

**RAJASTHAN HIGH COURT**

(Jaipur bench)

Before :- Narendra Kumar Jain, J.

S.B. Civil Misc. Writ Petition No. 3696 of 2011. D/d. 22.3.2011.

M/s. Goyal Electrical - Petitioner

**Versus**

M/s. Baid Rotomoulders Pvt. Ltd. and Another - Respondent

**Equivalent Citation:** 2011 AIR (Raj) 151 : 2011(48) PTC 125 : 2011 W.L.C. 597 : 2011(6) R.A.J. 409

For the Petitioner :- Prakash Thakuriya, Advocate.

For the Respondent :- **G . D . Bansal** , Advocate.

**Constitution of India, 150, Article 226 - Civil Procedure Code, 1908, Order 39, Rule 1, Order 7, Rule 10 - Infringement of registered trademark 'POLYCON' - Suit for permanent injunction - temporary injunction granted - Challenged by writ petition - Held, since there were some pleadings in main suit with regard to "passing off action", therefore, trial Court directed plaintiff to amend its suit restricting its claim with regard to infringement of registered trademark "POLYCON" and not for "passing off action" - Consequently, while granting injunction, plaintiff was directed to file fresh suit, which amounts to filing of amended suit. [Para 6]**

ORDER

Heard learned counsel for the parties.

2. Defendant petitioner has preferred this writ petition challenging the impugned order dated 1-11-2010 (Annexure-6) passed by Additional District and Sessions Judge (Fast Track) No. 7, Jaipur city, Jaipur whereby trial Court allowed application of the plaintiff respondent for temporary injunction under Order 39 Rule (1) and (2) C.P.C. and also directed that the plaint be returned under Order 7 Rule 10 to the plaintiff to re-submit fresh plaint only in respect of its case of infringement of registered trademark "POLYCON" and not for "Passing off action".

3. Submission of learned counsel for the petitioner is that trial Court committed an illegality in passing the order of injunction against the defendant and simultaneously in passing the order for return of plaint to the plaintiff to re-submit the fresh plaint only in respect of its case of infringement of registered trademark "POLYCON". He submitted that when suit was going to be returned, then injunction order should not have been passed against the petitioner. He, therefore, submitted that order passed by the trial Court is without jurisdiction and the same is liable to be set aside by this Court.

4. Learned counsel for the plaintiff respondent defended the impugned order and submitted that plaintiff's suit was exclusively for infringement of registered trademark "POLYCON" and not for "Passing off action". However, the defendant raised objection about some pleadings

with regard to passing off action, therefore, trial Court, while dealing with the objection of defendant, passed an order that so far as suit with regard to infringement of registered trademark "POLYCON" is concerned, the same is maintainable, but so far as other pleadings regarding "Passing off action" are concerned, the same is not maintainable. He submitted that objection raised by the defendant was not tenable, as there was no prayer in the suit with regard to facts relating to "Passing off action", but in view of finding and direction of the trial Court, the plaintiff has already amended and filed its suit, restricting its pleadings with regard to infringement of registered trademark "POLYCON" and deleting the pleadings with regard to "passing off action", therefore, there is no illegality in the order passed by the trial Court. He further submitted that so far as grant of injunction by trial Court is concerned, the petitioner is having alternative remedy to challenge the same by way of an appeal under Order 43 Rule (1) C. P. C. and the said order of injunction cannot be challenged by way of writ petition directly before this Court. He, therefore, submitted that there is no merit in this writ petition and the same deserves to be dismissed.

5. I have considered the submissions of learned counsel for the parties and examined the impugned order passed by the trial Court.

6. A copy of plaint, written statement and other documents including order sheet of trial Court dated 1-11-2010 have also been placed on record with the writ petition. From the same, it is clear that suit for permanent injunction filed by the plaintiff was in respect of infringement of registered trademark "POLYCON". Since there were some pleadings in the main suit with regard to "passing off action", therefore, trial Court while exercising its powers directed the plaintiff to amend its suit restricting its claim with regard to infringement of registered trademark "POLYCON" and not for "passing off action". Consequently, while allowing the application under Order 39 Rule 1 and 2 C.P.C. and granting injunction, trial Court also directed the plaintiff to file fresh suit, which amounts to filing of amended suit. Trial Court used the words "Fresh suit" instead of "Amended suit". In fact, contents of order clearly show that direction has been given for filing amended suit after deleting the pleadings with regard to "Passing off action".

7. So far as grant of injunction by trial Court is concerned, the petitioner is at liberty to file an appeal against the same under Order 43 Rule 1 C. P. C. and contest the matter on merits.

8. In these circumstances, I do not find any error of jurisdiction or illegality in the impugned order with regard to direction issued to the plaintiff to file amended suit only with regard to infringement of registered trademark "POLYCON". So far as merits of the case with regard to grant of injunction is concerned, the petitioner will have a liberty to file an appeal under Order 43 Rule 1 C. P. C.

9. With the aforesaid observations, writ petition is dismissed in limine.

Petition dismissed.