

(2001) 12 DEL CK 0065

In the Delhi High Court

Case No : Suit No. 975/97

George Lillington and Co. Ltd. and Another

APPELLANT

Vs

Prestige Paints and Another

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Citation : (2002) 95 DLT 753

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : H.P. Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—The plaintiffs have filed the present suit against M/s Prestige Paints and another seeking a permanent injunction restraining the defendants their servants, agents, stockists and all other persons on their behalf from infringing the plaintiffs registered copyright Nos. A-32770/81, A-32765/81, A-32766/81, A-32875/81 and A-32765/81 by using the offending lay out, design, colour scheme on the packings with the one used by the plaintiffs. It also seeks an injunction to restrain the defendants, their servants, agents or stockists from using the mark SUPER SNWOCEM which is an infringement of the plaintiffs trade mark SNOWCEM registered under No. 89847. It also seeks to restrain them from using the impugned label/mark with the mark SUPER SNWOCEM so as to pass off and enable others to pass off their SUPER SNWOCEM as that of the plaintiffs.

2. Relief is also claimed for delivery by defendants to the plaintiffs all the packings like sacks and other material containing the said offending trade mark and for rendition of accounts.

3. The facts alleged are that plaintiff No. 1 George Lillington and Company Limited is incorporated and organized under the laws of England and carrying on business in cement paint. The said company is the registered proprietor of the trade mark SNOWCEM under No. 89847 in Class 2 of the IV Schedule of the

Trade and Merchandise Marks Act, 1958. This trademark has been renewed from time to time and subsists in the Register of Trade of Marks. plaintiff No. 3 Snowcem India Limited is the registered users of the said trademark SNOWCEM in India. Their registered office is at India. The said paints under the trademark SNOWCEM are manufactured and filled in sacks of various sizes. plaintiff No. 2 Snowcem India Limited is the users of trademark SNOWCEM and are also duly registered with the Registrar of Copyrights works in respect thereof. plaintiff No. 3 is affixing its copyright on the drums and sacks in which SNOWCEM is packed.

4. It is alleged that the said trademark is continuously, regularly and extensively being used by the plaintiff No. 2 in respect of cement paint in India for the last more than 38 years and goods worth Rs. 250 crores of rupees have been sold. The SNOWCEM cement paints is sold in bags of various sizes. The mark SNOWCEM is written in bold letters. There are diagonal lines of blue colour. Similarly, the bags are affixed with trade mark SNOWCEM along with diagonal blue lines. plaintiffs cement paint is purchased by literate and illiterate persons including labourers and masons who do not read and write English.

5. In January, 1997 it came to the notice of the plaintiffs that defendants have started using the mark SUPER SNWOCEM on their cement paint. Defendants are stated to be using the above offending acts without the license or permission from the plaintiffs. In this process the defendants are committing fraud upon the public. The goods of the defendants are being passed off as that of the plaintiffs. On these broad facts the above said reliefs are being claimed.

6. The defendants had been proceeded ex parte and this Court has directed the evidence be led by way of affidavits.

7. In support the claim the affidavit of Shri R.C. Saxena, attorney of the plaintiffs has been filed. He has sworn an affidavit which is in line with the assertion of the plaint.

8. The evidence on the record clearly show that SNOWCEM India Limited, Killick House, Baji Pasalkar Marg, Bombay has registration No. 32766/81 with respect to the copyright, the title of the work is SUPER SNOWCEM SACK (25 KG). Similarly registration of copyright No. A-32768/81 clearly show that SUPER SNOWCEM DRUM of 50 KG has the above said registration number in the name of Snowcem India Ltd. Super Snowcem (Plastic Jar) has registration No. A-328567/81 in the name of Snowcem India Ltd, Killick House, Charanjit Rai Marg, Bombay. To that extent it must be held accordingly. The evidence on the record further show that the defendant has started using the sale of their articles as SUPER SNWOCEM. Indeed this is a grievance of the plaintiffs. plaintiffs as are apparent from the recorded facts above are using the trade mark SUPER SNOWCEM. They have a copyright in this regard. The defendant is using the mark SUPER SNWOCEM. Phonetically it is similar to that of the plaintiffs and that otherwise also the bag contains the same ingredients and they can easily be passed off as that of the plaintiffs goods. Any ordinary man would take the goods

of the defendant to be that of the plaintiff. Therefore, the plaintiffs indeed have a grievance and right to state that their valuable copyrights as such are being infringed and goods of defendant can be passed off as that of the plaintiff.

9. Learned counsel for the plaintiff did not press for the relief of rendition of accounts. The said relief is accordingly refused and with respect to the same the suit is dismissed.

10. However, for reasons given above since the plaintiffs valuable rights are being infringed defendants are restrained themselves or through their servants from infringing the plaintiffs registered copyrights No. A-32770/81, A-32765/81, A-32766/81, A-32857/81, A-32768/81 by using the offending layout, design and colour scheme on the packings as that of the plaintiffs. The defendants are further restrained from using SUPER SNWOCEM as a mark which is an infringement of plaintiffs right by using the mark SNWOCEM. The defendant should not use the label mark SUPER SNWOCEM to pass off their goods as the goods of the plaintiff i.e. the cement paints. Since the defendants are proceeded ex parte their will be no order as to costs.