
(2013) 08 DEL CK 0210

In the Delhi High Court

Case No : CS (OS) 80 of 2013 and IA No. 622 of 2013

HPL Electric and Power Pvt. Ltd.

APPELLANT

Vs

Sanjeev Sharma and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 138 DRJ 532 : (2013) 56 PTC 464

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Sushant Singh, Mr. P.C. Arya, Mr. V.K. Shukla, Mr. G. Polanki, Mr. Tejinder Singh, Ms. Parveen Aarya and Mr. Rupesh Pandey, for the Appellant;

Judgement

Jayant Nath, J.—Arguments have been heard in this suit. The plaintiffs have filed an affidavit of service on the defendants dated 20.03.2013. Service has been effected on the defendant. The original receipt of the courier agency with the report has been placed on record. The defendants are served. As none appeared on behalf of the defendants, they are proceeded ex parte. The plaintiff has filed the present suit seeking a decree for permanent and mandatory injunction for infringement of their registered Trade Mark "HPL" by the Defendant and for claiming all rights in their registered Trade Marks.

2. It is the contention of the plaintiff that it is a company incorporated under the Companies Act, 1956 in the name of HPL Electric & Power Pvt. Ltd., earlier named HPL Socomec Pvt. Ltd. since 1956. The plaintiff contends that it is carrying on an old and established business under the trade mark "HPL" of manufacturing, marketing and selling electrical and electronic items as mentioned in para 2 of the plaint. The plaintiff in the averments has stated that it is one of the premium manufacturer of reliable Electrical Protection Equipments, Switchgears, Electronic energy Meters and Energy Management Systems.

3. The plaintiff further contends that products in the name of the trade mark/logo HPL are being manufactured since 1956, though the full fledged use of the

logo began in the year 1971. As stated by the plaintiff in their averment, the plaintiffs created the distinctive logo in 1956 comprising of several artistic features which is represented in a quadrilateral with a red background and HPL written in a white script covered under the meaning of Logo Mark or Device Mark u/s 2(m) of the Trade Marks Act, 1999 and by virtue of its artistic features is covered under the definition of Artistic Work u/s 2(c) of the Copyright Act, 1957. The said logo is pictorially represented in para 9 of the plaint. The plaintiff contends to be the registered proprietor of the following trademarks, copies of the Registration certificates/Renewal certificates and present online status of which are placed on record as Annexure-B.

4. As according to the plaintiff, their Group mark HPL has a strong presence nationally as well as globally. In furtherance of the same, the plaintiff states that the turnover of the Group Companies of the plaintiff is over Rs. 1000 crores and a workforce of over 500 persons. The plaintiff also contends to have 69 marketing offices spread throughout the country with 1200 authorised dealers and 15000 retailers. The annual sales of the plaintiffs goods under the trade mark/name run into several crores. The details of the sales figures of the last five years are filed by the plaintiff as Annexure-C. Copies of the sale invoices of the plaintiff company have also been filed as Annexure-D.

5. The plaintiff further contends, that they have been advertising its trade mark/name "HPL" through various print media including newspapers, magazines, journals, etc and also through visual and electronic media. The advertising expenses incurred by the plaintiff company in the last five years have been placed on record as Annexure-E, additionally, copies of advertisements expense bills/promotional material are filed as Annexure-F.

6. It is the contention of the plaintiff, that during the first week of December, 2012 it came to the knowledge of the plaintiff that the Defendant No. 1, the proprietor of the company using the impugned trade mark/name has been manufacturing and selling all kinds of solar lights, solar torches, solar blinkers and other electrical items under the trade mark "HPL". The plaintiff has also contended that the defendant has also promoted the impugned trade mark/name on its website thereby infringing the plaintiffs trade mark. The plaintiff further contends that the defendant concern has replicated and imitated the well known logo HPL by taking the entire colour scheme, writing style, quadrilateral device, layout etc and using it in relation to identical goods. The pictographic comparison of the logos has been made in para 21 of the plaint. On further enquiry by the plaintiff, the plaintiff discovered that the defendant with malafide intention has filed trade mark application bearing No. 2146031 in class 11 on 18.05.2011 in respect of the impugned identical logo.

7. The plaintiff has relied upon the judgments of this Court in CS(OS) 559/2010 titled as The Indian Performing Right Society Ltd. v. Gauhati Town Club and Anr. and in CS(OS) 1544/2012 titled as United Coffee House v. Raghav Kalra & Anr. to contend that as the defendant is ex parte, the plaintiff need not to file evidence

keeping in mind the averments made in the plaint have been supported by an affidavit of Mr. Deepak Singhal, the Company Secretary of the plaintiff Company.

8. In view of the judgments of this Court, the contention of the plaintiff that he need not to file evidence is accepted. The affidavit of the Company Secretary of the plaintiff is taken on record.

9. In view of the averments made in the plaint and the accompanying documents, the plaintiff has established that it is registered proprietor of the trade mark HPL in Class VII, Class IX and Class XI. It is also the registered proprietor of trade mark HPL Group under Clause DC. The plaintiff has also proved that it has distinctive logo comprising of several artistic features and is represented in a quadrilateral with a red background and HPL written in a white script. The plaintiff has a copyright to the said artistic work. The act of the defendants in manufacturing and selling Solar Lights, Street Lights, Solar Gyser, etc. and other electrical items under the trade mark HPL is clearly in violation of the statutory rights of the plaintiff. The act of the defendants also appears to be a deliberate attempt to encash on the goodwill of the plaintiff and cause confusion and deception amongst the people regarding its source of origin and thereby sought to pass off his goods as that of plaintiff. The defendant's adaptation of mark HPL with identical shape, writing style has proved the contention of the plaintiff. In view of the above, a decree is passed in favour of the plaintiff and against the defendant for permanent injunction restraining the defendants, their directors, agents, etc. from manufacturing, marketing, reproducing or dealing with Solar Lights, Street Lights, Solar Gyser, Solar LED Lights, Torches, Blinkers, Solar Home Lightings and other electrical items using the trade mark and logo HPL or any other trade mark or logo deceptively similar to the said registered trade mark and logo HPL of the plaintiff. A decree of permanent injunction is also passed in favour of the plaintiff and against the defendants, their directors, agents, etc. from manufacturing, marketing, reproducing or dealing with Solar Lights, Street Lights, Solar Gyser, Solar LED Lights, Torches, Blinkers, Solar Home Lightings and other electrical items using the logo HPL in the manner as mentioned in para 21 of the plaint. Cost of the suit be also awarded to the plaintiff.