

MANU/DE/2489/2007

Equivalent Citation: 2007(98)DRJ499, (2007)ILR 6Delhi83, MIPR2007(3)368, 2007(35)PTC742(Del)

IN THE HIGH COURT OF DELHI

FAO (OS) 124-25/2005

Decided On: 12.09.2007

Appellants: **QRG Enterprises and Anr.**
Vs.

Respondent: **Surendra Electricals and Ors.**

Hon'ble Judges/Coram:

Vikramajit Sen and S.L. Bhayana, JJ.

Counsels:

For Appellant/Petitioner/plaintiff: N.K. Kaul, Sr. Adv., Pratibha M. Singh and Shruti Kakkar, Advs

For Respondents/Defendant: Valmiki Mehta, Sr. Adv., Manmohan Singh, Sanjeev Sindhvani, Amit Gaurav Singh and Aakansha Sharma, Advs.

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Trade Marks Act, 1999 - Section 2(1), Trade Marks Act, 1999 - Section 29(5); Trade and Merchandise Marks Act, 1958 - Section 2(1)

Cases Referred:

Rustom Cavasjee Cooper v. UOI 1970(1) SCC 248; Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd. MANU/DE/2122/2007; Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel (2006) 8 SCC 726 : AIR 2006 SC 3304 : 2006(2) CTMR 1(SC); Ramnik Vallabhdas v. Taraben Pravinlal Madhvani 2004 (1) SCC 497; Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd. MANU/DE/1366/2002; Wander Ltd. v. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727; Laxmikant V. Patel v. Chetanbhai Shah (2002) 3 SCC 65; Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai (2006) 5 SCC 282

Disposition:

Appeal dismissed

Citing Reference:

Mentioned 7

Case Note:

Intellectual Property Rights - Trade Marks - Scope of Appellate interference in interlocutory Orders - plaintiff-Appellants filed suit seeking injunction against Defendants from using the word or name 'Havell's' as its trade mark or even as part of its corporate name - Learned Single Judge rejected the application for interim relief holding that no objection was raised by plaintiffs in the use of Havell's as corporate name till long - Hence, present appeal - Whether the present Court as a Appellate Court can interfere in grant of injunction by lower Court - Held, grant of an interlocutory injunction is in exercise of discretionary power and hence, Appellate Courts usually would not interfere with the same unless perverse or contrary to the law - Neither of the situations manifests themselves in the present case - Appeal dismissed

Ratio Decidendi:

"Appellate Court cannot substitute decision of the lower Court by its own view unless finds the same to be perverse or contrary to the law."

JUDGMENT

Vikramajit Sen, J.

1. This Appeal is directed against the Order of the learned Single Judge passed on 26.4.2005 whereby the application of the plaintiffs'/Appellants for interim relief had been rejected. The Suit had been filed by the Appellants seeking a Decree of permanent injunction restraining the Defendants from using the word or name 'Havell's' as its trade mark or even as part of its corporate name. The learned Single Judge has recorded that

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the Defendants admit the proprietary rights of the plaintiffs over 'Havell's' so far as the trade mark is concerned, but dispute the plaintiffs' claim for exclusive use of 'Havell's' as part of the corporate name also. After taking note of the pleadings of the parties and the undisputed documents, the learned Single Judge noted that Havell's Pvt. Ltd. (Defendant No. 6) was in existence since 1956, fourteen years prior to when Haveli Ram Gandhi executed the Assignment Deed dated 9.10.1971 relied upon by the plaintiffs. At that point of time Haveli Ram Gandhi was a Director of Havell's Pvt. Ltd. and would have possessed specific knowledge of the fact that Havell's was part of the corporate name of Defendant No. 6. The Assignment Deed conveyed only the right to the trade mark Havell's, explicitly excluding the goodwill of the business. Even Defendant No. 5, namely, Havell's Electronics Pvt. Ltd., had been incorporated as far back as in 1974. Objections had not been raised from any quarter including the Petitioners with regard to the continued use of Havell's in the corporate name of either of these Defendants. Mr. Lalit Seth, who controls these two Defendant Companies, had merely acknowledged the exclusive rights of the plaintiffs to the trade mark Havell's, in its letters dated 11.10.1971 and 6.11.1971. Significantly, these letters were written on the Letterhead of Havell's Private Limited. Even after the assignment of the trade mark Havell's on 9.10.1971, Haveli Ram Gandhi himself continued to transact business in the name and style of Havell's Electricals Sales Corporation. Ten years later, when the Agreement dated 13.4.1981 was executed, Haveli Ram Gandhi had no authority to bind Defendant Nos. 5 and 6. Between 1971 and 1981 the Assignees/plaintiffs did not remonstrate against the use of the word Havell's as part of the trade name of any business enterprises belonging to Haveli Ram Gupta or of the contesting Defendants. The learned Single Judge also came to the prima facie view that the plaintiffs or their predecessors-in-interest raised no objection to the use of Havell's in the corporate name till 1988. The decision in Rustom Cavasjee Cooper v. UOI MANU/SC/0011/1970 : [1970]3SCR530 was applied. In these circumstances the learned Single Judge found it fit and proper to preserve the status quo.

2. We have already had the occasion of considering the interesting but complex question of the use of a word or name as part of a corporate name in Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd. MANU/DE/2122/2007 (hereinafter referred to as ATLAS). We had accepted the Appeal of the plaintiffs by restraining the Defendants from using the name or word 'Atlas' as part of their corporate name. We had preferred the view that ordinarily the interests of the consumer are paramount, and if the use of a word or name as part of a corporate name would result in creating confusion in the mind of a prospective customer, an injunction should issue against the new user. In arriving at our conclusion we had carefully dissected, digested and applied the Judgment of the Supreme Court in Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel MANU/SC/3725/2006 : 2006(33)PTC281(SC) . We had analysed the precedents dealing with acquiescence and honest and concurrent user. However, in the factual matrix of ATLAS we were of the opinion that that plaintiffs could not be seen to have acquiesced in the Defendants' use of 'Atlas' as part of its corporate name. No useful purpose shall be served in repeating in detail the same analysis of the law. It will only lead to making this Judgment prolix.

3. Mr. N.K. Kaul, learned Senior Counsel for the Appellants, has contended that the definition of the word 'mark', presently contained in Section 2(1)(m) of the Trade Marks Act, 1999, has not undergone any change as it corresponds exactly to the definition contained in Section 2(1)(j) of the Trade and Merchandise Marks Act, 1958. The definition of the word 'Mark' includes, inter alia, a name, ergo Havell's (we shall presume for the present purposes that it is a name) could constitute a mark. The fallacy in the argument is that, at the interlocutory stage, there is no logical justification for the conclusion that even this name constitutes a Mark as postulated by Section 2(1)(m). Although 'trade mark' has been defined in Section 2(1)(zb) of the Trade Marks Act, as meaning a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others, the word trade name or corporate name has not been dealt with in that statute. This absence becomes crucial for the simple reason that whilst the Defendants have not laid any challenge to the plaintiffs' claim for exclusive use of the word 'Havell's' in or as their trade mark, they have strenuously contended that they are entitled to its use in their trade name.

4. The Deed of Assignment dated 9.10.1971 specifically states that Haveli Ram Gandhi conveys to the Assignees [family of Qimat Ram Gupta] by sale, transfer and assignment the proprietary rights in the registered Trade Mark No. 167434 and trade mark in the pending applications Nos. 272378 and 272379 but without the goodwill of the business. As has already been mentioned above, considerable emphasis has been laid on these words by the learned Single Judge and in our view rightly so. It will be worthwhile to reiterate the definition given to the term goodwill in Cooper, namely, that -'Goodwill of a business is an intangible asset. It is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable . We also draw upon the discussion of a definition of 'goodwill' available in Ramnik Vallabhdas v. Taraben Pravinlal Madhvani MANU/SC/0891/2003 : (2004)1SCC497 . Thereafter, in paragraph 57 of Ramdev it has been digested that normally goodwill will encompass a trade mark, but there can be exceptions thereto. The learned Single Judge had concluded that the use of the word goodwill encompasses the use of the word 'Havell's' in the trade name. Prima facie, since the Assignment Deed in terms conveys only the trade mark, at the interlocutory stage all other rights must be held not to have been transferred. This is the first factor which distinguishes this case from ATLAS.

5. We also note that in the fourth recital of the Agreement dated 13.4.1981 the term 'trade name' finds mention along with trade mark for the first time. At the interlocutory stage this inclusion, after the passage of one decade, speaks volumes, but against the plaintiffs.

manupatra 6. So far as acquiescence or honest or concurrent user is concerned it cannot be ignored that the use of the word 'Havell's' in the corporate name predated the Assignment Deed by almost one and a half decades. Knowledge of the user of this name as part of a trade name was contemporaneous to the Assignment Deed dated 9.10.1971 in terms of the two letters dated 11.10.1971 and 6.11.1971 authored by Mr. Lalit Seth. In neither of these documents was there any admission or acknowledgment by the concerned Defendants that 'Havell's' would not be used as part of the trade/corporate name. The author, Mr. Seth, merely undertakes to stop further manufacture of any product under the Trade Mark No. 167484. The plaintiff will have to prove, through recording of evidence, that even the trade/corporate name fell within the sweep of Assignment Deed. A prima facie case has not been established such as would justify the passing of interlocutory orders in favor of the plaintiff.

7. The Suit which we are presently concerned with has been filed in 2004, but after two suits previously instituted in 1998 and 1990. It is noteworthy that in those two suits temporary injunction against use of the word Havell's in the trade name had not been prayed for. The learned Single Judge has rightly and justifiably kept this feature in perspective. The plaintiffs/Appellants will have to satisfy the Trial Court that the principles of constructive res judicata do not foreclose the claim for an injunction in the third suit. Learned Senior Counsel for the plaintiffs/Appellants had endeavored to rely on precedents to the effect that a mistake made by a counsel should not irreparably damage the interests of a litigant. The Trial Court will indubitably go into this question. However, it cannot be contended that at the interlocutory stage these principles disqualify the plaintiffs from seeking interlocutory relief.

8. It is trite that even a good case for the issuance of an ad interim injunction would be defeated by delay. After a delay of over three decades there would be no justification for passing an ad interim injunction which thereby would upset the status quo. Ramdev is distinguishable at least on two important grounds. Firstly, the litigation had commenced within a couple of years of the cause of action having arisen. Secondly, the two Assignment Deeds are diametrically different.

9. Mr. Kaul has argued that Section 29(5) of Trade Marks Act, 1999 pointedly prohibits the use of 'Havell's' by the Defendants as part of their trade/corporate name. This is indeed a conundrum, as the language of this sub-section is pre-emptory when compared even with its precursor, viz. Sub-section (1). A dishonest or deliberately confusing use of a trade mark is fraught with much more mischief than a trade name. While granting permission pertaining to trade/corporate name Courts can circumscribe user in a manner which ensures that the trade name is not used with the objective of causing confusion viz-a-viz the connected trade mark. This was ensured by the learned Single Judge who had decided Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd. MANU/DE/1366/2002, and indeed was accepted by the Defendant/Respondent. Even so far as Section 29(5) of the Trade Marks Act, 1999 is concerned the learned Single Judge has observed that the concept of concurrent user and acquiescence would constitute a legitimate defense. This prima facie view calls for no interference by us.

10. The scope of Appellate interference in interlocutory orders had been discussed by us in some detail in ATLAS. We had recounted and we reiterate that in Ramdev, after taking due note of all the precedents, the law was enunciated in these words.

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. MANU/SC/0595/1990, Laxmikant V. Patel v. Chetanbhai Shah MANU/SC/0763/2001 : AIR2002SC275 and Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai MANU/SC/2420/2006 : (2006)5SCC282].

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. However, in this case the courts below proceeded on a prima facie misconstruction of documents. They adopted and applied wrong standards. We, Therefore, are of the opinion that a case for interference has been made out.

11. In the conclusion we had said that the Trial Judge has the discretion to arrive at a decision and the dicta in Wander Ltd. v. Antox India P. Ltd. MANU/SC/0595/1990 commends, if not commands, non-interference with. An Appellate Court cannot substitute the decision of the lower Court by the view that it prefers, unless it finds the former to be perverse or contrary to the law. Neither of these situations manifests themselves before us. We think it imperative to clarify that the Defendants/Respondents are not entitled or authorised to employ their trade name on their products with such prominence or ubiquity as to transform it into a trade mark, since it will then confuse a customer possessing a modicum of intelligence into purchasing the Defendants/Respondents products believing them to be that of the plaintiffs/Appellants. Needless to say the views expressed herein, as is the opinion of the learned Single Judge, are only prima facie in nature.

12. Hence, we find no merit in the Appeal and it is dismissed. All pending applications also stand dismissed.

manupatra There shall be no orders as to costs.

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