(1998) 10 DEL CK 0095

In the Delhi High Court

Case No : IA 11421/95 and 2571-75/96 in S. 2622 of 1995

Electro Appliances and Others APPELLANT

Vs

Arora Crockery and Gift Corner and Others RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1998) 75 DLT 873

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Ajay Sahani and H.P. Singh, for the Appellant; Maninder Singh and K. Pratibha, for the Respondent

Judgement

K. Ramamoorthy, J.—In is 11421/95 the plaintiffs have; prayed for injunction. The third defendant had filed is 2571/96 to vacate the order of injunction. IA. 2572/96 had been filed by the third defendant for placing on record certain annexures along with the is 2571/96 under Order 39, Rule 4.

2. The third defendant had filed is 2573/96 u/s 10, CPC for stay of proceedings in Suit No. 2622/95.

3. is 2574 /96 is objections filed by the third defendant to the report of the Local Commissioner, Mr. Balram Chopra. is 2575/96 is again objections filed by the third defendant to the report of the Local Commissioner, Mr. C.D. Gupta.

4. The first plaintiff claims to be the proprietor of trademark ''CRYSTAL''. plaintiff No. 2 is the licensee of plaintiff No. 1. plaintiff No. 3 is the marketing agent of plaintiffs 1 & 2.

5. The case of the plaintiff is as follows :

The predecessor of the first plaintiff conceived and adopted the trade mark ''CRYSTAL'' in the year 1975 and commenced the use of the trade mark on the 7th of January, 1984. The predecessor applied for the registration of the trade mark and obtained registration. The trade mark ''CRYSTAL'' stands registered in the name of the first plaintiff in Classes 8, 9 and 11 under the Schedule to the Trade Marks Act, 1958. The plaintiffs have been advertising in leading magazines, on TV, newspapers, etc. in relation to their products. As a result of the high quality of the products manufactured and marketed by the plaintiffs and in view of the sales promotion and advertisement made by the plaintiffs, the trade mark ''CRYSTAL'' has acquired a distinctive connotation as being goods of the plaintiffs.

6. In the month of October, 1995, the plaintiffs knew about the fact that the defendants were selling kitchenware and tableware cutlery bearing the trade mark ''CRYSTAL''. Therefore, the defendants are infringing the plaintiffs trade mark. The act of the defendants is unjustified. In paragraph 13 of the plaint, it is stated:

"That by the defendants'' use of the said trade mark CRYSTAL in the same manner in its trade name as well on the goods viz. and for the kitchenware as that of the plaintiffs, an impression has been created in the minds of the consumers that the defendant is a branch of the plaintiffs or that the defendants'' business is the business of the plaintiffs or that the defendants are in some way associated with the plaintiffs which, in fact, is not true. The defendants sole intention is to deceive and/or mislead the buyers, traders and the general public to cause them to believe that the goods bearing the trade mark CRYSTAL are that of the plaintiffs manufacture."

7. The plaintiffs with reference to passing off had stated in paragraph 17 of the plaint thus :

"The plaintiffs further stated that the defendants were at all material time, aware of the plaintiffs trade mark CRYSTAL and the goodwill and reputation acquired by the plaintiffs in the same. The defendants appear to have adopted the impugned mark with a view to pass off their goods as the goods of the plaintiffs thereby leading to passing off. The plaintiffs, Therefore, submit that they are entitled to a perpetual order and injunction of this Hon''ble Court restraining the defendants by themselves, their servants, agents, dealers or any of them from in any manner using in relation to their kitchenware or other like goods, the impugned mark or any mark deceptively similar to the plaintiffs trade mark so as to pass off or enable others to pass off the defendants goods as and for the goods of the plaintiffs."

8. On these allegations, the plaintiffs had prayed for injunction, with reference to passing off, against the third defendant, M/s. Crystal Kitchenware Pvt. Ltd. The third defendant is now represented by Mr. Ramesh L.Vadodaria claiming to be the Managing Director of the third defendant Company. Mr. Ramesh L.Vadodaria would state that the genesis of the present dispute is the misunderstanding between him and his elder brother, Madhukar Vadodaria. In paragraph 4 of the is 2571/96, he would state :

"That it is respectfully submitted that Shri Ramesh Vadodaria and the Companies under his control are fully entitled to use the mark "Crystal". There is an Assignment Deed dated 2.9.92 executed by Shri Madhukar Vadodaria and others in favor of Shri Ramesh Vadodaria for using the trade mark "crystal'' for manufacturing and sale of Spoons, Forks, Table Cutlery sets etc. The name of Shri Ramesh Vadodaria was entered in the Trade Mark Certificate. However, the Registrar of Trade Marks, in an erroneous manner deleted the said entry from the Trade Mark Certificate. Shri Ramesh Vadodaria then filed an appeal being Appeal No. 6 of 1994 before the Hon''ble Single Judge of the Gujarat High Court. The Hon''ble Single Judge of the Gujarat High Court admitted the appeal and granted permission for use of the mark "Crystal as per the Assignment Deed dated 2.9.92. This fact has been suppressed by the plaintiffs from this Hon''ble Court. There is no doubt, that if the plaintiffs had informed this Hon''ble Court the above mentioned order passed by the Hon''ble Single Judge of the Gujarat High Court who is seized of the matter, this Hon''ble Court would not have entertained the present suit filed by the plaintiff, much less granted the ex-parte stay orders. The plaintiffs, because of the aforesaid suppression and concealment of the material facts have tried to mislead and over-reach this Hon''ble Court and have also succeeded in the same. Because of their such conduct, they have disentitled themselves from any indulgence from this Hon''ble Court."

9. He would refer to the disputes between the parties, himself and his elder brother, and would claim that he can use the trade mark ''CRYSTAL''. In paragraph 15 of the Application No. 2571/96, he would state:

"That as of today the Crystal group of firms are as follows:

(a) M/s. Electro appliances commenced with effect from 8,12.1986.

(b) M/s. Elegance Tableware w.e.f. 1.4.1987.

(c) M/s. Sharpmax Engineers w.e.f. 28.10.1981.

(d) M/s. Kitchenware India w.e.f. 9.12.1989.

(e) M/s. Aerochem Electronics w.e.f. 25.10.1988.

(f) M/s. Crystal International w.e.f. 19.10.1991.

(g) M/s. Crystal Mktg. Services w.e.f. 1.7.1986.

(h) M/s. Crystal Distribution Services w.e.f. 1.5.1992.

(i) M/s. Crystal Kitchenware Pvt Ltd. w.e.f. 1993."

10. According to the younger brother, Mr. Ramesh Vadodaria, he had been responsible for the goodwill of the business. He would project an assignment deed which was the subject matter of an appeal before the High Court of Gujarat, In paragraph 16 of the application, he would state:

"That because of various reasons there has been division of Crystal group of firms and as such there were changes of the constitution of the firms. The trade mark Crystal in Class 8 was in the name of Madhukar Vadodaria, Shri Hitesh Patel and Mrs. D. Indra Lakhani. The negotiations were held between the family members and the partners and ultimately it was decided that to execute retirement deeds for the division of the firms. Shri Ramesh Vadodaria was the pioneer partner of the firm M/s. EIMCO Engineers was manufacturing gas lighters under the trade mark Crystal. Shri Ramesh Vadodaria had put all labour and efforts in popularising the trademark crystal. It was agreed that the partners of M/ s. Electro Appliances to assign the trade mark Crystal in Class 8 revised under No. 4157/40 the owner of the trade mark Crystal therefore executed a deed of assignment in favor of Ramesh Vadodaria to be the exclusive owner of the trademark Crystal in respect of spoons, forks and other table cutlery of all kinds included in Class 8 for a consideration of Rs. 2,000/-. By the assignment deeds all rights, title in and of the trade mark together with the goodwill were assigned in favor of Shri Ramesh L.Vadodaria is free to use, transfer, sell, assign to any person/ firm whichever he feels right. The copy of the assignment deed dated 2.9.1992 is annexed hereto and is marked as Annexure D-1.

A perusal of this assignment deed clearly reveals that the assignor who were registered proprietor of the trade mark ''Crystal'' in respect of spoons, forks, kitchen knives and other table cutlery of class 8 registered under 415740 assigned the name to Mr. Ramesh Vadodaria along with the goodwill. The relevant clause of the Assignment Deed is as under :

Now Therefore this Deed witnesseth that in consideration of a sum of Rs. two thousand only (Rs. 2,000/-) the receipt whereof, the assignor hereby acknowledges. The assignor hereby assigns in to the assignee all rights, title in and of the said trade mark together with the goodwill of the spoons, forks and other table cutlery of any kind included in class 8 in respect of the said trade mark as registered and used and to hold in to the assignee absolutely from 31.3-1992."

However, a reservation was made in the assignment deed that Shri Ramesh Vadodaria will not sell only one cutlery set model Femina which were being sold by the Companies held by Madhukar Vadodaria. To make this restriction more specific the description and contents of the Femina Cutlery set model was also attached with the Assignment Deed.

In other words, by this Assignment Deed Shri Ramesh Vadodaria was fully authorised and he became entitled to use the trade mark Crystal for sale of spoons, forks and other table cutlery included in Class 8 except one cutlery set model Femina."

11. The basis of his claim is the assignment deed. He was challenging the order of the Registrar of Trade Marks. In paragraph 21 of the application, he would state:

"That it is respectfully submitted that the effect of this order is that Shri Ramesh

Vadodaria and the companies controlled by him are entitled to use the trade mark ''Crystal'' for manufacture and sale of spoons, forks and other table cutlery. Accordingly, Shri Ramesh Vadodaria and the Companies controlled by him are manufacturing and selling these items. All the sales of items under trade mark which are manufactured and sold by Shri Ramesh Vadodaria and the Companies under his control are in accordance with the Assignment Deed and the order passed by the learned Single Judge of the Gujarat High Court. The sale of different items which falls under Class 8 of the Trade Marks Rules which are sold by the Companies under the control of Shri Ramesh Vadodaria is nothing but the user of the mark by Shri Ramesh Vadodaria in accordance with the Assignment Deed dated 2.9.1992 and the order passed by the Hon''ble Single Judge of the Gujarat High Court. Shri Madhukar Vadodaria in furtherance of his mala fide motive to some how deprived Shri Ramesh Vadodaria of his entitlement to the user of the mark "Crystal", also filed a Contempt Petition before the Gujarat High Court. It is also relevant to mention here that in any case there is no doubt about the fact that Shri Madhukar Vadodaria had signed the Assignment Deed dated 2.9.1992. He cannot have any objection regarding the effect of the Assignment Deed and the rights of Shri Ramesh Vadodaria and the Companies under his control to use the trademark ''Crystal''. Therefore, there was no occasion to file various litigations against Shri Ramesh Vadodaria and the Companies controlled by him and further to move contempt petition. It is respectfully submitted that since the contempt petition was without any merit, it was dismissed as withdrawn by an order dated 5.5.1996 passed by the Hon''ble Gujarat High Court. A copy of the order dated 5.5.95 is annexed hereto and marked as Annexure D-3."

12. The learned Single Judge of the Gujarat High Court passed the following order on the 22nd of August, 1994:

"C.A.V. ORDER

ADMIT,

Heard learned Advocates on the issue of interim relief. In view of the facts and circumstances of the case, by way of interim relief till final hearing and disposal of this appeal, appellant personally is permitted to manufacture and sell under the Trade Mark "Crystal" Spoons, Forks and other table cutlery, not in set but as separate pieces, included in Class 8 as stated in the impugned deed of assignment dated 2.9.1992 but shall not manufacture and sell items under the Trade Mark "Crystal" retained by 2nd Respondent firm in respect of kitchen knives, table cutlery set consisting of spoons, forks and knives and kitchenware under the said assignment deed. Appellant shall not be entitled to permit others to use the trademark "Crystal" and shall maintain the accounts of the product."

13. The younger brother would complain that the elder brother had been instituting cases on frivolous grounds,

14. In paragraph 27 of the is 2571/96, he would state:

"That the mala fides of Shri Madhukar Vadodaria are further established by the fact that in the present suit five parties have been imp leaded as defendants. Defendant Nos. 1 and 2 are general merchants selling crockery and other items manufactured by different manufacturers. They have nothing to do with the dispute of user of trade mark ''Crystal'' pending between Madhukar Vadodaria and Ramesh Vadodaria. Similarly, defendant Nos. 4 and 5 are involved in job works given by different entrepreneurs. They manufacture and fabricate different items for different companies. The Companies belonging to Ramesh Vadodaria are getting their plastic injection mouldings parts made from these two defendants. They have nothing to do with the dispute regarding user of the trademark ''Crystal''. Further, the address in the plaint of defendant No. 3, M/s. Crystal Kitchenware P. Ltd. has been shown as W 209, Ajanta Commercial Complex Opp. Bombay Hotel, Gondal Road, Rajkot-2 whereas in the application for appointment of Local Commissioner, the appointment has been sought for inspection at the address i.e. Mittal Industrial Estate, Unit No. 2, Andheri Culla Road, Bombay which is the address of M/s. Elegance Tableware who is not made a defendant in the present suit. This kind of a conduct on the part of the plaintiff is not only highly improper but is a sure manifestation of its attempt to mislead and over-reach this Hon''ble Court. It has been obviously done to mislead this Hon''ble Court for obtaining such orders for which the plaintiff is not entitled and under the garb of such orders Shri Madhukar Vadodaria is causing harassment to Shri Ramesh Vadodaria and others."

15. In paragraph 29 of the application, he would state:

"That as stated above, by virtue of the Assignment Deed dated 2.9.1992 and the order passed by the learned Single Judge of the High Court (supra) Ramesh Vadodaria and the Companies under his control are entitled to use the trademark ''Crystal'' for production and sale of spoons, forks and other table cutlery items. It is respectfully submitted that Classes 8 and 21 under Appendix 3, Schedule 4 of the trade and Mercantile Mark Rules are as under:

"8. Hand tools and instruments; cutlery, forks and spoons; side arms."

"21. Small domestic utensils and containers (not of precious metal nor coated therewith); combs and sponges; brushes (other than paint brushes); brush making materials; instruments and material for cleaning purposes; steel wool ;glassware, porcelain and earthenware not included in other classes."

It is respectfully submitted that Shri Ramesh Vadodaria and the Companies under his control are entitled to manufacture and sell all the items of table cutlery, forks and spoons etc. The various products which are mentioned under Class 21, in the trade mark parlance, given under one category i.e. KITCHENWARE including, the domestic utensils, containers, glassware, earthenware are collectively known as kitchenware. It is an admitted position that none of the groups i.e, neither the Companies controlled by Ramesh Vadodaria nor under the control of Shri Madhukar Vadodaria have got registration for kitchenware under Class 21 of the Trademark Rules. The defendant No. 3 is informed to respectfully submit that application for registration for kitchenware i.e. kitchen utensils etc. by the Company under the control of Shri Madhukar Vadodaria is pending registration. The Companies under the control of Shri Ramesh Vadodaria are not manufacturing or selling anything which is beyond the scope of what has been assigned to him under the Assignment Deed dated 2.9.1992. In other words ,the companies under the control of Ramesh Vadodaria are selling spoons, forks and table cutlery sets under the trademark ''Crystal''. Gas lighters etc. are sold under the trade name ''Fantasy''. It is Therefore incorrect to even contend that any of the Company of Ramesh Vadodaria is going beyond the scope of the Assignment Deed dated 2.9.1992."

16. According to the younger brother, the plaintiffs had suppressed the order of the learned Single Judge of the Gujarat High Court in favor of Mr. Ramesh Vadodaria. According to the younger brother, on a proper appreciation of the order of the learned Single Judge of the Gujarat High Court, he was entitled to use the trade mark ''CRYSTAL''.

17. Mr. Maninder Singh, the learned Counsel for the third defendant, vehemently contended that the plaintiffs are guilty of suppression of material facts and Mr. Madhukar Vadodaria had been abusing the process of law by filing suits. According to the learned Counsel for the third defendant, if the corporate veil is lifted, the true facts will be known. According to the learned Counsel, Mr. Madhukar Vadodaria had determined to spoil the reputation and the business of Mr. Ramesh Vadodaria. Mr. Maninder Singh, the learned Counsel for the third respondent referred to the judgment of this Court in Anil Kumar Khurana Vs. Municipal Corporation of Delhi, . He referred to pages 602, 604, 605 and 606 relating to the point about abuse of process of law. He relied upon the judgment of the Supreme Court in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . The Supreme Court had observed:

" While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice we must say, is a Contempt of Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage". Per Frank Further, J, in Offutt v. U.S., (1954) 348 US 11.

The law should not be seen to sit by imply, while those who defy it go free, and those who seek its protection lose hope". Per Judge, Curtis-Raleigh quoted in Jennison v. Baker, (1972) 1 All ER 997."

The learned Counsel submitted that it is in the light of this observation the act of the respondents has to be considered. This judgment has no application to the facts of the instant case.

18. Mr. Maninder Singh, the learned Counsel for the third defendant, further submitted that there is a likelihood of the conflict of decisions when there are other suits pending in various Courts at various place and filing of such suits is also an abuse of process of law. He referred to the judgment of this Court in "S.K. Kapoor and Ors. v. UOI and Ors.", 38 (1989) DLT 304. This is not at all relevant.

19. Elaborating the concept of lifting of corporate veil, Mr. Maninder Singh, the learned Counsel for the third defendant, placed reliance on the judgment of the Supreme Court in New Horizons Limited and Another Vs. Union of India (UOI) and Others, .

20. The learned Counsel also referred to the judgment of the Supreme Court in Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, . He relied upon the passage at page 637 which is in the following terms;

"In Salomon v. Salomon & Co. Ltd. the House of Lords had observed,

"the company is at law a different person altogether from the subscribers ....;and, though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act."

Since then, however, the Courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". [Gower : Modern Company Law--4th Edn. (1979) at p.137.] Pennington (Company Law -- 5th Edn. 1985 at p.53) also states that "where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the Court will disregard the corporate veil. A Professor of Law, S.Ottolenghi in his article "From peeping behind the Corporate Veil, to ignoring it completely" says :

"the concept of ''piercing the veil'' in the United States is much more developed than in the UK. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that ''when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons''. The same can be seen in various European jurisdictions."

[(1990) 53 Modern Law Review 338]

Indeed, as far back as 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" [published in (1912) XII Columbia Law Review 496] and summarised their central holding in the following words :

"The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? the nearest approximation to generalisation which the present state of the authorities would warrant is this: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the Courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons."

I am unable to see how this could be of any help to respondents while the Court is considering the question of Contempt of Law.

21. Mr. Ajay Sahani, the learned Counsel for the plaintiffs, submitted that the plaintiffs are relying upon trade mark which is a registered one and in the application for vacation of injunction, the third defendant had not disputed that fact. According to Mr. Ajay Sahani, the proceedings before the learned Single Judge of the Gujarat High Court are relied upon by the third defendant without understanding the import of the order. That was an appeal filed by the younger brother, Mr. Ramesh Vadodaria, and it is specifically mentioned therein that Mr. Ramesh Vadodaria could personally manufacture and sell under the trade mark ''CRYSTAL'' spoons, forks and other table cutlery in set but not in separate pieces. According to Mr. Ajay Sahani, the learned Counsel for the plaintiffs, defendants had been infringing the trade mark of the first plaintiff and the third defendant, now represented by Mr. Ramesh Vadodaria, is acting contrary to what is decided by the Gujarat High Court. Mr. Ajay Sahani, the learned Counsel for the plaintiffs submitted that Mr. Ramesh Vadodaria filed an appeal against the order dated 22.8.1994 of the learned Single Judge of the Gujarat High Court and that was also dismissed.

22. While dealing with the submission of the learned Counsel for the third defendant, Mr. Maninder Singh, about the suppression of the order passed by the

learned Single Judge of the Gujarat High Court, Mr. Ajay Sahani, the learned Counsel for the plaintiffs, submitted that there was absolutely no need for referring to the order of the learned Single Judge of the Gujarat High Court and there was no question of any suppression. The question of suppression would arise only if the Gujarat High Court had passed any order against the plaintiffs and there would not any conflict between the judgment that may be rendered by this Court and the order passed by the Gujarat High Court. The Division Bench of the Gujarat High Court had dismissed the appeal filed by Mr. Ramesh Vadodaria and, Therefore, the younger brother, Mr. Ramesh Vadodaria, is raising the bogie of the plea of suppression of material facts by plaintiffs.

23. The third defendant relied upon the assignment deed which referred to above. According to Mr. Ajay Sahani, the learned Counsel for the plaintiff, the assignment deed is under challenge and not admitted by the first plaintiff, nor by the other plaintiffs. Therefore, on the basis of the assignment deed, the third defendant company cannot claim any right to use trademark ''CRYSTAL''.

24. The plaintiffs have made out a strong case of entitlement to the trade mark ''CRYSTAL'' on the basis of registration and also passing off. On the facts and circumstances of this case, I am of the view that it is not necessary to examine in detail the provisions of the Trade Marks Act, 1958 and the principles laid down by the Supreme Court and this Court in various decisions. The principles are well settled and the facts of this case are also very clear. Therefore, I have no hesitation in holding that the plaintiffs are entitled to an order of injunction pending the suit and the interim injunction granted is made absolute. Accordingly, LA. 11421/95 is allowed and is 2571/96 is dismissed.

25. is 2572/96 by the third defendant seeking to place on record certain annexures filed along with the Application No. 2571/96 under Order 39, Rule 4 is ordered and the third defendant is bound to prove the documents at the time of trial in accordance with law. The documents filed by the third defendant now do not, in any way, help the third defendant

26. The is 2573/96 filed by the third defendant u/s 10 of the CPC is dismissed as the applicant has not made out any case for stay.

