

(2015) 05 DEL CK 0391
In the Delhi High Court
Case No : CS(OS) 2110 of 2009

Kashi Vishwanath Steels Ltd.

APPELLANT

Vs

Kys Manufacturer and Exporter Pvt. Ltd.

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Citation : (2015) 7 AD 530

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Umesh Mishra and Sunil Kumar, for the Appellant

Final Decision : Disposed off

Judgement

Indermeet Kaur, J—Present suit has been filed by the plaintiff for the relief of permanent injunction, infringement, passing off and rendition of accounts. The plaintiff is a company incorporated under the Indian Companies Act. It is engaged in the business of manufacturing all kinds of structural steels, angles, shapes and sections such as beams, channels, rounds, flats, squares steels bars etc.

2. The plaintiff in the year 1998 had adopted the trademark/label "KVS" and "KVS (Label)" in respect of setting up steels furnaces and continuous casting forging and rolling and re-rolling mill plant for producing and manufacturing of steels and alloy steels ingots, steels and alloy steels billets and all kind and size of re-rolled sections and has been continuously using the same right up to the present time. The alphabets/letters "KVS" and "KVS (Label)" are substantially and essentially the trademark/label "KVS" and "KVS (Label)".

3. The plaintiff has a reputed reputation and has generated a large goodwill in this business under the trade name and label "KVS" and "KVS (Label)". The plaintiff had also applied for a copyright in this artistic work in "KVS" under the Indian Copy Right Act. Submission is that it is honestly, bonafidely and continuously in the course of business and as proprietor using the trade name/

trademark/label/logo in relation to his business.

4. The defendant has adopted the trademark/label "KYS" and "KYS (Label)" in respect of manufacturing and marketing M.S. bars, TMT bars, M.S. rounds, M.S. angle and other steel and metal equipments. They are engaged in the same business as that of the plaintiff. This trademark/label "KYS" and "KYS (Label)" are identically and deceptively similar to the trademark/label of the plaintiff. The imitation is in exactitude of copying in such manner that not only ordinary purchaser but also the big retailers/dealers/distributors are bound to confuse and deceive.

5. The plaintiff became aware of the defendant's impugned adoption in August, 2009 when the plaintiff received complaints from its dealers and distributors regarding the sale of impugned goods of the defendant bearing the impugned mark in the markets. The plaintiff made enquiry in the market and it was revealed that the defendant is selling the impugned goods in the market clandestinely and surreptitiously. The defendant has applied for registration of the said trademark under class.

The impugned action of the defendant is in violation of the plaintiffs proprietary rights due to which the plaintiff has suffered business loss in trade and business. Suit was accordingly filed.

6. Written statement was filed opposing the submissions. The defence of the defendant was that he is the prior user of the trademark and trade name "KYS" and he is part of "KYS" group of companies. Present suit is not maintainable. The defendant is in the market for a long time and his user is in fact prior to that of the plaintiff.

7. Replication was filed reiterating the averments contained in the plaint and refuting the submissions made in the written statement.

8. On the pleadings of the parties, on 13.01.2011, the following issues were framed. They read herein as under:-

(i) Whether the defendant is guilty of infringement of the registered trademark KVS and KVS LABEL of the plaintiff in class 6? OPP

(ii) Whether the defendant is guilty of passing off its goods as that of the plaintiff by manufacturing and marketing the goods in class-6? OPP

(iii) Whether the defendant is guilty of infringement of the registered copyright of the plaintiff in class 6 in respect of its trade mark KVS? OPP

(iv) Whether the plaintiff is entitled to a decree of perpetual and mandatory injunction against the defendant? OPP

(v) Whether the plaintiff is entitled for damages and rendition of accounts from the defendant. If so, to what extent and for what period? OPP

(vi) Relief.

9. The defendant thereafter stopped participating in the proceedings. Evidence was led. The plaintiff in support of his case has examined two witnesses. However none of them were cross-examined as the defendant did not care to appear before the Local Commissioner for cross-examination. Evidence of the plaintiff stood dosed.

10. On 24.02.2014 a statement was made by the learned counsel for the defendant seeking discharge on the ground that although he has sent registered letter to the defendant, the defendant was not showing any interest in the matter. The defendant was granted opportunity to lead evidence but since none had appeared for him, he was proceeded ex-parte on 25.11.2014. Matter has thereafter been listed for final arguments. They have been heard ex-parte as the defendant has chosen not to appear.

11. Since the defendant has been proceeded ex-parte and none of the witnesses of the plaintiff have been cross-examined, the ex-parte affidavits by way of evidence given by both the witnesses are taken on record.

12. PW-1 Devendra Kumar Aggarwal is the Managing Director of the plaintiff. He has proved the documents Ex. PW-1/1 to Ex. PW-1/80. He was not cross-examined. PW-2 Sunil Aggarwal, Assistant in the Copyright office had brought the summoned record showing registration of A-93061/2012 proved as Ex. PW-21 in favour of the plaintiff.

13. The plaintiff has been able to establish its case and he has been able to bring on record both orally and as through documentary evidence that the defendant has infringed the trademark/trade name of the plaintiff and has also infringed his copyright.

14. The suit of the plaintiff is accordingly decreed and a decree of permanent injunction is passed in favour of the plaintiff and against the defendant restraining the defendant, its directors, proprietors, partners, agents, servants, assigns, representatives, successors and distributors from using, selling, exporting, offering for sale, advertising or displaying directly or indirectly or dealing in any other manner in steel and twisted steel bars, M.S. bars, TMT bars, M.S. rounds, angle and other related metal and steel material under the impugned trademark "KYS" and "KYS (Label)" or any other mark which is identically or deceptively similar to the trademark/label of the plaintiff which may amount to infringement of his registered trademark/passing of his trademark and his copyright. The infringed goods, if any, lying with the defendant are directed to be disposed of. The plaintiff is also entitled to damages quantified at Rs. 1 lac. Suit of the plaintiff is decreed and disposed of in the above terms.