
(2017) 11 DEL CK 0324

In the Delhi High Court

Case No : Civil Suit (COMM) No. 1345 Of 2016

Aaloke Surie

APPELLANT

Vs

Prabhu Ram Verma & Ors

RESPONDENT

Date of Decision : 20-11-2017

Acts Referred:

Trade Marks Act, 1999 — Section 2(zg)

Citation : (2017) 11 DEL CK 0324

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Mohan Vidhani

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. Arguments have been heard in the suit. Despite of none has appeared on behalf of Defendants. Hence, Defendants were proceeded ex parte vide

order dated 23.11.2015.

2. The plaintiff has filed the present suit seeking a decree of permanent injunction against the defendants for infringement of the registered Trade

Mark/label of the plaintiff â??SURIE POLEXâ?? and for claiming rights in their registered Trade Mark.

3. It is the contention of the plaintiff that he is a renowned manufacturer and marketer inter alia in abrasives, polishing, scouring as washing

preparations, polishing stones, bleaching preparations and other substances for laundry use, and also the polishing machines and stone processing

machines, machinery and couplings and belting (except for vehicles), wax etc. for past several decades carrying on the business under the name and

style of M/S SURIE POLEX as its sole proprietor.

4. It is contended by the plaintiff that he adopted the said mark SURIE POLEX AND POLEX in respect of aforesaid goods in the year 1987 and it is

being used in respect of S logo since 2006.

5. It is further contended by the plaintiff that he has various registrations in different classes in India . It is also stated that the plaintiff has consistently

and continuously carried out the business for more than twenty seven years and in the process its mark SURIE POLEX and POLEX have acquired

the leadership status in the top end of the market in their product category and the same is considered epitome of quality which other brands in the

market aspire to reach. Details of the sales figures of the plaintiff under the aforesaid trademark are mentioned in para 6 of the plaint.

6. It is further contended that the plaintiff has advertised the said trademark by various mass media. Details of the advertisement figures of the

plaintiff are mentioned in para 7 of the plaint.

7. It is contended by the plaintiff that the aforesaid trademarks have acquired a very valuable goodwill and reputation on account of superior quality of

goods. It is further contended that on account of prior, continuous and long user of the said trademarks coupled with huge sales and advertisement, the

said trademark has become WELL KNOWN within the meaning of Section 2(zg) of the Trade Marks Act, 1999.

8. It is contended that plaintiff came to know in the second week of September, 2014 about selling of similar goods by defendants under the trademark

â??Ss SURIE SHAKTI POLEXâ?. The plaintiff tried to buy the goods under the said trademark but was unsuccessful to get the same. It is further

contended that the plaintiff procured goods of defendant no. 1 having above mentioned impugned mark with the help of the Notary Public. It is stated

that the plaintiff also came across registration of the trademark â??Ss SURI SHAKTI SOLID ABRASIVEâ? by the defendant no.1. It is also

contended that the name and address mentioned on the packing of the defendant is that of defendant no.3 as stated in the memo of parties.

9. It is contended that the defendant no.1 is also trading under name and style of â??M/s Verma Power Tools & Electricalsâ? and â??Solid Abrasive

and Chemical Industries (India)â?.

10. It is further contended that the impugned mark â??Ss Suri Shakti Solid

Abrasiveâ? of defendant no.1 was published in Trade Marks Journal no.

1592 dated 10.06.2013 which somehow inadvertently skipped the eyes of the plaintiff which resulted in the registration of the same as no opposition to the same was filed.

11. It is the contention of the plaintiff that the impugned mark clearly amounts to infringement and passing off of the trademarks of the plaintiff. It is

contended that the plaintiff has the sole right to use the marks SURIE POLEX, SURIE, POLEX and its similar marks due to long and continuous use.

12. It is also contended that the plaintiff has acquired immense goodwill and reputation among the public and that his goods are also available on e-

commerce portals like www.alibaba.com, www.indiamart.com and www.corporateonline.com. Therefore, due to priority in adoption, long and

continuous use and extensive sale and advertising, the said trademark has come to connote the goods of the plaintiff.

13. It is the contention of the plaintiff that defendants have no reason to adopt the identical/deceptively similar marks as that of plaintiff as the very

source of adopting the first name of mark i.e â??SURIEâ? is surname (â??SURIâ?) of plaintiff which he has derived from his forefathers. Hence, it

is urged that the plaintiff is using his own â??surnameâ? which itself is distinctive in nature.

14. Mr. Aaloke Surie has led evidence as PW 1/A. He has stated that he adopted the distinctive trade mark/label SURIE POLEX and POLEX in

respect in the year 1987 and has been continuously using the same in respect of the goods since August, 1987. He also stated that he adopted the S

logo in using his marks/labels SURIE POLEX and POLEX in respect of the same continuously since 2006. The copies of Indian registration

certificates of the trademark are exhibited as EX.PW1/1 to EX.PW1/19; registration certificates in China are Ex.PW1/21 to PW1/25 (OSR). Certain

Sale bills under the aforesaid trademarks are exhibited as EX.PW1/26 to PW1/75 and the advertising bills as EX.PW1/76 to PW1/105. Further, he

stated that the said trademark has become WELL KNOWN within the meaning of Section 2(zg) of Trade Marks Act, 1999.

15. Mr. Suresh Kumar Agarwal, Notary Public appointed by Government of India, has led evidence as PW 2/A. He has stated that he purchased

certain goods from M/s Orion Sharma Power Tools Co. who was selling the goods

being abrasives under the trade mark SURI SHAKTI POLEX and

Angle Grinder Pads under the trademark UNIO POLEX on 20.09.2014. The notary report issued by PW2 dated 20.09.2014 is exhibited as EX.

PW2/1; cash memo of goods as EX. PW2/2 and photographs of articles as

16. PW3, Ms. Himani, Data Entry Operator, Registrar of Trade Marks, has on 23.09.2016, before the Joint Registrar, stated that she has brought the

certificate of registration of trademarks registered in favour of the plaintiff which are collectively exhibited as EX.PW3/1(colly.). Certified copy of

defendantsâ?? trademark is exhibited as EX.PW3/2.

17. In view of the averments made in the plaint and the un-rebutted evidence filed by the Plaintiff, the Plaintiff has established that he is the registered

owner of the said trade mark SURIE, SURIE POLEX and the S logo, thus he has a statutory right to the exclusive use of the same. The mark Ss

SURIE SHAKTI POLEX used by the defendants is structurally, visually and phonetically identical to the registered trade mark of the Plaintiff. There

is a clear violation of the rights of the Plaintiff. It is also clear that the plaintiff has been using its mark since 1987. The act of the Defendants lacks

bonafide. The goods and services are sold under the deceptively similar trade mark will also lead to passing off the goods and services of Defendants

as that of the Plaintiff.

18. Accordingly, a decree is passed in favour of the plaintiff and against the defendants in terms of Para 35(i), (ii) and (iii) of the prayer. I also pass a

decree in sum of Rs. 5 lacs for damages to be paid by the defendants to the plaintiff.

19. The Plaintiff shall be entitled to costs of the suit. Suit stands disposed of accordingly. All pending applications, if any, stands disposed of.