

RAJASTHAN HIGH COURT

Before :- Bela M. Trivedi, J.

S.B. Civil Misc. Appeal No. 4652 of 2012. D/d. 3.10.2013.

Navyug Commercial - Appellant
Versus
Maheshwari Tea Company Pvt. Ltd. - Respondent

Equivalent Citation: 2013(56) PTC 596 : 2014(1) W.L.N. 598 : 2014(1) DNJ 63 : 2014(2) R.A.J. 416 : 2014(1) W.L.C. 219

For the Appellant :- Prateek Kasliwal, Advocate.

For the Respondent :- Rajendra Prasad and **G . D . Bansal** , Advocates.

Civil Procedure Code, 1908, Order 39 - Rule 1 and 2 - Interim injunction - Infringement of action - Appellant was using the label with the word "Mangaleshwari", which was phonetically and visually deceptively similar to the image with the word "Maheshari" registered under the Act - Trial court had allowed the application - Appellant was restrained from using the word "Mangaleshwari" for his business of tea and coffee and also from using the packing material similar to the registered trademark of the respondent - No illegality or infirmity in the impugned order.

[Para 4]

Cases Referred :

[Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, 1965 SCR \(1\) 737 : PTC \(Suppl\)\(2\) 680\(SC\).](#)

[Keshav Kumar Aggarwal v. NIIT Ltd., 2013 \(54\) PTC 178 \(Del\).](#)

[Ramdev Food Products \(P\) Ltd. v. Arvindbhai Rambhai Patel, \(2006\) 8 Supreme Court Cases 726 : 2006 \(33\) PTC 281 \(SC\).](#)

ORDER

Bela M. Trivedi, J. - The present appeal, filed under Order 43, Rule 1 (r) of CPC is directed against the order dated 18.10.2012 passed by the Additional District Judge (Fast Track) No.3, Metropolitan Jaipur, (hereinafter referred to as "the trial court"), in Civil Misc. Application No.214/2012, whereby the trial court has allowed the application of the respondent-plaintiff under Order 39, Rule 1 & 2 of CPC, restraining the appellant from using the word "Mangaleshwari" for his business of Tea & Coffee and also from using the packing material similar to the registered trademark of the respondent-plaintiff.

2. It appears that the respondent-plaintiff has filed the suit being No.222/2011 against the appellant-defendant, alleging interalia that the respondent's-company was using the trademark "Maheshari" in specific artistic manner, label, colour scheme, layout, and design

since 1961 and that word "Maheshari" alongwith the color scheme and design was also registered under the Trademark Act, (hereinafter referred to as "the said Act"). It was further alleged that the appellant-defendant was using the packing material and label with the word "Mangaleshwari", with the color scheme and design deceptively similar to the trademark registered by the respondent-plaintiff. The respondent-plaintiff had also filed the application under Order 39, Rule 1 & 2 seeking temporary injunction, which was resisted by the appellant-defendant by filing the reply, alleging interalia that the defendant was in the business of trading, selling and manufacturing the tea since 1991 with name of "Mangaleshwari" and that the defendant had also moved the application for getting its mark registered under the said Act. The trial court vide the impugned order dated 18.10.2012 allowed the said application of the respondent for temporary injunction as stated hereinabove.

3. It has been sought to be submitted by the learned counsel Mr. Prateek Kasliwal for the appellant that the trial court could not have restrained the appellant from using the word "Mangaleshwari" for the business of tea & coffee, when the respondent had not registered the word "Maheshari" and it was the whole image, which was registered under the said Act. He also submitted that the appellant is using the word "Mangaleshwari" since last more than 20 years and his business has been stopped with the injunction granted by the trial court. According to him, it would be matter of evidence which could be appreciated by the trial court after both the sides have led their evidence, as to whether the appellant should be permanently restrained from using the word "Mangaleshwari" or not, and if the temporary injunction as granted by the trial court is continued, that would tantamounting to allowing the suit at the interim stage. However, the learned counsel Mr. Rajendra Prasad for the respondent has vehemently submitted that the appellant has not placed any document before the trial court to show that the appellant was carrying on the business in tea since last 20 years as alleged. According to him, from the original labels used by the appellant as well as the respondent it was very apparent that the appellant was using the label with the word "Mangaleshwari", which was phonetically and visually deceptively similar to the image with the word "Maheshari" registered under the said Act. Relying upon the decision of the Delhi High Court in case of **Keshav Kumar Aggarwal v. NIIT Ltd., 2013 (54) PTC 178 (Del)** the learned counsel Mr. Prasad has submitted that when the label mark is registered, it cannot be said that the word mark contained therein is not registered.

4. Having regard to the submissions made by the learned counsels for the parties, and to the impugned order passed by the trial court, it clearly transpires that the respondent-plaintiff had established prima facie before the trial court that their trademark "Maheshari" as shown in the image registered in the registration certificate was being used since 2003 and that the said certificate was valid upto May 2013. From the original labels produced by the learned counsel for the respondent for the perusal of the Court, it transpires that not only the word "Mangaleshwari" used by the appellant is phonetically and visually similar to the word "Maheshari", but the entire label including the colour scheme, get up and design used by the appellant is also deceptively similar to the registered image of the label used by the appellant. The learned counsel for the respondent has rightly relied upon the decision of the Delhi High Court, in which it has been observed as under:-

"36. For the purpose of proving infringement, the main ingredients to be established under Section 29 of the Act are that the plaintiff's mark is registered under the Trade mark Act, the defendant's mark is identical with or deceptively similar to the registered trademark of the plaintiff and the defendants use of the mark is in the course of trade in respect of the goods covered by the registered trademark. Section 29, dealing with. infringement

of registered trademarks, mandates that a registered trade mark is infringed by a person who not being the registered proprietor uses in the course of a trade mark which is identical with, or deceptively similar to, the trade mark, in relation to any goods in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

5. In **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, 1965 SCR (1) 737 : PTC (Suppl)(2) 680(SC)**, the Hon"ble Apex Court in the following paras held as under:

"In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark, would be immaterial."

6. In view of the afore stated settled legal position, this Court is not inclined to interfere with the discretionary order passed by the trial court, which is even otherwise legal and proper. At this juncture, a very pertinent observation made by the Apex Court in case of **Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel And Others, (2006) 8 Supreme Court Cases 726 : 2006 (33) PTC 281 (SC)** is reproduced as under:-

"126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again. [See for **example Wander Ltd. v. Antox India (P) Ltd., Laxmikant V. Patel v. Chetanbhai Shah** and **Seema Arshad Zaheer v. Municipal Corpn. Of Greater Mumbai.**]

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion."

7. In that view of the matter, the Court does not find any illegality or infirmity in the impugned order passed by the trial court. However, having regard to the facts and circumstances of the case, the trial court is directed to expedite the hearing of the suit.

8. The appeal being devoid of merits deserves to be dismissed and is accordingly dismissed.