
(2018) 08 DEL CK 0227

In the Delhi High Court

Case No : Company Suit (COMM) 7 OF 2018

A & A Dukaan Financial Services Pvt. Ltd

APPELLANT

Vs

Abhishek Kohli & Others

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 13A Rule 2, Order 13A Rule 4, Order 13A Rule 6, Order 39 Rule 3

Citation : (2018) 08 DEL CK 0227

Hon'ble Judges : MANMOHAN, J

Bench : Single Bench

Judgement

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MANMOHAN, J: (Oral)",

I.A.10783/2018,

1. Today in Court, learned counsel for the plaintiff has handed over a photocopy of an application filed under Order XIII A Rules 2, 4 and 6 of CPC",

seeking summary judgment on 09th August, 2018. The original application has been numbered by the Registry at the instance of the Court and placed",

on record. Since the defendant is ex parte, the said application is taken up for hearing and disposal.",

CS(COMM) 7/2018 & I.As.101/2018, 2789/2018",

2. It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement, passing off, dilution, damages/account",

of profit in relation to the defendants' use of registered trademarks and domain name belonging to the plaintiff. The prayer clause is reproduced,

hereinbelow:-,

â??(a) decree of permanent injunction restraining the Defendant Nos.1 and 2, their principal officers, servants, agents, dealers, distributors,"

franchisees and anyone acting for and on their behalf from infringing the Plaintiffâ??s registered and otherwise well-known trademarks,

â??bankbazaarâ?? and â??bankbazaar.comâ??, whether in isolation or in combination with any other word or words;"

(b) decree of permanent injunction restraining the Defendant Nos.1 and 2, their principal officers, servants, agents, dealers, distributors, franchisees",

and anyone acting for and on their behalf from using the infringing domain name (www.bankbazaarloan.com), or any other name or phonetically,"

visually or otherwise deceptively similar to the Plaintiffâ??s registered and otherwise well-known trademarks â??bankbazaarâ? and,

â??bankbazaar.comâ??, whether in isolation or in combination with any other word or words;"

(c) decree of permanent injunction against the Defendants from transferring, alienating or offering for sale the infringing domain to any third party and",

from creating any third-party interest in the said domain name and directing Defendant Nos.3, 4 and 5 to maintain status quo in relation to the domain",

name www.bankbazaarloan.com by keeping the same on hold till prayers (a), (b) and (d) are granted;"

(d) decree of mandatory injunction ordering the Defendants to transfer the domain name www.bankbazaarloan.com to the Plaintiff without any,

charge/fees/price from the Plaintiff;,"

(e) order rendition of accounts by the Defendant Nos. 1 & 2;,"

(f) decree of damages of Rupees Two Crores (Rs.2,00,00,000/-) in favour of the Plaintiff and against the Defendant Nos. 1 & 2 for the infringement",

of the Plaintiffâ??s trademarks, passing of the Plaintiffâ??s Domain Name and for dilution of the Plaintiffâ??s goodwill and reputation; and",

(g) direct the Defendant Nos. 1 & 2 to handover to the Plaintiffs all materials including stationery, brochures, visiting cards, letterheads, pamphlets,"

etc. which bear the infringing domain name â??bankbazaarloan.comâ?? or the infringing mark â??bankbazaarloanâ??;,"

(h) award costs of this suit in favour of the Plaintiff including fair/reasonable legal costs/counselâ??s fees, as may be deemed appropriate, against the",

Defendants;,"

(i) Pass any such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.â??,

3. Vide order dated 04th January, 2018, this Court granted an ex parte ad interim injunction in favour of the plaintiff and against the defendants.",

The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-,

â??Consequently, till further orders, defendants No.1 and 2, their directors, proprietors, servants, agents, assigns, representatives, successors,"

distributors, franchisees and anyone acting for and on their behalf are restrained from advertising, promoting or in any manner using, transferring,"

alienating or offering for sale the domain name www.bankbazaarloan.com and from creating third party interests in any manner in the said domain,

name or any other name phonetically, visually or otherwise deceptively similar to plaintiffâ??s registered trade marks â??bankbazaarâ? and",

â??bankbazaar.comâ?? whether in isolation or in combination with any other words.,

The defendants No.3 to 5 are also directed to freeze or mandatorily stop operation of the domain name www.bankbazaarloan.com and to maintain,

status quo by keeping the said domain name on hold till further orders.,

Let the provisions of Order 39 Rule 3 CPC be complied within two weeks.,

Order dasti under the signature of Court Master."""

4. On 18th April, 2018, defendant no. 3 was deleted from the array of parties. Since despite service, none appeared for the defendant nos. 1 and 2,the",

said defendants were proceeded ex-parte on 07th August, 2018.",

5. Learned counsel for the plaintiff states that he has instructions not to press for prayers (e)to (g) of the plaint. The statement made by learned,

counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.,

6. This Court is of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in Satya,

Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508 has held as under:-",

â??I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way,

of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being",

verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of",

examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the,

plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.â??,

7. The relevant facts of the present case are that the plaintiff is engaged in the business of online technology driven market for aggregation, display",

Period,Views

Jan-Dec, 2014",18421836

Jan-Dec, 2015",43727760

Jan-Dec, 2015",91596470

Jan-Dec, 2015",120240923