

(2008) 05 DEL CK 0090

In the Delhi High Court

Case No : IA No"s. 12280 of 2007 and 4459/08 and I.A. No. 13865 of 2007 in
CS (OS) No. 2096 of 2007

India Habitat Centre

APPELLANT

Vs

Ms. Sunita Aeren, Ms. Sanjeev J. Aeren, Indirapuram Habitat
Centre and Vice Chairman, Ghaziabad Development Authority

RESPONDENT

Date of Decision : 26-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Citation : (2008) 05 DEL CK 0090

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sudhir Chandra, Sudhinder, Neel Mason, Anurag Choudhary and Arvind Gopal, for the Appellant; Ravi Shankar Prasad Anil Airi and Sadhna Sharma, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—The plaintiff society has filed this suit claiming that it was owner of "India Habitat Centre" with a logo vide Registration Certificate numbers 854734, 854735 and 854736 in respect of Paper and Paper Articles, Printed Matter, Newspaper and Periodicals Books, Photographs, Stationery, Office Requisites, Instructional and Teaching Material; Furniture, Articles of Wood, Cane and Wicker; and Bed and Table Covers.

2. The defendant was coming up with a "Habitat Centre" named as "Indirapuram Habitat Centre" and the defendant was using a logo similar to that of the plaintiff. The prayer of the plaintiff is that the defendant be restrained from reproducing logo of plaintiff in any material form and thereby infringing plaintiff's copyright in the logo. The other claim of the plaintiff is that the defendant be restrained from using word "Habitat Centre" coupled with "Indirapuram". The plaintiff states that "Habitat Centre" was a unique combination of words and serves as a trade mark of the plaintiff. It has been continuously and extensively used by the plaintiff since its formation in 1987.

"Habitat Centre" has become an identity signature of the plaintiff and it is identified by the common people with the services being provided by the plaintiff. The plaintiff was involved in bringing together various institutions and individuals interested in habitat and habitat related environmental issues in all facets. "India Habitat Centre" was trading style of the plaintiff and "Habitat Centre" in fact denotes and is associated with the plaintiff since its inception. Use of words "Habitat Centre" in combination by any third party will lead to confusion as to source or the origin of the services provided by that party and Therefore use of these words by defendant in "Indirapuram Habitat Centre" would give impression as if "Indirapuram Habitat Centre" was an institute or branch of "India Habitat Centre" and the defendant would encash the goodwill of the plaintiff in marketing its own services while in fact the defendant had nothing to do with the plaintiff. In nutshell the arguments of the plaintiff is that the use of word "Habitat Centre" by the defendant shall infringe the rights of the plaintiff, damage the cause of the plaintiff and shall amount to passing of the services of the defendant as that of plaintiff.

3. Counsel for the defendant, at the very outset, stated that the logo adopted by the defendant initially had been changed. The earlier logo had some similarity with the logo of the plaintiff. After filing of the suit, the defendant has changed its logo which is altogether different from that of the plaintiff's logo. I have perused the logo now having been adopted by the defendant and this logo has no similarity with the logo of the plaintiff. With this change in logo by the defendant, the question of infringement of trade mark of the plaintiff registered vide registration nos. 854734, 854735 and 854736 does not arise. A perusal of these trade marks would show that plaintiff's registered trade mark comprised of a caricature of the person with outstretched arms and a triangle in the centre and this caricature is contained within a circle bearing words "India Habitat Centre" on the perimeter of circle. The trade mark was specifically registered for the articles mentioned in the Registration Certificate as stated above. Since the defendant has altogether changed the logo and the defendant "Habitat Centre" was at the stage of construction of building, the question of infringement of these trade marks would not arise. Thus, the only question to be decided by the Court is whether the combination of words "Habitat Centre" is the property of the plaintiff and the defendant cannot be allowed to use this combination "Habitat Centre" coupled with "Indirapuram" and the name of the defendant "Indirapuram Habitat Centre" violates the rights of the plaintiff.

4. Counsel for the defendant argued that the plaintiff's trade mark was registered only for specific items as mentioned in the certificates. The defendant is not using the words "India Habitat Centre" which is registered name of the plaintiff association, nor has any intention to use this trade mark. He submitted that "Habitat Centre" is a common property, common to the business of clubs & habitat sites and the plaintiff has no exclusive right on words "Habitat" or "Centre". It is submitted that "Indirapuram Habitat Centre" in no way violates the plaintiff's right in "India Habitat Centre". There cannot be a registration of or

a right vested in anyone prohibiting others from using "Habitat" or "Centre" either as two separate words or in combination as "Habitat Centre". The plaintiff cannot claim exclusive rights over these words and pray for restricting other person from using these words separately or in combination.

5. It is admitted position that "Habitat Centre" is not a registered trade mark of the plaintiff. The word "Habitat" is a generic word taken from Latin word "Habitatio" which means the process of inhabiting a house or home. In the field of ecology, the word "Habitat" has been used in a broader sense as physical condition that surrounds species or species" population or assemblage of species or communities. This being a generic word, exclusivity to its use cannot be claimed by any person nor can be granted. The word "Centre" is a descriptive word which indicates the place or the concentration of a thing. No one can claim exclusive use to word "Centre".

6. This Court in 1996 PTC (16124) Competition Review Private Ltd. v. N.N. Ojha (Competition Success Review) observed that "Competition" was a generic term and in absence of similarity in colour scheme, the plaintiff could not claim exclusive use of the word "Competition". Similarly in Rupee Gains Tele-Times Pvt. Ltd. v. Rupee Times 1995 15 PTC 384, this Court held that the word "Rupee" was synonym with money and all financial journals and publications have been using the word business or financial or money for their journals and newspapers. Merely because one company has used word "Rupee" to name its financial journal could not mean that the said word cannot be used by any other journal nor it can mean that the journal first using word "Rupee" has acquired trade mark in the said word. "Rupee" is a descriptive word not a distinctive word. In J.R. Kapoor v. Micronix India (Micro Tele v. Micronix) 1994 PTC 260 (SC), the Supreme Court held that "Micro" was a common/general name descriptive of the products which are sold or of the technology of by which the products are manufactured and as such the user of the products are not likely to be misguided or confused by the said word. In SBL Ltd. v. Himalaya Drug Company 1997 PTC (17) the controversy was between trade marks liv. 52 and LIV-T. It was held that "Liv." is an abbreviation of liver, a human organ and both the drugs pertain to ailments or diseases associated with liver functioning. It was held that where any symbol, word or expression or get up commonly used by traders in connection with their trade, in respect of such symbol, word or expression a particular trader cannot claim an exclusive right. It was further held that words, expressions or devices which are descriptive of particular goods or trades are open to use by all persons engaged in the trade.

7. The word "Habitat Centre" only signifies a centre providing services in relation with environment, assembling of people for various kinds of activities and getting together for different purposes. Various authorities, agencies, government bodies have been using word "Habitat Centre" for purpose of conveying that the place was being used for the purposes of facilities pertaining to habitat. The term "Habitat Centre" has been in public domain and has been used either singly or

jointly world over by hotels, companies and by various Government and non-Governmental organizations like "ITES Habitat Centre" in Cochin, "Karnataka State Habitat Centre" at Anjanpura. There is a chain of "Habitat Centre" hotels in Zaragoza in Spain. There is a Science Habitat Centre website. The defendant has also stated that Greater Noida Habitat Centre Ltd., Kerala Habitat Pvt. Ltd and Gurgaon Habitat Centre are the registered companies having "Habitat Centre" as part of their name.

8. I consider that "Habitat Centre" cannot be the exclusive property of the plaintiff. Neither "Habitat" nor "Centre" can be allowed to become property of any person singly or jointly. The "Habitat Centre", "Cultural Centre", "Health Centre", "Shopping Centre", "Activity Centre" are names which are in public domain and can be used by any person. The plaintiff does not have a prima facie case for injunction stopping defendant from using "Indirapuram Habitat Centre" as its name. The plaintiff is not entitled for interim injunction.

9. The applications No. 12280/2008) of the plaintiff under Order 39 Rules 1 & 2 CPC for grant of interim injunction is hereby dismissed and the application (IA No. 4459/2008) of the defendant No. 3 is allowed.

IA No. 13865/2008 (Order 39 Rule 2A CPC)

In view of the orders passed on the interim injunction application, this application has become infructuous and the same is dismissed as such.

CS(OS) No. 2096/2007

List the suit for further proceedings on 22nd September, 2008