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

+ **FAO(OS) (COMM) 217/2024**

SOUTHERN INFOSYS LIMITEDAppellant

Through: Mr. Piyush Kaushik, Advocate.

versus

INFOSYS LIMITEDRespondent

Through: Mr. Peeyoosh Kalra, Mr. C.A.
Brijesh, Mr. Krishna Gambhir
Mr. Yashwant Singh, and Mr.
Ishith Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **23.10.2024**
CM APPL. 56458/2024 (for exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 56457/2024 (99 days delay)

Bearing in mind the disclosures made in the application, the delay of 99 days in filing the appeal is condoned.

Application stands disposed of.

FAO(OS) (COMM) 217/2024 & CM APPL. 56456/2024 (stay)

1. Southern Infosys Limited, the defendant in a suit instituted by the plaintiff-respondent, has approached this Court by way of the present appeal seeking to impugn the order dated 27 May 2024 in terms of which the learned Single Judge has issued an interim injunction restraining it from using the mark “Infosys” as part of its corporate/trade name. The injunction as framed reads as follows:-



“27. The Defendant is restrained from using the mark 'INFOSYS' as part of their corporate/ trade name 'Southern Infosys Limited' or in any other manner amounting to infringement of the Plaintiff's trademarks.

28. The Defendant is afforded a period of four months from the date of release of this order, to make the transition to a non-infringing tradename. Immediately after the expiry of the four months period, the Defendant shall cease the use of the mark 'INFOSYS,' as part of their trade name/ corporate name or in any other manner amounting to infringement of the Plaintiff's trademarks.”

2. The learned Single Judge has, at the outset, taken into consideration the plaintiff-respondent being the registered proprietor of the trademark “Infosys” and which registration as a word mark came to be granted on 15 July 1987 with a claimed use dating back to 01 March 1981. The details of the registrations as held by the plaintiff-respondent clearly predate that of the defendant’s adoption of the mark as would be apparent from a perusal of the table which forms part of the impugned judgment and is extracted hereinbelow:-

<i>“Trade Mark</i>	<i>Registration No. and Date of Application</i>	<i>Goods and service Details</i>
<i>INFOSYS</i>	<i>475267: 15th July, 1987</i>	<u><i>Class 9</i></u> <i>Computer Hardwares, Computer Interface Computer Peripherals, Electronic Telex Interface, and all goods covered in class 9</i>
<i>INFOSYS</i>	<i>475269: 15th July, 1987</i>	<u><i>Class 16</i></u> <i>Computer stationery, Computer manuals, Printed matters for computer, Instructional and teaching materials etc.</i>
<i>INFOSYS</i>	<i>484837: 27th January, 1988</i>	<u><i>Class 7</i></u>



		<i>Machines and machine tools and motors (not for land vehicles) included in class 7.</i>
Infosys	637315: 18 th August, 1994	<u>Class 9</u> <i>computer hardware, data modules, motion control devices, ware house management system, customer service management systems as used in banks, automatic teller machines, computerized interactive machines all being goods included in class 9. "</i>

3. The appellant appears to have adopted Infosys as part of its corporate name on 30 September 1998. The learned Single Judge has thereafter taken into consideration the commonality in the trade name itself coupled with both the plaintiff and the respondent being engaged in the pursuit of businesses pertaining to a similar class of goods and services. It was in the aforesaid backdrop that the Court ultimately came to observe that the business activities of the appellant “*significantly intersects with*” the technological areas protected under the Infosys trademark held by the respondent.

4. The Court has thereafter rendered the following significant observations:-

“10. As previously noted, Section 29(5) of the Act does not require the Plaintiff to demonstrate that the use of their trademark results in public deception or dilution of the mark. However, given the Defendant’s emphasis on the issue of trademark similarity, a brief examination of whether the marks ‘INFOSYS’ and ‘Southern Infosys Limited’ could confuse consumers is warranted. This assessment considers the visual, phonetic, and conceptual similarities between the Plaintiff’s trademark and Impugned tradename. Visually the Defendant’s tradename integrates the term ‘INFOSYS.’ Although the prefix ‘Southern’ might suggest some differentiation, ‘INFOSYS’ remains the dominant element of the name, closely mirroring the Plaintiff’s standalone trademark. On a



prima facie assessment, this visual similarity could lead consumers to perceive a connection between the two entities. On a prima facie view phonetically, the marks are nearly identical, as the pronunciation of 'INFOSYS' remains unchanged. The addition of 'Southern' does little to mitigate the strong phonetic impact of the shared term, potentially leading consumers to believe that 'Southern Infosys Limited' is a regional branch or an associated entity of the Plaintiff. On a prima facie view conceptually, both marks suggest an affiliation with information systems or technology-related services. While 'Southern' may imply a geographical distinction, it does not alter the primary technological connotation of the term 'INFOSYS.' ' This shared conceptual message reinforces the perception that the goods and services offered under 'Southern Infosys Limited' could be endorsed by or affiliated with the Plaintiff. In conclusion, on a prima facie assessment the combination of visual, phonetic, and conceptual similarities between the marks, on a prima facie assessment significantly raises the likelihood of consumer confusion, suggesting that 'Southern Infosys Limited' might be mistakenly associated with the Plaintiff."

5. One of the objections that appears to have been addressed before the learned Single Judge and was reiterated before us was of an alleged concealment of facts by the respondent who had failed to advert to the cease and desist notice which had been issued on 27 April 2020 and had not been disclosed along with the plaint. Dealing with this aspect, the learned Single Judge has pertinently observed that the appellant failed to establish how an alleged concealment of the kind adverted to above could be said to have materially influenced the outcome of the case. In our considered opinion, the plaintiff-respondent could have not derived any benefit from concealing the issuance of the cease and desist notice. In fact, that would have been a circumstance which would operate in its favour while pressing its case of infringement.

6. More significant are the following prima facie conclusions which have come to be recorded by the Court:-



“16. The Plaintiff adopted the trademark ‘INFOSYS’ in 1981 and the first registration of the mark ‘INFOSYS’ was granted in their favour in 1987. Given the Plaintiff’s long and continuous use, it has been declared a ‘well-known’ trademark. However, for addressing the issue of infringement, Defendant’s date of adoption and Plaintiff’s status, as on the said date, will be the sole criteria for the Court to rule on the instant application. The Defendant concededly adopted the term ‘Southern Infosys Limited’ in 1998, after more than 17 years of the Plaintiff’s use and subsequent registration of the mark ‘INFOSYS.’ Even though the Plaintiff’s trademark may not have acquired the status of ‘well-known’ trademark at that point of time, but Defendant’s adoption raises significant concerns, particularly in the context of trademark rights awareness. The Defendant, by virtue of operating in the same industry and the public listing of the company, had constructive notice of the Plaintiff’s registered and well-known trademark. It is a fundamental expectation that entities undertake thorough due diligence before adopting a corporate or trade name, especially when entering fields populated by established trademarks.”

7. Of fundamental significance is the fact of Infosys itself having attained the status of a well-known mark which was duly noticed by the learned Single Judge in Para 2.5 of the order impugned before us. Para 2.5 reads as under:-

“2.5. This Court has recognized and declared ‘INFOSYS’ as a ‘well-known’ mark as a testament to the trademark’s extensive recognition, distinctiveness, and the substantial reputation it holds across various sectors. Besides, the trademark registry has also declared ‘INFOSYS’ as a well-known trademark. This status not only enhances the protection afforded to ‘INFOSYS,’ but also emphasizes its significant impact and established presence in the marketplace.”

8. In view of the aforesaid, we find no justification to interfere with the order impugned.

9. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 23, 2024/RW