

RAJASTHAN HIGH COURT

(D.B.)(Jaipur Bench)

Before :- Prem Shankar Asopa, J.

S.B. Civil Misc. Appeal No. 3305 of 2011. D/d. 30.7.2012.

M/s Shri Tirupati Industries - Appellant

Versus

M/s Tirupati Industries - Respondent

Equivalent Citation: 2013 AIR (Raj) 15 : 2013(2) R.A.J. 475

For the Appellant/Defendant :- Anil Upman, Advocate.

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

Trade Marks Act, 1999 Sections 134(c), 135 Civil Procedure Code, 1908, Order 39 Rules 1 and 2, - Grant of temporary injunction - Validity - Defendant was restrained from using Trade Mark "M/s. Shri Tirupati Industries" - Appeal against, by defendant - Plaintiff was doing business of grains and lentils since 1987 under the brand name "M/s Tirupati Industries" - Defendant started the same business in the same city under brand name "M/s Shri Tirupati Industries" one year prior to filing of suit - Held, there was prima facie case of passing off - Difference of "Shri" would also be covered under partial or full or synonymous use of Tirupati Industries causing irreparable injury to plaintiff with balance of convenience lying in favour of plaintiff - No interference warranted - Appeal dismissed.

[Para 9]

JUDGMENT

Prem Shanker Asopa, J. - Heard learned counsel for the parties.

2. By this appeal-appellant has challenged the order dated 24th March, 2011 passed by the Additional District Judge No. 5, Jaipur Metropolitan, Jaipur in civil misc. injunction application No. 9/2011 filed in Civil Suit No. 22/2011 whereby appellant has been restrained from using the Trade Mark "M/s. Shri Triupati Industries" partly or fully or connected name for sale of lentils and grains itself or through its agents.

3. Briefly stated the facts of the case are that the plaintiff respondent has filed a civil suit with the averments that he is running his business of grains and lentils in the name and title of M/s Triupati Industries in V.K.I. Area, Jaipur for so many years and this firm was registered on 7th July, 1987 with the commercial Taxes Department. It was further averred that M/s. Triupati Industries is a big name in the production and sale and purchase of grains and lentils but appellant has started the same business in the name and title of M/s Shri Triupati Industries in Chandpole Grain Mandi., Jaipur one year before filing of the civil suit and, therefore, is taking illegal advantage of credibility of his firm by using same name. Along with the suit the plaintiff respondent also filed an application for grant of temporary injunction.

4. appellant filed reply to the application stating therein that is running its business in different area and work of firm is of a grosser and also dealing in trading of lentils.

5. The trial court after hearing both the parties came to the conclusion that the plaintiff respondent is doing business of grains and lentils since 7th July, 1937 whereas firm is doing business since last one year on the date of filing of the suit. Both the firms are doing business in Jaipur and simple business of grosser will not distinguish the business of the plaintiff respondent as the business of lentils is the same which is covered by the term "passing off", therefore, there exists a prima facie case in favour of the plaintiff respondent. Both the firms are doing business at Jaipur of the Unties and simple difference of "Shri" will also cover under the partial or full or synonymous of Triupati Industries which will cause irreparable loss to the plaintiff and balance of convenience also exists in favour of the plaintiff.

6. Submission of the counsel for appellant is that appellant is doing business of general merchant and not doing the business of sale and purchase of lentils in the same area which does not amount taking of advantage of credibility of the plaintiff. However, counsel for appellant also submits that since the injunction order is causing hardship to the appellant, therefore, the trial court may be directed to decide the suit within reasonable period.

7. Submission of counsel for the plaintiff respondent is that the trial court has passed the order in accordance with the provisions of Section 134(c) of the Trade Marks Act, 1999 and has rightly covered the present case by the term "passing off" and further both the firms are doing business at Jaipur.

8. I have gone through the memo of appeal and further considered the aforesaid submissions of counsel for the parties.

9. On consideration of the judgment of the trial court I am of the view that the trial court has rightly decided issue of prima facie case by considering the fact that the plaintiff respondent is doing business of grains and lentils since 7th July, 1987 whereas appellant is doing business since last one year on the date of filing of the suit. Both the firms are doing business in Jaipur and simple business of grosser will not distinguish the business of plaintiff respondent as the business of lentils is the same Which is covered by the term of "passing off" as envisaged under Section 134 of the Trade Marks Act, 1999 and further mere difference of "Shri" will also cover under partial or full or synonymous of Triupati Industries which will cause irreparable loss to the plaintiff respondent and the balance of convenience also exists in favour of the plaintiff respondent.

10. There is no force in this Misc. appeal and the same is, dismissed. However, the trial court is directed to decide the civil suit within a period of six months from the date a copy of this order is placed before it by appellant.

Appeal dismissed.