

(2022) 03 DEL CK 0196

In the Delhi High Court

Case No : Civil Suit (COMM) No. 524 Of 2021, I.A. No. 4506 Of 2022

Kamdhenu Limited

APPELLANT

Vs

Raghunath Virdharam Bishnoi And Ors

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 03 DEL CK 0196

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : S.K. Bansal, Darpan Wadhwa, Moazzam Khan, Alipak Banerjee, Aparimita Pratap, Amer Vaid, Brijesh Ujjainwal, Neel Mason, Vihan Dang, Aditi Umapathy, Parva Khare, H.V. Shankar, Bushra Kazim, Bushra Kazim Mishra

Judgement

Prathiba M. Singh, J1. This hearing has been done through hybrid mode.

I.A. 4506/2022 (for direction)

2. The present application has been filed by the Plaintiff-Kamdhenu Limited, seeking various directions qua the illegal use of the term/mark/name 'Kamdhenusteel' in various forms by known and unknown Defendants.

3. The background of this case is that the Plaintiff adopted the trademark 'Kamdhenu' in 1994 and has been manufacturing, selling and offering for sale various products including TMT Bars, Cement, Real Estate, etc. It is stated to be an ISO 9001:2008 certified company, with a market share of around 20% of retail branded TMT Steel Bars in India. The Plaintiff is also the registered owner of the trademark 'Kamdhenu' and its formative marks, in various classes, including in Classes 6 and 35, registered between the years 1996 and 2008. The flagship website/domain names of the Plaintiff are 'www.kamdhenuispat.com' and 'www.kamdhenulimited.com', stated to have been registered in 1999 and 2016.

4. The Plaintiff realized sometime in 2021 that one Sh. Raghunath Virdharam

Bishnoi-Defendant No.1 with the address 5/2, Club Road, Punjabi Bagh, Delhi and the email address - bishnoimumbai@gmail.com, with various other addresses in Mumbai and Rajasthan, and certain unknown people, had registered various domain names with the mark 'Kamdhenushpat', such as the domain name 'www.kamdhenushpat.com', copying the trademarks/label/trade name/etc. of the Plaintiff. The case of the Plaintiff is that the Defendants had portrayed themselves to be the representatives of the Plaintiff-company and induced various third parties to enter into dealership agreements with them, by impersonating the Plaintiff and its business. The Plaintiff was made aware of the same when one entity informed them that it had received multiple calls from mobile numbers +91-8291921518 & +91-9137285531 of Defendant Nos.1&2, with the service providers being Vodafone Idea Limited/Defendant No.3 (hereinafter "Vodafone") & Reliance Jio Limited/Defendant No.4 (hereinafter "Reliance Jio").

5. The details relating to the number of persons who have been defrauded by the Defendants have been set out in the application. The modus operandi adopted by these Defendants was to approach various customers and get purchase orders placed from them and receive advance amounts through various bank accounts.

6. Moreover, the submission of Mr. Bansal, Id. Counsel for the Plaintiff, is that Defendant No.1 had in fact availed of the Ads Program on the Google platform and had registered 'kamdhenuishpat' as the keyword so as to appear in the top search result as a sponsored advertisement. Accordingly, the Plaintiff by the present application, is seeking directions against the Registrar of the said domains - GoDaddy LLC/Defendant No.8 (hereinafter "GoDaddy"), as also against various banks/Defendant Nos.5-7, telecom companies/Defendant Nos.3, 4 & 9, and Google LLC/Defendant No.10 (hereinafter "Google"), for disclosure of details of the holders of the domain names, mobile numbers, bank accounts, and Google Ads/email accounts.

7. In this matter, in I.A. No.13715/2021, being an application seeking injunction under Order XXXIX Rules 1&2 CPC, the predecessor Bench of this Court, on 25th October, 2021, had passed an interim order and directions in the following terms:

" xxx xxx xxx

6. The plaintiff has made out a prima facie case. The defendants No.1 and 2, their owners, partners etc. are restrained by an ex-parte injunction in terms of prayer para (a) of the present application.

7. Defendants No.3 and 4 are directed to provide the KYC details to the court of the Mobile Nos. +91-8291921518 and +91-9137285531 mentioned in prayer para (c) and (d) respectively of the application.

8. Defendants No.5, 6 and 7 are also directed to provide the KYC details of the account holders of the accounts mentioned in prayer para (e), (f) and (g) of the application. They will also place on record the details of the transactions in the

said accounts for the last one year.

9. Defendant No.8 is also directed to comply with the above prayer para (h) of the application.

10. Defendant No.10, 11 and 12 are also directed to comply with the above prayer para (j) and (k) of the application.”

8. Thereafter, vide order dated 4th January, 2022, further directions were issued for blocking and suspending the domain names and for disclosure of KYC details of the Defendants.

9. Today, further directions are sought as the Plaintiff states that Defendant No.8 has not provided the details of the Registrant of infringing domains and new infringing domains such as ‘http://www.kamdhenusteelltd.com’ and ‘http://www.kamdhenusteelimited.com’ have also been registered with Defendant No.8 around 20th January, 2022, and details of Registrants of the same are required along with details of certain mobile numbers and opening of the sealed cover filed by Vodafone.

10. It is also submitted by Mr. Bansal, Id. Counsel appearing for the Plaintiff, that despite approaching various police stations and police authorities including cyber cell authorities, no action has been taken against Defendant Nos.1 and 2. In fact, even basic details are not being revealed to the Plaintiff. The Plaintiff’s business is suffering immensely.

11. Mr. Darpan Wadhwa, Id. Senior Counsel appearing for GoDaddy, has placed reliance on the recent order passed by a Id. Single Judge of this Court in CS(COMM) 154/2021 titled Godrej Properties Ltd. v. Ashok Kumar & Anr., dated 14th March, 2022, where certain directions have been issued to prevent phishing through the registration of similar domain names. He submits that similar directions may be passed in this matter, instead of Defendant No.8 being blanketly directed to remove all future use of the Plaintiff’s marks, as and when such domain names may come up.

12. Heard and perused the record. A perusal of the application shows that the sums received by these Defendants are in lakhs of rupees. The portrayal of the Defendants as being the Plaintiff or connected/affiliated with the Plaintiff is being facilitated by the illegal domain names which have been registered by the Defendants and the various bank accounts which have been opened by them for their transactions. This Court is convinced that the manner in which Defendant Nos.1 and 2 have defrauded third parties and gullible customers cannot be ignored by the Court and some stringent measures would have to be taken to ensure that the trademark and goodwill of the Plaintiff is not misused by Defendant Nos.1 and 2, who are portraying themselves to be the Plaintiff or connected / affiliated to it. Under such circumstances, the following directions are issued:

(i) Insofar as the infringing domain name in this application is concerned, being

'http://www.kamdhenusteelltd.com', Defendant No.8- GoDaddy LLC shall suspend the said domain name with immediate effect. Insofar as the second domain name being 'http://www.kamdhenusteelimited.com' is concerned, upon receiving a communication, GoDaddy has already suspended the domain name. The same shall continue to remain suspended. Status quo shall be maintained and no transfer of the said two domain names shall be permissible. Secondly, details as to the Registrants of these domain names being 'http://www.kamdhenusteelltd.com', and 'http://www.kamdhenusteelimited.com', shall also be communicated by Defendant No.8 to the Plaintiff within three working days.

(ii) Insofar as when any further illegal and infringing domain names are discovered, the Plaintiff shall report to GoDaddy on its phishing tool (available at <https://supportcenter.godaddy.com/AbuseReport>), in respect of any and all objectionable domains containing the word 'Kamdhenu', 'Kamdhenusteel' and 'Kamdhenuispat'. GoDaddy shall immediately take cognizance of the said reporting and disable/suspend such domain names within three working days. If GoDaddy does not disable or suspend the domain names within three working days, the Plaintiff is permitted to move an application or an affidavit before the Joint Registrar, Delhi High Court, in this regard, who shall direct the same to be suspended.

(iii) GoDaddy shall also provide to the Plaintiff, the details of the registrants of all the domain names as and when reported by the Plaintiff, including the email addresses, mobile numbers and postal addresses which may have been available with it, of the domain names which are blocked/suspended by it.

(iv) It is made clear that this order is not restricted to the domain names listed in the suit and in the application but to all other domain names containing the mark - 'Kamdhenu', 'Kamdhenusteel' or 'Kamdhenuispat' in relation to steel and metal products and allied products.

(v) Insofar as Google is concerned, the details of the person/entity who has used the email address - bishnoimumbai@gmail.com shall be provided by Google, within three working days to the Id. Counsel for the Plaintiff. In addition, the said platform shall also disable the usage of 'Kamdhenu' and 'Kamdhenusteel' as keywords in relation to steel and metal and allied products, by Defendant No.1, within three working days. Moreover, the details of the person/entity who availed of the said Ads Program on the Google platform, including the addresses/mobile numbers, email addresses and the payments made through any banking or other platforms shall also be disclosed by Google to the Plaintiff within three working days, if any, over and above any information already disclosed. At this stage, Mr. Vihan Dang, Id. counsel appearing for Google, submits that the payment details of the persons who had availed of keywords and the sponsored ads on the Google Ads platform have already been provided to the Plaintiff and the Google Ads account of the said Defendant has also been suspended. The status quo shall be maintained by Google, in this regard.

(vi) All the banks listed in the prayer to the present application, shall provide the KYC details to the Id. Counsel for the Plaintiff as below:

Sl.

No.

Bank

Account No. and IFSC

1.

Canara Bank, Post Box No.495, 74, Janpath, New Delhi-110001(Defendant No.5)

&

Canara Bank, 297, Bellasis Road, UFW

Trust Building, Opposite Bus Depot, Mumbai, Maharashtra-400008 (Defendant No.6)

· A/c No.918010055567418;

· A/c No.121101115759 (IFSC-CNRB0000238),

· A/c No.110016520238

(IFSC-CNRB0000238),

· A/c No.110028639070 (IFSCCNRB0000238),

· A/c No.110024346682 (IFSC CNRB0000238),

· A/c No.110009987387 (IFSC- CNRB0001723),

· A/c No.110001613029.

2.

Punjab National Bank, 265, Orchid City Centre, Mumbai Central, Mumbai-400008

Head Office/Corporate Office: Plot No 4, Sector -10 Dwarka, New Delhi-110075 (Defendant No.7)

A/c No.2916000100535046 and 2916001500018496
(IFSC-PUNB0436400)

3.

Axis Bank Limited, Axis House, C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai-400 025

A/c No.921010031808364 (IFSC-UTIB0000056)

4.

ICICI Bank, ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara-390007, Gujarat

A/c No.254601001146 (IFSC- ICIC0001398)

(vii) The telecommunication companies i.e., Vodafone, Reliance Jio, and Airtel, shall provide KYC details of the mobile numbers being +91-8274015086; +91-8274856645; +91- 8902805463; +91-8017270982; +91-8017473729; +91-8811811419; +91-9051564104; +91-8274086819, +91-8584046472; +91-8274855248; +91-9051564104; +91-6295517550; +91-7595025966 and +91-9599089676 to the Plaintiff, except any details already disclosed. In this regard, Vodafone and Reliance Jio have submitted details of the numbers listed in the plaint, i.e., +91-8291921518 & +91-9137285531, as below:

(a) Details of +91-8291921518 filed by Vodafone: This Court has opened and perused the sealed cover filed by Vodafone on record, pursuant to the previous order dated 25th October, 2021. The same reveals that the mobile number is registered in the name of Defendant No.1- Mr. Raghunath Virdharamji Bishnoi with the Mb. Nos. +91 8291921518, 9769552829 and Address: 66/68, Ram Bhavan, Room No 23, Kumbharwada, SP Road, 4th Kumbharwada Lane, Mumbai, Maharashtra, Opp. Goldeol Temple, 400004. The said sealed cover be opened and brought on record.

(b) Details of +91-9137285531 filed by Reliance Jio: An affidavit dated 4th January, 2022, has been filed by Reliance Jio where the customer name for the said mobile number is Mr. Anuj Bind, S/o Umesh Prasad, Mb. Nos.: +91-9137285531, 8252412281, Address: Wing D 606 Shitat Society, Bhavani Ln, Garodia Nagar, Ghatkopar East, Mumbai, Maharashtra-400077, along with a copy of his Aadhaar Card.

(viii) If any of the above details have already been provided, then the present directions would be restricted to the details which are not provided.

13. Issue notice to Defendant No.1- Mr. Raghunath Virdharamji Bishnoi, by all permissible modes including WhatsApp/email/post/SMS, at the information provided in the document filed by Vodafone, i.e., at Mb. No. +91 8291921518, 9769552829 and Address: 66/68, Ram Bhavan, Room No 23, Kumbharwada, SP Road, 4th Kumbharwada Lane, Mumbai, Maharashtra, Opp. Goldeol Temple, 400004.

14. Issue notice to Mr. Anuj Bind, S/O Umesh Prasad, by all permissible modes including WhatsApp/email/post/SMS, at the information in the document filed by Reliance Jio, i.e., at Mb. Nos.: +91-9137285531, 8252412281, Address: Wing D 606 Shitat Society, Bhavani Ln, Garodia Nagar, Ghatkopar East, Mumbai, Maharashtra, 400077.

15. Let Mr. Anuj Bind be impleaded as Defendant No.13 in the present suit.

16. Additionally, let an amended memo of parties be filed by the Plaintiff as per the above captured details of the Defendant No.1 and of Mr. Anuj Bind, within one week.

17. Insofar as the grievance of the Plaintiff is concerned that he has been unable to get the police authorities to take necessary action, let Court notice be issued to Mr. Sanjay Lao, Id. Standing Counsel (Criminal), GNCTD to file the status report before this Court as to what action has been taken pursuant to the various complaints filed by the Plaintiff in respect of the actions of Defendant Nos.1 and 2 in duping and defrauding various customers and collecting monies by impersonating the Plaintiff or its affiliates, within four weeks.

18. Moreover, the concerned official on behalf of the Delhi Police shall also place on record a proper report after investigating into this matter, especially to:

(i) Identify the whereabouts and the identity of the person(s)/entity who had registered the infringing domain names stated in the plaint and application including <https://www.kamdhenusteellimited.com>, and <http://www.kamdhenusteelltd.com>, or using the email address- bishnoimumbai@gmail.com, and operating/owning the various bank accounts, as specified in paragraph 12(vi) above.

(ii) Conduct investigation into the KYC details of all these mobile numbers- +91-8274015086; +91-8274856645; +91- 8902805463; +91-8017270982; +91-8017473729; +91-8811811419; +91-9051564104; +91-8274086819, +91-8584046472; +91-8274855248; +91-9051564104; +91-6295517550; +91-7595025966 and +91-9599089676, as to the persons who are using the same.

(iii) Conduct an investigation into the two persons identified by Vodafone and Reliance Jio-

(a) Defendant No.1- Mr. Raghunath Virdharamji Bishnoi with the Mb. Nos. +91 8291921518, 9769552829 and Address: 66/68, Ram Bhavan, Room No 23, Kumbharwada, SP Road, 4th Kumbharwada Lane, Mumbai, Maharashtra, Opp. Goldeol Temple, 400004.

(b) Mr. Anuj Bind, S/o Umesh Prasad, Mb. Nos.: +91-9137285531, 8252412281, Address: Wing D 606 Shitat Society, Bhavani Ln, Garodia Nagar, Ghatkopar East, Mumbai, Maharashtra-400077.

19. The detailed status report in this regard shall be filed within four weeks.

20. Id. counsel for the Plaintiff to intimate this order to Mr. Sanjay Lao, Id. Standing Counsel (Criminal), GNCTD for compliance.

21. In addition, on the basis of the information disclosed by some of the Defendants, including GoDaddy and Google, certain details have been ascertained in respect of the persons who have indulged in this illegal and unlawful conduct of infringing the Plaintiff's marks.

22. The said details be provided by the Id. counsel for the Plaintiff to the concerned Police official for conducting the said investigation, through Mr. Sanjay Lao, Id. Standing Counsel (Criminal), GNCTD. The concerned official of Delhi Police conducting the investigation in terms of the direction today, shall also conduct an investigation of these persons and file a status report.

23. On behalf of Department of Telecommunications/Defendant No.10 and Ministry of Electronics and Information Technology/Defendant No.11, Mr. Harish V. Shankar, Id. CGSC submits that vide notice dated 9th November, 2021, communication has been issued to all the ISPs to block all the infringing domain names, pursuant to the previous order dated 25th October, 2021.

24. Let the sealed cover be opened and the document in the said sealed cover be brought on record before the next date.

25. List before the Joint Registrar on 7th April, 2022.

26. List before the Court on 19th July, 2022.