
(2012) 08 DEL CK 0376
In the Delhi High Court
Case No : CS (OS) 1399 of 2012

Consolidated Contractors International Company S.A.L.	APPELLANT
Vs	
Consolidated Construction Consortium Ltd. and Others	RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) 193 DLT 217 : (2013) 53 PTC 641

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Girija Krishan Varma, Ms. Lobna Arif and Ms. Pushpa Sinha, for the Appellant; Saurabh Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.

IA No. 9246/2012 (under Order 39 Rule 1 & 2 CPC) and IA No. 11336/2012 (under Order 39 Rule 4 CPC)

1. The plaintiff before this Court is a foreign company, registered in Lebanon, and it operates under the trade name "Consolidated Contractors Company". The plaintiff, which is a multinational company, claims business presence in India since 1986 and is stated to be engaged in construction, engineering, procurement, development and investment activities through numerous subsidiaries and group companies. Defendant No. 1 is a company incorporated under Indian Companies Act, whereas defendant No. 2 is a partnership firm. The partners of defendant No. 2 are the promoters of defendant No. 1 company, which is engaged in the business of building, construction, installation and related activities. The plaintiff company claims to be using the logo reproduced below since 1952 when it conceived and adopted its unique trading name and distinctive logo. Since their adoption, the plaintiff has continuously and uninterruptedly used the same trading name and logo, which have over the years become globally recognized and associated with the plaintiff in the international

business community and amongst consumers.

The logo, according to the plaintiff, incorporates a unique stylized design and pattern comprising of (a) a total of five triangles; (b) an inverted triangle in the center; (c) an artistically designed symbol within the inverted triangle; (d) the letters "CCC" geometrically and strategically placed within smaller triangles.

The letters "CCC" stands for "Consolidated Contractors Company". The plaintiff claims to have holding copyright in the aforesaid artistic logo, which accordingly to the plaintiff, is being used in India since the year 1985. The plaintiff has also applied for registration of the aforesaid logo to the Registry of Trademarks and its application is stated to be pending.

The defendants are using the following logo for the purpose of their business:

In the earlier years, the defendants have been using only the above reproduced triangle with 3C in it, as its logo.

It is alleged that the impugned logo and trade name, which are identical to the trade name and logo of the plaintiff, has been adopted by the defendants with mala fide intentions to piggy back on the reputation and goodwill of the plaintiff. The defendant No. 2 had applied for registration of the impugned trade name and logo on 14.2.2006 and the notice of opposition have already been filed by the plaintiff. The proceedings with respect to those applications are pending before the Trademark Registry. The plaintiff has sought injunction restraining the defendants from infringing its copyright and passing off their business activities as those of the plaintiff. An interim injunction claiming similar reliefs has been sought in IA 9246/2012. The defendants have filed IA 11336/2012 for vacation of interim order of this Court dated 15.5.2012 whereby defendants were restrained from using the impugned logo.

2. Defendants have filed written statement contesting the suit and have taken preliminary objection that the suit is liable to be dismissed since the plaintiff has concealed the material facts including that the parties were discussing a coexistence agreement. On merits, it is alleged that defendant No. 1 was incorporated in the year 1997 and since then it is continuously engaged in the business of construction, engineering procurement and project management. It is stated that defendant No. 1 has its credit, several well known projects such as IT Parks, Biotech Parks, Resorts and Hotels, Commercial, Industrial & Institutional structures and infrastructure facilities etc. Defendant No. 1 alleges to have completed 628 projects and working on 167 ongoing projects. It has 2008 employees on its roll and about 27,000 people working in its various projects, through contractors. Defendant No. 1 is also a company listed in National Stock Exchange and Bombay Stock Exchange. The turnover and profit of defendant No. 1 for the last seven years is stated to be as follows:

Result of the Year

Total Sales (Rupees in Lakhs)

Profit Before Tax (Rupees in Lakhs)

2011-12

201,012.47

1,393.80

2010-11

213,665.71

9,593.13

2009-10

195,004.35

14,807.46

2008-09

175,586.13

10,501.62

2007-08

144,809.06

13,135.91

2006-07

85,471.20

6,194.80

2005-06

42,645.40

2,904.30

It is further alleged that the defendants have genuinely adopted the impugned logo/ trademark in the year 1997 and their name and mark have acquired high visibility and tremendous reputation and goodwill in the country. It is further alleged that the defendant No. 2 has applied for registration of the aforesaid trademark in classes 9, 16, 19, 36, 37 and 42 vide trade mark application nos. 1421413, 1421414, 1421415, 1421416, 1421417 and 1421418 respectively, with the user of 31st May, 1997.

It is also alleged that the word "consolidated" is commonly used and there are as many as 224 companies using the word "consolidated". The names of such companies have been given in the written statement. It is further alleged that if the plaintiff has presence in India since 1985 or 1996, it is unimaginable that it

came to know about defendants only in June, 2008, when the parties are in the same line of business and defendant No. 1 has continuously and extensively been using the impugned name and logo for its goods/ services and has been regularly advertising the same. The defendants have also alleged that plaintiff has acquiesced in use of impugned name and logo and cannot now object to it build immense goodwill and reputation using the aforesaid name and logo and the public at large recognizes the defendants with that name and logo.

3. The case of the defendants is that the impugned name and logo is being used by it since 1997 and if the plaintiff was actively present in India and had opened a liaison office in Mumbai in the year 1986, as is claimed by it, it could not have been unaware of the said use, particularly when the said name and logo was being used publicly and was also being publicized from time to time, particularly when the parties are in the same business. The defendants have placed on record the various letters issued by them, to certain persons offering appointment with defendant No. 1-company. The first such letter dated 22.08.1997 is written to one Mr X. Arul Anandan in Chennai and the other such letter dated 01.09.1997, written to one Venkat Ramana B.N. The other letters placed on record were written in February, 1998 and November, 1998. On all these letters, the name of defendant No. 1 as also the logo comprising 3C in a triangle has been printed on the top of the letters. The defendants have also placed on record documents which show that the name Consolidated Construction Consortium Limited and the logo of triangle with three "Cs" in it was being used by defendant No. 1 on commercial correspondence. They have placed on record a letter dated 29.08.2002, placing work order on one M/s Alfab Products. Another work order was placed on Shakti Met-Dor Limited on 20.02.2002. The first commercial letter using the said name and logo is dated 17.08.1999 written to Restile Ceramics Limited with respect to construction of a bottling plant and supply of vitrified tiles. There are letters written on 25.09.1999, 21.03.2001, 01.01.2000, 02.11.1999, 14.03.2001, 26.12.2001 and 28.01.2002. On all these letters, the logo of a triangle with 3 Cs in it as well as the name of defendant No. 1 has been prominently printed on the top of the letter.

The defendants have also placed on record various annual reports of defendant No. 1-company for the year 1997-98 onwards. The name of defendant No. 1 as well as the logo of a triangle with 3 Cs in it has been used on all these reports. The defendants have also placed on record an advertisement published in Hindu dated 18.06.2003 where the name of defendant No. 1 as well as the above-referred logo has been printed on the top of the advertisement. This advertisement clearly shows that the said name and logo were also being publicized at least from June, 2003. The said name and logo was also used on various other advertisements published by defendant No. 1 in the newspapers. One such advertisement is dated 10.05.2006 and another such advertisement is dated 30.10.2007 published in the Financial Express.

Defendant No. 1-company came out with a public issue of its shares in September, 2007 and huge advertisements with respect to issue were published in newspapers on 20th and 21st September, 2007. The copies of those advertisements have been placed on record. The financial results of defendant No. 1-company were also published in newspapers from time to time and in the advertisements containing financial results, the aforesaid name and logo have been prominently printed on the top of the advertisements dated 30.10.2007.

Since the plaintiff as well as defendant No. 1 are engaged in similar business activities, it would be rather difficult to accept that the plaintiff remained unaware of the use of the above-referred name and logo by defendant No. 1, prior to defendant No. 1 applying to the Trademark Registry for registration of the impugned logo in its name. Computed from the year 1997 when the defendants started use of the logo comprising 3C in a triangle, there is delay of as many as 15 years in invoking the jurisdiction of this Court. Computed from 29.08.2002 when the commercial letter having the abovereferred logo prominently printed on it was written by defendant No. 1 to M/s. Alfab Products, there is a delay of about ten years in invoking the jurisdiction of this Court. Computed from 17.08.1999 when defendant No.1 wrote a commercial letter to Restile Ceramics Limited, there is delay of about 13 years in coming to this Court since the abovereferred logo was printed on this letter as well.

4. Admittedly, defendant No. 1 applied for registration of the impugned logo on 14.02.2006 and notice of opposition was filed by the plaintiff before Trademark Registry. In fact, this is plaintiff's own case that it was on publication of the impugned logo by the Registrar of Trademarks that it came to know of the use being claimed by the defendants and accordingly filed objections before Trademark Registry. The present suit having been filed in May, 2012, there is delay of about 04 years in approaching this Court even if it is presumed that the plaintiff came to know of use of the said logo only in the year 2008.

5. It is settled proposition of law that delay in seeking legal redressal though not a relevant factor in the suit based on infringement of a trademark, is certainly an important consideration in a suit based on passing off. Another relevant factor in such a case would be the extent of the delay in approaching the Court and the injury that would be caused to the defendant on account of injunction in such a delayed action. It is true that not every delay constitutes acquiescence, but long and unexplained delay, which allows the defendant to continue to build his business would normally constitute acquiescence, by condoning the act of the defendant.

6. The following view taken by Christopher Wadlaw in his work "The Law of passing off" was quoted with approval by a Division Bench in B.L. & Co. And Others vs Pfizer Products, 2001 FTC 797 (Del) (DB):-

Delay in applying for interlocutory reliefs is a very serious matter. As a rule of thumb, delay of up to about a month, or perhaps six weeks, generally has no

adverse effect on an inter partes application and delay of up to twice that period need not be fatal if it can be explained and the plaintiff's case is otherwise strong. On an ex parte application even delay of a few days can be critical. Unjustified delay of more than a few months is almost always fatal to the plaintiff's case, even though delay of this order has no effect on the plaintiff's rights at trial. Unlike many of the issues which can arise on motion, the existence of delay does not normally admit of much argument. Delay, if present, is therefore a short, safe and simple basis for refusing relief. This means that applications for interlocutory injunctions in which there is significant delay are unlikely even to get as far as a hearing, and those that do are quite likely to be refused without going into the merits or the balance of convenience.

In the case before the Division Bench, the respondent before this Court claimed that it had come to know only in January, 2001 about the launch of product of the appellant. Rejecting the plea, the Division Bench, inter alia, observed as under:-

The respondent claims to be a multi-national Corporation with turnover in Billions of Dollars with its products being sold in over 147 countries in the world. Such a Corporation can be expected to have its extensive communication network where it constantly surveys the markets and devises its future plans and strategies. In these facts, it is idle to contend that it was only in a recent internet search that the respondent learnt of the launch of the appellants product in January, 2001...

...The respondents knew all along as is evident from the documents filed by the respondents on record of the launch of the appellant's product, but they chose to wait till the appellant had developed them for any year and had obtained the requisite permission for its manufacture. Even after commencement of manufacture, the respondents did not take action for nearly 5 months and came to the Court only on 31.5.2001...

The factor of delay alone should have been sufficient to deny the respondents an ex parte restraint. The learned Single Judge erred in not noticing this aspect of the matter and passed an order of ex parte restraint which was likely to cause irreparable injury to the appellants. Learned Single Judge in our view with respect, failed to consider the matter in the light of the above principles.

In Ramdev Food Products Pvt. Ltd. Vs. Arvinbhai Rambhai Patel and Others, , Supreme Court observed that principle of acquiescence would apply where: (i) sitting by or allow another to invade the rights and spending money on it; (ii) it is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc.

In Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd., , Supreme Court stated:-

Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive

rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches..

Kerr in his "Treatise on the Law and Practice of Injunction", Sixth Edition at pages 360-361 states as under:-

But delay may cause the Court to refuse an interlocutory injunction, especially if the defendant has built up a trade in which he has notoriously used the mark...

7. As noted earlier, in the case before this Court, there has been inordinate delay on the part of the plaintiff in approaching this Court. The documents placed by the defendants on record clearly show that the impugned name and logo have consistently been used by them since the year, 1997. The impugned name and logo have been printed on commercial letters, written by defendant No. 1-company from time to time. Since the plaintiff-company is engaged in the same business in which the defendants are engaged, it could not have been unaware of the aforesaid use by defendant No. 1, particularly when it also had a liaison office in India and claims to have entered into contract with a number of Indian companies, including Larsen & Toubro Ltd., Reliance Petroleum Ltd., Hindustan Construction Co. Ltd., Punj Lloyd Ltd., Taj Hotels and Mitsubishi Corporation, India. The turnover of defendant No. 1-company which was Rs. 42645.40 lakh in the year 2005-06 had increased to Rs. 213665.71 in the year 2010-11, thereby taking a quantum leap of more than five times in five years. Even in the year 2011-12, the turnover of defendant No. 1 was Rs. 201012.47 lakh and it had profit before tax amounting to Rs. 1393.80 lakh. It employs as many as 2008 employees had the plaintiff initiated legal proceedings against defendant No. 1, soon after defendant No. 1 publicly started using the impugned name and logo and had it been successful, defendant No. 1 could have adopted some other name and logo instead of continuing with the impugned name and logo. As noted earlier, defendant No. 1 is a company listed with National Stock Exchange. It came out with a public issue of its shares in the year 2007 and the issue was widely advertised in newspapers. The impugned name and logo were extensively used at the time of public issue by placing huge advertisements in newspapers. Even at that time, the plaintiff-company did not bother to come to this Court seeking injunction against use of the impugned name and logo.

8. This is plaintiff's own case in the plaint that it came to know of the use of the impugned name and logo by the defendants in June, 2008 when it filed opposition to the application of the defendants for registration of the said name and logo. Even if this averment is taken on its face value, there is delay of four years in approaching this Court and there is no valid explanation forthcoming from the plaintiff-company to explain such an abnormal delay. As noted earlier, in the case of B.L. & Co. (supra), there was delay of five months on the part of the respondents in approaching the Court for grant of injunction. The Division Bench found the delay to be fatal and took a view that the respondent/plaintiff was not entitled to grant of injunction. The delay before this Court being many times more and there being no explanation for it, is absolutely fatal to the case of the

plaintiff. The plaintiff-company was sitting idle when the rights claimed by it were allegedly being invaded by the defendants. Such a conduct on the part of the plaintiff is wholly inconsistent with its claim for an exclusive right to use the logo, comprising 3 Cs in a triangle and trade name adopted by it. This finds further strength from the fact that the parties have been negotiating for quite some time and one of the proposals being discussed by them was mutual co-existence which implies use of the logo comprising 3 Cs in a triangle and the corporate name, including the word "consolidated" as a part of it, by both the parties. This is yet indicator that the plaintiff-company has never been serious about protecting its intellectual property rights in the name and logo adopted and being used by it. I, therefore, held that on account of inordinate delay in coming to the Court, the plaintiff is not entitled to any injunction.

No other submission was made by the learned counsel for the plaintiff during the course of the arguments.

For the reasons stated hereinabove IA No. 9246/2012 filed by the plaintiff is dismissed, whereas IA No. 11336/2012 filed by the defendants is allowed. Interim order dated 15.05.2012 is hereby vacated. The observations made in this order being tentative and prima face would not affect the decision on merits. The IAs stand disposed of.

CS(OS) 1399/2012

The parties to appear before the Joint Registrar for admission/denial of the documents on 11.10.2012.

The matter be listed before Court on 23.01.2013 for framing of issues.