

(2017) 12 DEL CK 0345

In the Delhi High Court

Case No : Civil Suit (COMM) No. 395 Of 2017, Civil Miscellaneous Application No. 6797, 8432 Of 17

Gautam Gambhir

APPELLANT

Vs

D.A.P & Co. & Anr

RESPONDENT

Date of Decision : 13-12-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2017) 12 DEL CK 0345

Hon'ble Judges : S.P Garg, J

Bench : Single Bench

Advocate : Rajeev Nayyar, Manik Dogra, Sonali Jaitley Bakhshi, Jaiyesh Bakshi, Anshul Gupta, P.Singhai, Aastha Lumba, Saurabh Seth, Richa Kapoor, Kunal Anand

Final Decision : Disposed Of

Judgement

S.P Garg, J

1. During the course of arguments in IA No.6797/17 under Order XXXIX Rule 1 & 2 CPC, it was agreed that the matter may finally be disposed of

as no evidence is required to be led by any party. Consequently, arguments on merits were heard and the matter was listed for final disposal.

2. Present suit has been filed by the plaintiff Gautam Gambhir for temporary and permanent injunction and damages etc. against the defendants. The

facts of the case in brief are as under :

3. In the plaint, it is averred that the plaintiff is an international cricket player associated with Indian National Cricket Team since 2003; during his

tenure with the Indian Cricket Team, he has earned enormous accolades of success for self as well as for the country. He has served as the Captain

of the Indian Cricket Team and has been conferred various awards, including the prestigious Arjuna Award for his immense contribution to the Indian

cricket. The plaintiff has also led IPL team Kolkata Knight Riders to victory twice in 2012 and 2014. The plaintiff has been associated with a lot of

national and international brands and has endorsed many reputed brands. At present, he is the Brand Ambassador of International Shoe and Apparel

brand, Asics and Blind Cricket World Cup. The name "Gautam Gambhir", upon being mentioned, immediately gets associated with the plaintiff

only and no one else. The said name carries with itself immense goodwill and reputation and continues to be exclusively associated with the plaintiff; it

is a household name not only in India but also in the field of international cricket. The said name is a rare combination of two words being specifically

associated with the plaintiff and it is protectable under the provisions of the Trade Marks Act, 1999 as the fame, recognition and achievements of the

plaintiff add value to such a personal name which does not remain a mere name but becomes an indicator which identifies the persona of the world

renowned cricket player and therefore the right to use the said name vests solely with the plaintiff and does not accrue to anyone else. The name has

attained a special distinctive character by virtue of extensive use since 2003 and has attained the status of a well known mark.

4. It is further averred that the defendant is running the restaurants with the tag line "by Gautam Gambhir" while the plaintiff has absolutely no

connection with the said restaurants. The plaintiff was recently approached by few individuals who enquired if the said restaurants were owned by

him as the tagline tends to create confusion in the minds of public regarding the fact that the plaintiff has some association or connection with the said

restaurants. Tagline seems to have been added to the names of the said restaurants to deceive the public into believing that the restaurants are owned

by the plaintiff. The plaintiff discovered in November, 2016 that the defendant was promoting the said restaurants by the tagline "by Gautam

Gambhir", making it deceptively similar to being a restaurant/bar run and owned by the plaintiff. The defendant seem to capitalize on the

plaintiff's name and is trying to misappropriate the goodwill and reputation earned by the plaintiff by using the same in the tagline of the said

restaurants. The defendant failed to respond to the plaintiff when he was contacted either to take off the tagline or clarify that the said restaurants

have no connection with the plaintiff. A legal notice dated 12.12.2016 was sent to the defendant requesting him to refrain from using the tagline with

the said name. It was responded to by a reply dated 18.01.2017 where the defendant blatantly refused to adhere to the plaintiff's requests.

5. The defendant, in the written statement, urged that the suit is not maintainable. The restaurants are owned by him; he being in restaurant business since 2014. The first restaurant under the name and style of "Blu Wavs by Gautam Gambhir" was started in Rajouri Garden, New Delhi and

again in 2015 another restaurant under the name and style of "Play Reloaded by Gautam Gambhir" was opened in Rajouri Garden. Two more

restaurants under the name and style of "Ghungroo by Gautam Gambhir" and "Hawalat by Gautam Gambhir" were opened. With the success

of four restaurants in the last three years, the defendant has become a well known name and has goodwill among the consumers, employees and other

restaurateurs. License has been duly issued by Municipal Corporation of Delhi with respect to M/s Blu Wavs. It is further averred that the name and

styling "by Gautam Gambhir" in the restaurant name/logo is a bonafide effort by the defendant to associate the restaurants with himself (his own

identity) and to build up goodwill of his own in the restaurant industry. It is further stated that the defendant had applied for the trademark for

"Hawalat Lounge and Bar by Gautam Gambhir" much prior to the issuance of legal notice by the plaintiff and the aforesaid Logo has been

registered by the Trademarks Registry in Class 43, under No.3436616 on 20.12.2016 in respect of restaurant service. He has also applied for the

trademark "Ghungroo by Gautam Gambhir" vide application No.3449867 dated 5.01.2017 in Class 43. Even though there is coincidental

resemblance in the name of the plaintiff and the said restaurateur, but the defendant at no incidence in the past ever related himself with the plaintiff.

6. Learned Senior counsel for the plaintiff relying upon the judgments Titan Industries Ltd. vs.M/s Ramkumar Jewellers 2012 SCC OnLine Del 238;2

Bajaj Electricals Limited, Bombay vs.Metals & Allied Products, Bombay and another AIR 1988 Bom 16;7 Mr.Arun Jaitley vs.Network Solutions

Private Limited and Ors. [CS(OS) 1745/2009]; Precious Jewels & Anr. Vs.M/s Varun Gems [FAO(OS) 609/2012]; Tata Sons Limited and Ors.

vs.Aniket Singh [CS(OS) 681/2012] and D.M.Entertainment Pvt.Ltd. vs.Baby Gift House and Ors. [CS(OS) 893/2002] urged that the defendant is

illegally using the name of the plaintiff as a tagline under the name of their restaurants with a view to deceive the public into believing that the restaurants are actually owned and promoted by the plaintiff. The defendant has prominently displayed the name "Gautam Gambhir" along with the name of his restaurant "Ghungroo" which is an attempt to ride on the reputation of the plaintiff and lead people to believe that the restaurant is owned by him (the plaintiff). The unauthorized use of the name of the plaintiff, despite the defendant being put to notice, is causing actual confusion in the minds of the consumers. One such instance was when a user on Zomato (a restaurant and food delivery rating site) was clearly misled into believing that the restaurant belonged to the plaintiff (at page 18 of the documents filed by the plaintiff). In fact, due to low quality of food and service, user had criticized the restaurant thus indirectly tarnishing the image of the plaintiff in the eyes of the public.

7. It is further urged that the "Personality Rights" of the plaintiff have been illegally violated by the defendant and are certainly actionable. Even an innocent representation of one's surname may lead persons to believe that goods/services belonged to another person.

8. Learned counsel for the defendant contended that the citations relied upon by the plaintiff to substantiate his case are not applicable to the facts and circumstances of the case. The words "Gautam Gambhir" are generic and are not capable of conferring any exclusive right upon the plaintiff.

The defendant cannot be restrained to use his "own" name to promote the restaurants "owned" by him. No representation was ever made by the defendant any time to project if the restaurants are owned by the plaintiff or he is associated, in any manner, with them.

9. In the instant case, this Court finds no sound reasons to grant the restraint order. Celebrity status of the plaintiff is not disputed. However, there is no material on record to infer if any time in running the said restaurants with the tagline "by Gautam Gambhir", the defendant ever represented

to the public at large in any manner that the said restaurants were owned by the plaintiff or he was associated with them in any manner. The

defendant is running at present four restaurants which were opened at different stages. One restaurant was opened in 2014 and no steps, whatsoever,

were taken by the plaintiff that time to seek restraint order; the present suit was filed only in May, 2017. First restaurant's success motivated him

to open three other restaurants in subsequent years. It is not in dispute that the defendant is known by his name "Gautam Gambhir". The said restaurants are owned by him. Apparently, he is entitled to carry on "his" business in "his" "own" name. The law is that no one is entitled to carry on his business in such a way as to represent that it is the business of another, or is in any way connected with the business of another. Of course, an individual is entitled to carry on his business in his "own" name so long as he does not do anything more to cause confusion with the business of another and if he does so honestly/bonafide. In the instant case, the plaintiff is not associated with the restaurant business. Nothing has come on record if any time, the plaintiff was invited for any inauguration or function of the restaurants in question. No overt act has been attributed to the defendant whereby he at any time attempted to make representation to any individual or the public at large that the restaurants were owned by the plaintiff. The plaintiff has given only one instance of an individual who had some confusion with the said restaurants to be owned by the plaintiff. No "disclaimer" was ever issued by the plaintiff to dispel the so-called confusion in the public who recognized the plaintiff only to be associated with Cricket. The said restaurants are being run by the defendant after getting necessary permission from the authorities. When the logo "Hawalat Lounge and Bar by Gautam Gambhir" was registered by the Trademarks Registry in Class 43, under No.3436616 on 20.12.2016 in respect of restaurant service, there was no objection before the Trademark Registry. It is categorically claimed by the defendant that inside or outside the restaurants, he had never displayed any picture/photo / poster of the plaintiff to cause confusion in the public. In all the webpages/online platforms i.e. facebook, WhatsApp, etc. and at all his displays otherwise, viz. stationery, wall pictures, merchandises, etc. the defendant has very prominently put numerous of his "own" pictures to associate his "own" identity with his "own" restaurant business. Apparently, plaintiff's name was not commercialized by the defendant. Nothing has emerged on record if there was any loss to the goodwill of the plaintiff in his field i.e. Cricket because of running of the restaurants by the defendant with the tag line in his "own" name.

10. In view of the above discussion, the suit fails and is dismissed with no orders as to costs.

11. Decree-sheet be prepared accordingly.
12. Pending applications also stand disposed of.