

MANU/DE/1678/2008

Equivalent Citation: MIPR2009(1)105, 2009(39)PTC16(Del)

IN THE HIGH COURT OF DELHI

FAO(OS) 331/2007 and CM Nos. 15020 and 11857-58/07 and 1136, 4200-01, 4214-15 and 8434/08

Decided On: 26.11.2008

Appellants: **Ram Krishan and Sons Charitable Trust Ltd.**

Vs.

Respondent: **IILM Business School**

Hon'ble Judges/Coram:

Vikramajit Sen and S.L. Bhayana, JJ.

Counsels:

For Appellant/Petitioner/plaintiff: Arun Jaitley, Sr. Adv., Pratibha M. Singh and Naveen Chawla, Advs

For Respondents/Defendant: C.M. Lall and Chitra Sharma, Advs.

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Trade Marks Act, 1999 - Section 27(2), Trade Marks Act, 1999 - Section 134, Trade Marks Act, 1999 - Section 135; Code of Civil Procedure, 1908 (CPC) - Section 148A, Code of Civil Procedure, 1908 (CPC) - Order 39 Rule 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rule 2

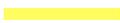
Cases Referred:

Anil Rai v. Vinay Rai CS(OS) No. 294/2006; Rajappa Hanamantha Ranoji v. Sri Mahadev Channabasappa (2000) 6 SCC 120 : 2000(4) Scale 692; S.P. Chengalvaraya Naidu v. Jagannath AIR 1994 SC 853; The Advocate General, State of Bihar v. Madhya Pradesh Khair Industries AIR 1980 SC 946; Delhi Development Authority v. Skipper Construction JT 1995(2) SC 391; Satish Khosla v. Eli Lilly Ranbaxy Ltd. 71 (1998) DLT 1; The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasgupta AIR 1960 SC 1352; Martin Burn Ltd. v. R.N. Banerjee AIR 1958 SC 79; Wander Ltd. v. Antox India P. Ltd. (1990) Supp SCC 727; Manjunath Anandappa v. Tammanasa (2003) 10 SCC 390; Ramdev Food Products Pvt. Ltd. v. Arvind Rambhai Patel AIR 2006 SC 3304; Lakshmikant V. Patel v. Chetanbhai Shah (2002) 3 SCC 65; Seema Arshad Zaheer v. MC of Greater Mumbai (2006) 5 Scale 263

Disposition:

Application dismissed

Citing Reference:

Discussed		6
Mentioned		7

Case Note:

Intellectual Property Rights - Trade mark - Infringement of - Family dispute over the use of the trade mark "IILM" by the family members — plaintiff-Appellant filed suit for permanent injunction, restraining passing off, damages, unfair competition etc. and an ex parte order had been granted restraining the Defendants-Respondents from passing off their Institution using the mark "IILM" in any manner deceptively similar to that of the plaintiff - But this order has been recalled by the Single Judge, holding, inter alia, that because of concealment and deliberate misstatement of material facts the plaintiff would be required to be non-suited and rejected the Application for interim relief - Hence, the present appeal - Held, party who approaches the Court for discretionary relief, should candidly and forthrightly narrate all material facts in the Complaint and/or the application for injunction - In the present case, for several years both the adversaries were enjoying the use, jointly and/or severally, of the mark/name "IILM" with or without prefixes — Hence, no single member is entitled to its exclusive use, until and unless an agreement to this effect has been inked and adhered to by all the necessary parties - Further, parties are not entitled to seek an adjudication of the partition of their family in an action for passing off — Prima facie case had not been made out or did not exist in favour of the plaintiff - Single judge rightly held so - Appeal dismissed

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Civil - Interlocutory matters - Role of Appellate Court - Held, Appellate Court not to interfere in interlocutory matters except where the discretion has been exercised in a perverse manner, that is, which no reasonable man would adopt - Impugned Order does not manifest any aberration of these pervasive proportions - Appeal dismissed

Ratio Decidendi:

Party who approaches the Court for discretionary relief, should candidly and forthrightly narrate all material facts in the Plaint and/or the application for injunction.

JUDGMENT

Vikramajit Sen, J.

1. This Appeal assails the Order dated 30.7.2007 of the learned Single Judge, holding, inter alia, that because of concealment and deliberate misstatement of material facts the plaintiff would be required to be non-suited; that such a plaintiff has no equity in his favour and is disentitled to discretionary relief. The Application for interim relief filed under Order XXXIX Rules 1 and 2 was dismissed.

2. The subject matter agitated in the Plaint, filed under Section 27(2) read with Sections 134 and 135 of the Trade Marks Act, 1999, was for permanent injunction, restraining passing off, damages, unfair competition etc. Initially, by Order dated 23.7.2007 an ex parte order had been granted restraining the Defendants (Respondents before us) from passing off their Institution using the mark 'IILM' in any manner deceptively similar to that of the plaintiff. It was this injunction that was recalled in terms of the impugned Orders. A reading of the Plaint will disclose that the Prayers centred upon the use of the mark 'IILM'. In other words, the family disputes, inter se, Mr. Anil Rai and Mr. Vinay Rai, sons of Late Shri Ram Krishan Kulwant Rai, were not in question in the subject proceedings. The family disputes had already been brought before this Court in CS(OS) No. 294/2006 titled Anil Rai v. Vinay Rai. This was the Suit seeking mandatory and permanent injunction for the implementation of the Family Arrangement dated 19.3.2000.

3. It has been argued before us that the ex parte ad interim injunction granted in favour of the plaintiff (Appellant before us) was vacated solely on the ground of suppression of material facts, but this argument is not entirely correct. The learned Single Judge has returned findings, inter alia, to the effect that 'That it had been falsely stated in paragraph 13 of the plaint that the plaintiff had gained knowledge that the Defendant was running an Institute with the mark 'IILM' as a prefix or suffix only on 9.7.2007. That 'IILM had been referred to in CS(OS) 294/2006 not merely as an acronym for a larger name i.e. Institute for Integrated Learning and Management as well as Rai Schools as assets of the trust. That the plaintiff ought to have disclosed relevant details of the prior suit. That the approval of the All India Council for Technical Education (AICTE) since 1999 had no bearing on the claim of either Mr. Anil Rai or Mr. Vinay Rai to the rights of user of the acronym IILM. That the close blood relationship of the two adversaries should have been clearly pleaded in the Plaint. That the claim over IILM as an Institute would be adjudicated in CS(OS)294/2006.

That in filing the Plaint by Ram Krishna Kulwant Rai Charitable Trust the plaintiff had succeeded in its concerted effort to prevent the Defendant from receiving fair notice in accordance with requirements of the provisions of Section 148A of the CPC.

4. It needs to be emphasised that the party who approaches the Court for discretionary relief, nay any relief, should candidly and forthrightly narrate all material facts in the Plaint and/or the application for injunction. While this may not be an imperative in their dealings and actions prior or posterior to the filing of the lis, it is an implacable and undilutable necessity in litigation. The Court, therefore, need not detain itself on shortcomings or subterfuges adopted by the parties in their actions unless these actions leave no room for debate that a genuine doubt could have been created in the mind of the concerned litigant.

5. The learned Single Judge has relied on several cases, including *Rajappa Hanamantha Ranoji v. Sri Mahadev Channabasappa* MANU/SC/0404/2000 : (2000)6SCC120 , *S.P. Chengalvaraya Naidu v. Jagannath* MANU/SC/0192/1994 : AIR1994SC853 . *The Advocate General, State of Bihar v. Madhya Pradesh Khair Industries* MANU/SC/0504/1980 : 1980CriLJ684 , *Delhi Development Authority v. Skipper Construction* MANU/SC/0686/1995 : 1995CriLJ2107 and of the Division Bench of this Court in *Satish Khosla v. Eli Lilly Ranbaxy Ltd.* MANU/DE/0763/1998 : 71(1998)DLT1 , all of which call for strict action to be taken against the party guilty or perpetrating a fraud on the Court or, in any way, misleading the Court. It is beyond cavil that any party guilty of such an act stands disentitled to the grant of any equitable relief and on this score, therefore, we must uphold the impugned Order.

6. The feature that ought not to be forgotten is that the dispute between parties revolves around the use of the mark or acronym 'IILM'. A holistic reading of the impugned Order discloses that had the learned Single Judge learnt or been apprised of the common heritage, lineage and rights of the two adversaries, it would inexorably and inevitably have come to the conclusion that a prima facie case had not been made out or did not exist in favour of the plaintiff. It appears from the records and is the common ground before us that one of the earliest educational institutions opened by the Rai Family was the Institute for Integrated Learning and Management in New Delhi, in respect of which All India Council for Technical Education (AICTE) approval had been duly obtained. It is also prima facie evident that the mark or name 'IILM' is an acronym of the said educational

manupatra institution. The uncontroverted position is that a host of educational institutions had been established either by the patriarch, namely, Shri Ram Krishan Kulwant Rai, father of the warring families of his two sons, namely, Mr. Anil Rai and Mr. Vinay Rai or collectively by the undivided family. It appears to us that once it is manifestly clear that both parties were using the acronym 'IILM', neither of them is legally entitled to restrain, restrict or foreclose the other from its use. For several years both the brothers were enjoying the use, jointly and/or severally, of the mark/name 'IILM' with or without prefixes. Therefore, it is wholly irrelevant whether the institutions which were using 'IILM' were being governed or controlled by the family members of Mr. Anil Rai and Mr. Vinay Rai. If from the inception, 'IILM' was used exclusively by either the plaintiff or the Defendant, it would assume importance for adjudication of the claim of the common law relief or remedy of passing off. It is this thread that we find woven throughout the fabric of the impugned Order. The position would alter if by agreement between the litigating adversaries exclusive use of 'IILM' is devised.

7. The parties are not entitled to seek an adjudication of the partition of their family in an action for passing off. This would be germane only to CS(OS)294/2006. Therefore, we need not look into the two Family Settlements dated 7.2.2000 and 19.3.2000 which are hotly contested. It is for this reason that we have resolutely declined to read the two Family Arrangements despite it being insisted upon by Mr. Lal, learned Counsel appearing for the Respondent. We refrain from doing so for the reason that it is not the position of the Defendant that the terms of these Family Arrangements are acceptable to him. Indeed, in the course of hearings before us Mr. Jaitley, learned Senior Counsel for the Appellant, had immediately responded to Mr. Lal's repeated reference to the Family Arrangements by stating that the plaintiff is ready and willing to completely implement its terms. On our query, Mr. Lal has clarified that the Defendant harbours the grievance that the Family Arrangements did not fairly and equitably divide the assets of the Rai Family. We cannot but condemn the approbation and reprobation on the part of the Defendant. This, however, does not detract from the position that 'IILM' was commonly used by all the members of the Rai Family and hence at the present stage no single member is entitled to its exclusive use, until and unless an agreement to this effect has been inked and adhered to by all the necessary parties. For these reasons we are in agreement with the learned Single Judge that a prima facie case does not exist in favour of the plaintiff.

8. It stands clarified in *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasgupta* MANU/SC/0331/1960 : (1960)IILLJ39SC and *Martin Burn Ltd. v. R.N. Banerjee* MANU/SC/0081/1957 : (1958)ILLJ247SC that - 'While whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence'. To this we are compelled to clarify that there may be multitude of cases and myriad scenarios where it is not possible for the Court to conclusively accept or reject the case presented by the plaintiff or the Defendant. It is conceivable that the Court is unable to arrive even at any preponderant opinion or conclusion. The present case presents such a situation since both the parties had exercised and enjoyed the common right to the use of the trade name 'IILM'. It was, therefore, a case where a prima facie case has not been disclosed and accordingly an interim injunction is not justified.

9. So far as the Caveat is concerned, we cannot conclusively and affirmatively agree with the Defendant that by filing the action in the name of the Trust the plaintiff has violated Section 148A of the Code of Civil Procedure, 1908 in letter or in spirit. The ownership or control of the plaintiff Trust is again a matter which will have to await the delivery of the final judgment in the relevant suit.

10. The role of the Appellate Court in interlocutory matters invariably involves the exercise of discretion. As has been spelt out in *Wander Ltd. v. Antox India P. Ltd.* MANU/SC/0595/1990 and *Manjunath Anandappa v. Tammanasa* MANU/SC/0248/2003 : [2003]2SCR1068 the Appellate Court would be ill-advised to substitute its understanding or appreciation of the factual matrix with that of the original forum. The opinion of the Apex Court to this effect is evident from the following passage from *Ramdev Food Products Pvt. Ltd. v. Arvind Rambhai Patel* MANU/SC/3725/2006 : 2006(33)PTC281(SC) :

128. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored 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, *Lakshmikant V. Patel v. Chetanbhai Shah* MANU/SC/0763/2001 : AIR2002SC275 and *Seema Arshad Zaheer v. MC of Greater Mumbai* MANU/SC/2420/2006 : (2006)5SCC282 .

129. 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 it had considered the matter at the trial stage it would have come to a contrary conclusion.

11. These precedents proscribe interference in Appeal except where the discretion has been exercised in a perverse manner, that is, which no reasonable man would adopt. The impugned Order does not manifest any

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12. For these manifold reasons we find no error in the impugned Order. The Appeal as well as all the pending applications are dismissed but with no order as to costs.

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