
(2001) 09 DEL CK 0200
In the Delhi High Court
Case No : Suit No. 2180/97

JK Corporation Ltd.

APPELLANT

Vs

Pratibha Cement (P) Ltd.

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Copyright Act, 1957 — Section 2

Citation : (2001) 94 DLT 580

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Gitanjali Duggal and Neel Mason, for the Appellant;

Final Decision : Allowed

Judgement

V.S. Aggarwal,J.

1. J.K. Corporation Limited, hereinafter described as the plaintiff, has filed the present suit for permanent injunction to restrain the defendant (Pratibha Cement (P) Ltd), its proprietor or partner, its principal officers. servants or distributors from using the trade mark VSK Lakshmi cement together with three petalled lotus device or any other trade mark or device which is identical with or deceptively similar to the plaintiff's trade mark Lakshmi cement and in this process not to infringe the plaintiff's trade mark registration no. 464272. It also prays to restrain the defendant or its partners, officers or servants from reproducing any of the artistic feature of the plaintiff's trade dress in any material form amounting to an infringement of plaintiff's copyright. Thirdly, permanent injunction is prayed to direct the defendant not to advertise, manufacture, sell or offer for sale the cement under the trade mark VSK Lakshmi cement together with three petalled lotus device in the bags identical to that of the plaintiff referred to above. It prays for an order of delivery of the stocks including containers, labels for purposes of destruction of the same by the plaintiff and for rendition of accounts of profit illegally earned by the defendant.

2. The facts alleged are that the plaintiff company was previously known as Straw Products Ltd. Its present name J K Corporation Ltd was adopted in the year 1994. Rakesh Kumar Gupta is the constituted attorney of the plaintiff. The plaintiff company besides other is engaged in the manufacture of wide range of products like paper, synthetic fibre and magnetic tapes. The cement manufactured by the plaintiff company had received international acclaim.

3. However, bag of the cement of the plaintiff contains COC guarantee emblem clearly printed on it. The lower left hand portion of the plaintiff's bag contains a symbol consisting of a toothed wheel with a hammer and alphabets JK printed on it. This is the symbol indicating that plaintiff company is a member of JK organisation of the companies of JK Group. The cement of the plaintiff is sold in green HDPE bags bearing the trade mark Lakshmi cement and device of three petalled lotus enclosed in two (V-shaped) devices the upper one being inverted. The right hand corner of the bag contains COC emblem of guarantee and the left hand top corner has ISI emblem. plaintiff's bag constitutes an original artistic work within the meaning of Section 2(c) of the Copyright Act. It was created by M/s Everest Advertising Pvt. Ltd. and now vest with the plaintiff company exclusively.

4. In addition to that it is asserted that plaintiff has used the trade mark Lakshmi cement and the device of three petalled lotus device in relation to cement of their manufacture since 1982. It has been advertised throughout India and huge amounts had been spent in this regard. On account of long and continuous use of the trade mark Lakshmi cement and on account of wide spread advertising and publicity that the product has received substantial and valuable reputation has accrued to the trade mark Lakshmi cement. The said trade mark was registered under no. 464272 dated 8th December, 1986 in class 19 in respect of cement. The registration is more than seven years old and duly renewed under Trade and Merchandise Marks Act, 1957.

5. The grievance of the plaintiff is that in the month of November 1993 the plaintiff became aware of the defendant M/s Pratibha Cement (P) Ltd. who is also engaged in the manufacture of cement using the trade mark VSK Lakshmi cement. The said trade mark is deceptively similar trade mark to that of the plaintiff. The plaintiff with a view to safeguard its common law and statutory rights addressed a notice. It appears to have little effect. hence the present suit with the above said relief has been filed.

6. This court on 4th August, 1998 had proceeded ex parte against the defendant.

7. In support of its case the evidence has been led by affidavit. The same has been filed of Rakesh Kumar Gupta, attorney of JK Corporation.

8. The affidavit clearly indicates that JK Corporation Ltd. is a company incorporated under the Companies Act. It was previously known as Straw Products Ltd.

9. The evidence in the form of the affidavit establishes that the plaintiff company has been selling its cement in green HDPE bags which bears the trade mark Lakshmi cement. It has device of three petalled lotus enclosed in two shevron (V-shaped) devices. In the right hand corner of the bag it has COC emblem of guarantee, the left hand top corner has the ISI emblem. The nature of the bag that has been referred to is P6. Besides establishing the sale and the advertisement expenses it has been shown that the registration is valid till date and is more than seven years old.

10. This evidence show that plaintiffs have a case not only in passing off but with respect to the infringement claimed pertaining to the alleged trade mark of the plaintiff. This is so because the defendants bag is by and large similar to that of the plaintiff. Consequently, it must be held that plaintiff is entitled to the permanent injunction of the trade mark of the plaintiff and also regarding the artistic feature of the plaintiff's trade dress which infringes the copyrights of the plaintiff.

11. In the face of the aforesaid the suit of the plaintiff is decreed restraining the defendant, its partners, distributors or agents from using the trade mark VSK Lakshmi cement with three petalled lotus device or any other trade mark or device which is identical or similar to the plaintiff's trade mark Lakshmi cement and the device of three petalled device.

12. The defendants are further restrained through its partners, agents or servants from reproducing any of the artistic feature of the plaintiff's trade dress in any material form and further they are restrained from directly or indirectly dealing in cement under the trade mark VSK Lakshmi cement. There will be no order as to costs.