local Commissioner on 31 August 2022, which is presently with the Registry of this Court, shall be delivered up to the plaintiff.

13. Mr. Khan presses for punitive damages in this case.

14. The Court is inclined to award nominal damages. Accordingly, the court awards costs of ₹ 3 lakhs towards damages against the defendants.

15. The suit stands decreed accordingly.

16. Let a decree sheet be drawn up by the Registry.

I.A. 13333/2022 (under Order XXXIX Rule 2A of the CPC)

17. Learned Counsel for both the parties are heard. Orders are reserved.

C.HARI SHANKAR, J

SEPTEMBER 5, 2023

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