



2024:DHC:5787-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.08.2024

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RFA(OS)(IPD) 1/2023, CM Nos.39/2023, 40/2023 & 42/2023

**R. C. PLASTO TANKS AND PIPES
PVT. LTD.**

..... Appellant

versus

**GANESH GOURI INDUSTRIES
& ANR**

.....Respondent

Advocates who appeared in this case:

For the Decree Holder : Mr. J. Sai Deepak, Mr. Ajay Amitabh
Suman & Mr. Shravan Kumar Bansal, Advs.

For the Judgement

Debtors

: Mr. Salim A. Inamdar, Mr. Modassir H.
Khan & Ms. Shruti Kapur, Advs.

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HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. Being aggrieved by the judgment dated 20.02.2023, passed by the learned Single Judge of this Court dismissing the petition filed under Section 50 of the Copyright Act, 1957 seeking removal of the respondents' copyright registration (hereafter '**the impugned order**'), the appellant has preferred the present intra-court appeal under Section

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96 and Order 41 of the Code of Civil Procedure, 1908 (CPC), read with Rule 2 (e)/5(V)/10/29 of the IPD rules.

2. The appellant had sought removal of the copyright registration



bearing No. A-142047/2022 in art work titled “Gauri Aqua Plast” (Label) from the register of copyright.

3. Both the appellant and the respondents are engaged in the business of manufacturing, supplying, exporting range of water storage tanks apart from other products. The manufacturing and supplying of water storage tanks is the common business of the parties. The appellant claimed that it adopted the trademark “Plasto” which is a registered



mark and also an artistic label (copyright



registration A-142461/2022) and also

4. The respondent was granted registration on 20.05.2022 on an



artistic work being label

5. The challenge to the respondents copyright was dismissed by the learned Single Judge holding that the Appellant/Petitioner has failed to demonstrate that their label substantially covers the work comprising in the copyright registered in favour of the respondents. It was also held that there are substantial differences in competing copyright and no ground for cancellation is made out. The dismissal of the appellant’s challenge led to filing of the present appeal.

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6. The learned counsel for the appellant submitted that from the bare perusal, the similarity between the competing artistic work is apparent. He submitted that while evaluating the identity / similarity of the competing art work, the overall similarity has to be seen between the two works. He further submitted that the respondent was well aware of the marks and artistic work used by the appellant and had on an earlier occasion given an undertaking before the Nagpur Court that it will not use the mark “PLASTO” or any other mark similar or identical to the same on any of their products.

7. He vehemently contended that the learned Single Judge failed to appreciate that the parties in a suit filed before the Nagpur Court had entered into a settlement where the respondent had given a specific undertaking not to use the mark or the appellant’s Tagline “PLASTO HAI TOH GUARANTEE HAI” or any other mark which is deceptively similar to the appellant’s mark.

8. He submitted that the appellant is admittedly prior author / creator of the art work ‘PLASTO’. Its trademark in class 90 was registered way back on 05.09.2014. He contended that the respondent is trying to ride on its popularity and the impugned art work is a substantial copy of the appellant’s art work, including the smooth shaped corner and background colour. Strong reliance has been placed by the appellant on the settlement arrived at between the parties in the suit filed by the appellant before the Civil Court in Nagpur.

9. A Civil Suit being Suit No. 03/2018 was filed by the appellant alleging infringement of trademark. It was alleged that the respondent’s



mark / label at that time being is deceptively similar to



the appellant's trademark It is an admitted position that suit was decreed on 21.02.2019 on the basis of settlement arrived at between the parties. The main terms of the settlement as noted by the learned Single Judge are as under:

"a. The defendant agree that he will not use the mark "PLASTO" or defendant's Tagline/slogan "PLASTO HAI TO GUARANTEE HAI" or any other mark similar/ identical to the same on any of their product which are deceptively similar to the Plaintiffs business and to restrain from manufacturing, marketing, supplying, distributing, selling, trading, promoting the impugned products under the representation AQUA PLAST/ नाम ही गारंटी है or any other representation, which is identical to or deceptively similar to the plaintiffs registered mark, PLASTO, and / or from using in any manner, whatsoever, the plaintiffs trademarks as enlisted in paragraph 12 of the plaint and change their font which is similar to the plaintiff products, and will not use the tagline or slogan " नाम ही गारंटी है "

b. The Defendant agree to remove, delet, omit or obliterate all reference indicia, mention of the infringing representation from the products, promotional, material, dyes, lables, raw material etc. and give an undertaking of this compliance in writing, within seven days from the execution of the settlement deed.

c. That the products baring infringing mark shall be defaced/ destroyed by the defendant at their own cost. The Defendant agrees to unconditionally withdraw the trademark or copyright application or registration in respect to any mark, lable or logo, which is identical to or is deceptively similar to the Plaintiff's trademarks, within 10 days from the date of execution of this settlement. The Defendant would share a



copy of the withdrawal letter with the Plaintiff's counsel.

d. The Plaintiffs agrees that it would have no issue if the Defendant wishes to use the mark "AQUA PLAST" device/logo and/or wither word per se or in any other representation which is neither identical nor deceptively similar to the said trademark/lable of the plaintiff in the course of its business.

e. That the plaintiff undertakes not to take any objection for Registration of any mark logo/ word by defendant consisting of the word "PLAST" if the same is not infringing the logo/ word/ mark of the plaintiff in any whatsoever, and if any such objection is already raised than the same shall be withdrawn by the plaintiff forthwith."

10. It is, thus, the case of the appellant that the respondent despite giving an undertaking has adopted the deceptively similar work and the copyright was thus, erroneously registered.

11. The learned counsel for the respondent, on the other hand, submitted that there is no similarity between the appellant's copyright and the artistic work adopted by the respondent. He submitted that from the bare perusal of the competing works, no similarity can be found so as to entitle the appellant to seek removal of the copyright registration in favour of the respondent.

ANALYSIS

12. The Copyright Act, 1957, was enacted to give rights and recognition to the artistic works and literary work of the author. It gives the exclusive right, subject to provisions of the Act, to commercially exploit the said work. The right is infringed when any person, without



a licence granted by the owner of the copyright does anything, the exclusive right to do which is conferred on the owner of the copyright. Any person aggrieved can also file an application with the Registrar of Copyrights to seek rectification / removal of any work being registered. The infringement / reproduction does not necessarily have to be exact or verbatim copy of the original, if the same resembles with the original in large measure, it is sufficient to indicate that it is a copy. The test to determine is whether the viewer, on seeing both the works, would be of the opinion and get an impression that the subsequent work is a copy of the first work. At the same time, there cannot be any copyright over an idea or subject matter. The same idea can be developed in a different manner. The same in some cases can be an infringement of the trademark, but may not necessarily be an infringement of the copyright.

13. The test, therefore, is the visual appearance. On bare perusal of the competing works in the present case it is apparent that the same are not identical. The contention of the appellant is that the respondent in an earlier suit filed by the appellant for infringement of the trademark had undertaken not to use the mark similar / identical to the appellant's mark and, thus, the adoption of the present work is nothing but a small variation.

14. It is relevant to note that the only similarity in both the works is the appearance of the word "PLAST".

15. The petition before the learned Single Judge was filed under Section 50 of the Copyright Act, 1957 and the burden in such circumstances, therefore, is on the appellant to demonstrate that the



impugned copyright is not original thereby lacking creativity and is colourable imitation of the original work.

16. From the bare comparison of the two works that subsists in the label used by the parties, it is evident that both are distinct. The work used by the respondents in the opinion of this Court, cannot be considered as colourable imitation or substantive reproduction of the work of the appellant.

17. As noted above, the only common feature in both the works is the word “PLAST” which is admittedly a derivative of the word Plastic. As rightly observed by the learned Single Judge, there are various differentiating elements in both the works. The respondent uses a prefix “AQUA” with “PLAST”. The works also contains a graphical representation or alphabet ‘G’ which is styled as “Okay” in a hand gesture with enclosed three wavering lines indicating liquid. It also shows the word “Gouri” and a Tagline “NAAM HI KAAFI HAI” in Hindi with additional words being “Tanks, Pipe and Fitting”. The same cannot be called as a colourable imitation or substantial reproduction of



the appellant’s work being

18. The appellant relies upon the proceedings before the Nagpur Court to contend that the variation by the respondent on the mark which it had undertaken not to use would fall within the principle of Safe Distance Rule. The Safe Distance Rule is applied for the purpose of relieving the Court on the need to retry the dispute after the infringement case is decided since every small variation would lead to



the proceedings requiring the Court to adjudicate again. In the event, that the Court finds that merely a small variation has been adopted so as to defeat the purpose of injunction, the Court can interfere applying safe distance rule and pass an order without getting into a long drawn process of trying a suit again. The same is a tool in the hands of the Courts to enforce a decree of injunction and to prevent unfair trade practices. The same in the opinion of this Court is applicable where the party after having lost the injunction dispute, is not allowed to make a small variation to defeat the injunction.

19. As noted above, the parties in an earlier suit before the Nagpur Court had agreed on certain aspects. The respondent had agreed that he will not use the mark “PLASTO” or the appellant’s Tagline being “Plasto Hai To Guarantee” or any other mark similar / identical to the same.

20. The respondent at that time was selling its products under the representation “Aqua Plast” / “Naam Hi Guarantee Hai”. The appellant had agreed that it would have no objection on the respondent using the mark “Aqua Plast”. The appellant also undertook not to object on the respondent using the mark / logo consisting of word “Plast” as long as the same will not infringe the logo / mark of the appellant.

21. The plaintiff, in our opinion, cannot take any benefit of the undertaking given by the respondent in an earlier suit. When the broad features of the competing artistic works in the present case are compared, a mere commonality appears to be the colour and the generic shape of the label. The same in the absence of the broad features being



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similar is not sufficient to call the respondent's work as a colourable imitation or substantial reproduction of the appellant's copyright.

22. The Copyright Act, 1957 provides protection to the expression of an idea and not the idea itself. The colour blue being an idea behind using the work on a water tank. The learned Single Judge rightly appreciated the said aspects and held that the appellant has failed to prove that they were the original creator or owner of the work contained in the respondent's copyright.

23. In view of the above, we find no infirmity in the impugned judgment.

24. The present appeal is, therefore, dismissed.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

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