



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO. 68 OF 2023
(Akash Ghanshyam Parwani Vs. Mohammad Yusuf Abdul Gaffar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. C.A. Babrekar, Counsel for the appellant.
Mr. M.G. Sarda, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 4, 2025

Heard.

2] The issue involved is of infringement of trademark. The Co-ordinate Bench of this Court in the case of *Ramesh Khatanmal Lulla Vs. Mohammad Yusuf Abdul Gaffar* [Appeal Against Order No. 58/2017 decided on 9/3/2018] has, in context with considering application seeking interim relief, made following important observations and also rendered a finding, which reads thus :

“14. The aforesaid position of law laid down by the judgments of the Hon’ble Supreme Court and this Court show that when it is a case of infringement of registered trade mark, the Court has to examine whether the mark of the defendant is identical or similar to the registered trade mark and once it is found that the essential features of the registered trade mark has been copied by the defendant, irreparable injury or loss that the plaintiff would suffer has to be presumed. This is because a case involving infringement of registered trade mark concerns his statutory right and its violation if prima facie demonstrated by the plaintiff, should suffice for grant of an order of temporary injunction, because the loss or injury is presumed and at the prima facie stage of consideration of an application for temporary injunction, proof of

actual loss is not necessary. The moment it is found that the defendant has used a mark which is identical or similar to the registered trade mark, loss or dilution of the good will that the plaintiff enjoys on the basis of registered trade mark has to be presumed. In such a situation, the balance of convenience clearly tilts in favour of the plaintiff. Apart from this, the plaintiff has to establish comparative strength of its case in order to successfully claim an order of grant of temporary injunction. In order to reach a finding, the Court also has to examine whether the mark of the defendant is identical to that of the registered trade mark or it can be said to be deceptively similar as defined by Section 2(h) of the aforesaid Act and in arriving at a finding on the same, the Court has to see whether a customer of average intelligence and imperfect recollection would be misled by the mark of the defendant and confuse it with the registered trade mark of the plaintiff due to over all similarity in the essential features with the registered trade mark.”

3] As could be seen, the Court has held that when the case is of infringement of registered trademark, the Court has to examine whether the mark of the defendant is identical or similar to the registered trademark, and once it is found that the essential features of the registered trademark has been copied by the defendant, irreparable injury or loss that the plaintiff would suffer has to be presumed.

4] The argument of the learned Counsel for the petitioner – plaintiff that the respondent – defendant has not produced details of loss suffered by him because of the alleged infringement is, therefore, of not avail.

5] Further, in the aforesaid judgment, the Court also held that in order to reach a finding of infringement, the Court has to examine whether the mark

of the defendant is identical to that of the registered trademark, and in arriving at a finding on the same, the Court has to see whether a customer of average intelligence and imperfect recollection would be misled by the mark of the defendant and confuse it with the registered trademark of the plaintiff due to overall similarity in the essential features with the registered trademark.

6] In the present case, the respondent is running a business of 'Phapda Powder' under the trademark 'गाय छाप', which carries a picture of cow. The petitioner is involved in the business of 'Farsan Powder' in the name and style as 'गाय' having picture of cow.

7] If one has to compare these two pictures/marks, what is prominent is cow and the word 'गाय' and also 'powder'. Thus, a common man may not, therefore, be able to distinguish the minor discrepancies as regards the words 'Phapda' and 'Farsan'. The trial Court's view that the two marks are such that carries similarity in essential features and may confuse the customer, is a possible view. The order granting injunction, thus, does not suffer from any illegality.

8] No interference, therefore, is called for in the impugned order. The appeal, therefore, is dismissed. It is, however, clarified that the trial Court shall decide the case on its own merits and will not get influenced by the observations made by this Court.

(ANIL L. PANSARE, J.)

Sumit