

(2001) 09 DEL CK 0228

In the Delhi High Court

Case No : Suit No. 986 of 2001 and IAs 4844 and 5696 of 2001

Gupta Brothers Conduit Pipe Manufacturing Co. Pvt. Ltd.

APPELLANT

Vs

Anil Gupta and Another

RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, 151, 20
Copyright Act, 1957 — Section 62, 62(2)

Citation : (2001) 09 DEL CK 0228

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : K.G. Bansal, for the Appellant; M.L. Mahajan, for the Respondent

Judgement

A.K. Sikri, J.—Along with suit, is No.4844/2001 has been filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC for ad interim injunction. Ex-parte injunction dated 18th May, 2001 was granted in this application. The defendants after service of the said injunction order promptly filed is No.5696/2001 under Order XXXIX Rule 4 read with Section 151 CPC for vacation of this order. Arguments were heard on both applications. Question of territorial jurisdiction of this court was also argued as that is the main defense of the defendant.

2. In brief the case of the plaintiff is that the plaintiff company is the proprietor of the trade mark G.B.Label in relation to electrical goods like electrical apparatus and instruments and electrical accessories under the trade mark G.B.Label which was adopted way back in the year 1941. The plaintiff has also obtained registration of the trade mark under the provisions of Trade and Merchandise Marks Act, 1958 and particulars of these registrations are given in para 5 of the plaint. The plaintiff claims G.B.Lable being distinctive in its get up, make up and the manner of writing constitute an art work which is original in character and the same has become a distinctive indicium of the plaintiff in relation to its business goodwill. The sale figures are given in para 9 of the plaint in an attempt to demonstrate the goodwill and enviable reputation acquired by

the plaintiff in relation to these goods. The cause of action for filing the present suit was the defendants' adoption of the trade mark G.B.Label and GEE BEE Label in respect of same goods. It is stated that the defendant No.2 is managing the affairs of defendant No.2 and is proprietor or partner of defendant No.2. The defendant No.1 was earlier Director of the plaintiff company and after resigning from the plaintiff company, he has started business under the name of the defendant No.2 and has adopted the aforesaid trade marks which are identical with and deceptively similar to the trade mark of the plaintiff in its get up, make up and manner of writing. It is also stated that the defendants have adopted this trade mark and trade name in the month of January, 2001 slavishly imitating the trade mark of the plaintiff out of positive greed with a view to take advantage and to trade upon the reputation of the plaintiff and also with a view to calculate deception and confusion in the markets and to pass off their spurious and sub-standard goods as that of the plaintiff.

3. The defendants in their written statement have taken various preliminary objections. In the first instance, it is stated that the defendant No.2 is a sole proprietor concern of Smt.Anju Gupta. The defendant No.1 has no concern with defendant No.2. The territorial jurisdiction of this court to entertain the suit filed by the plaintiff is also challenged on the ground that the defendant No.2 has never sold any goods in Delhi nor committed any act of infringement and passing off in Delhi. It is stated that no evidence worth the name has been filed by the plaintiff to substantiate its claim of the alleged sale of the goods by the defendant in Delhi as mentioned in para 14 of the plaint. As such no cause of action having arisen in Delhi, the suit filed by the plaintiff in this court is not competent. On merits the case of the defendant No.2 is that the defendant No.2 has honestly and bonafidely conceived and adopted the trade marks G.B.Label and GEE BEE Label after ascertaining that there was no such trade mark in use in the markets. It is also stated that the trade mark GEE BEE Label also forms a prominent part of the trade mark name "GEE BEE Steel Industries". The defendant No.2 has gained enviable goodwill and reputation in the market in respect of its good bearing aforesaid trade marks and people have come to know that these goods belong to the concern. "M/s GEE BEE Steel Industries", Dinanagar only and to none else. It has also moved applications dated 4th May, 2000 and 16th October, 2000 for registration of trade marks G.B. and GEE BEE respectively which are expected to be accepted in near future. The various averments made in the plaint including the claims of the plaintiff of their trade marks since 1941 or trade marks having acquired distinctiveness and reputation are also denied. The defendant No.2 has also tried to state that the trade marks adopted by the defendant No.2 are not identical with and/or deceptively similar to the plaintiff's trade mark as a whole. At the stage, when the trade mark GEE BEE as used by the defendant No.2 is in the form of the device of an oval Along with words "DELUX" and "A GUPTA PRODUCT". Therefore, there is no likelihood of any deception or confusion.

4. It may be stated at the outset that during the course of the arguments,

learned counsel for the defendants accepted that defendant No.2 would not use the trade mark G.B. and confined his arguments to defendant No.2's right to use the trade mark GEE BEE. The statement of the learned counsel for the defendant No.2 regarding trade mark G.B. is hereby recorded as per which defendant No.2 has undertaken not to use this trade mark.

5. Since there was a great deal of arguments on the aspect of territorial jurisdiction which was the main plank of attack of the defendants, it would be appropriate to deal with this aspect first.

6. Learned counsel for the defendants submits in this behalf that this court has no territorial jurisdiction to entertain the present suit inasmuch as defendants reside and work for gain in Gurdaspur, Punjab and no cause of action has arisen in Delhi i.e. within the territorial jurisdiction of this court. It was submitted that the plaintiff did not file a single document which could show that the defendant were selling their products in Delhi. In fact there was no sale made by the defendants, and Therefore, the plaintiff could not file the suit in Delhi. He cited the judgment of this court in the case of Lok Nath Prasad Gupta Vs. Bijay Kumar Gupta reported in 57 (1995) DLT 502 in support. On the other hand, it was argued by learned counsel for the plaintiff that the present suit was a composite suit for trade mark and copyright which could be gathered from reading para 15 of the plaint and in that view of the matter, this court had jurisdiction applying the principles contained in the Copyright Act. He also relied upon the judgments in the cases of 1. 1998 PTC 260, P.M.Diesels Ltd. Vs. Patel Field Marshal Industries 2. 1984 PTC 97, M/s Nirex Industries (P) Ltd. Vs. M/s Man Chand Foot Wears Industries. 3. 1992 (1) A.L.R.417, The Tata Iron & Steel Co.Ltd. Vs. Mahavir Steels and Ors. and 4. 2001 PTC 321. SmithKline Beecham Plc and Anr. Vs. Sunil Sanghi and Anr.

7. It may be stated at this stage that the plaintiff is a Private Limited Company and it has its office at Dina Nagar, Gurdaspur, Punjab. Place of residence/office of both the defendants 1 and 2 is also at Dina Nagar, Gurdaspur. Therefore none of the parties have office in Delhi. The plaintiff is claiming jurisdiction of this court on the basis of following averments made in para 15 of the plaint:

"That the defendants are working for gain in Delhi and the acts of infringement and passing off are carried out in Delhi. The defendants are selling their goods under the trade mark G.B. and GEE BEE surreptitious manner,. Moreover, the plaintiff's trademark G.B.Label is registered in the appropriate office of Trade Marks Registry at New Delhi. plaintiff is also carrying on his business activities at Delhi and is widely distributing his goods in Delhi, and as such, this court has jurisdiction to entertain and adjudicate the present suit in view of the above and otherwise also in view of Section 62 of the Indian Copyright Act, 1957. Thus, this Hon'ble court has jurisdiction to entertain and adjudicate the present suit."

The allegations in this para are as under:

1. The defendants are working for gain in Delhi and acts of infringement and

passing off by the defendants are carried out in Delhi.

2. The plaintiff is also carrying on his business at Delhi and is widely distributing the goods in Delhi.

3. This court has jurisdiction in view of Section 62 of the Indian Copyright Act as well.

8. In so far as first averment relating to defendants is concerned, the same is not correct. As per plaintiff's own showing, both the defendants are working for gain in Dina Nagar, Gurdaspur, Punjab. No document worth the name has been filed to show that the defendants are selling their goods in Delhi. The plaintiff has produced on record various bills issued by the defendants. Although these bills relate to different cities, like Cochin, Ahmedabad, Jammu, Madras, Madurai etc., not a single bill is produced by the plaintiff which would show the sale of goods by the defendants in Delhi. When the defendants are selling the goods in Dina Nagar, other cities of Punjab and so many cities of other States and the plaintiff could procure the bills relating thereof, it is not possible to accept the contention of the learned counsel for the plaintiff that in Delhi defendants are making clandestine sales.

9. As far as allegations about the sale of goods by the plaintiff in Delhi and the shelter of Section 62 of the Indian Copyright Act is concerned, I am afraid, apart from making bald averment in para 15 nothing is placed on record to substantiate the same. Admittedly, there is no office of the plaintiff in Delhi nor it is pleaded by the plaintiff. In these circumstances, judgment of this court in the case of Lok Nath Prasad Gupta (supra), stated by the defendants would be relevant. In that case both the plaintiff and the defendant were residents of Calcutta. The plaintiff had claimed jurisdiction of Delhi court by stating in para 13 of the plaint "the Court has jurisdiction to entertain and try the present suit as the defendant is selling its products within the territorial jurisdiction of this court. Moreover, this court has jurisdiction u/s 62(2) of the Copyright Act, 1957 as the plaintiffs carry on their business within the territorial jurisdiction of this Hon'ble Court".

10. After reproducing the aforesaid para 13, this court took note of further pleadings in that suit in paras 3 and 4 of the judgment which read as under:

"Apart from the above said statement in Para 13, which is the jurisdiction clause in the plaint, it is nowhere mentioned in the plaint as to how and in what manner, the plaintiff carries on his business within the jurisdiction of this court. Nor is it stated as to how and in what manner, the defendant is selling its products within the territorial of this court The plaintiff has not alleged a single transaction of any sale of his products by the defendant himself or anyone else on his behalf in the infringing pouch within the territorial jurisdiction of this court.

The defendant has specifically pleaded in the written statement that this court does not have jurisdiction to try the suit as both the parties are manufacturing

chewing tobacco (Khaini) in Distt.24 Pargana(North) West Bengal and the defendant has never sold his Khaini in the jurisdiction of this court at any point of time. It is further alleged that the plaintiff has filed the present suit before this court with a view to harass the defendant. The defendant lives jointly with his elder brother Shri Rakesh Kumar Gupta. plaintiff's sister is married with the defendant's brother. Their relations are stained."

11. Thereafter, the court took into consideration the provisions of Section 20 of CPC as well as Section 62 of the Indian Copyright Act and ultimately held that the Delhi court had no jurisdiction by making the following observations in para 10:

"A bald assertion, as has been made in para 13 of the plaint referred to hereinabove, without giving further facts or particulars is not enough to confer this court with a territorial jurisdiction over the suit. The plaintiff does not allege having any shop, branch of office of his own in Delhi. The plaint also does not allege any instance of the defendant having sold the infringing goods in Delhi or having any office, branch or shop of his own in Delhi."

This judgment squarely applies to the facts of this case.

12. It may be mentioned here that various judgments cited by the plaintiff herein were also taken note of by this court in para 11 of the judgment but held that those judgments were not detrimental to the view taken in para 10.

13. In so far as facts of the present case are concerned, they are almost similar to the facts contained in the aforesaid judgment. Various judgments cited by the plaintiff are of no avail. In the present case also the defendants have categorically pleaded that they are not make any sales in Delhi. The plaintiff, as already pointed out above, has not been able to show a single document to the contrary. In all the judgments cited by the plaintiff, this court held that Delhi courts had the jurisdiction after finding that the plaintiff either had the office in Delhi or was carrying on business in Delhi. At the cost of repetition, it is mentioned that the plaintiff has not been able to show that it carries on business in Delhi. Accordingly, I hold that averments made in the plaint fail in conferring territorial jurisdiction on this court. For this reason when it is to be held that this court has no territorial jurisdiction, it is not necessary to deal with the matter in controversy on merits.

14. The suit is directed to be returned to the plaintiff for presentation to the appropriate court.

15. Suit and all IAs stand disposed of. Interim order stands vacated. No costs.