
(2009) 01 DEL CK 0217
In the Delhi High Court
Case No : CS (OS) 1600 of 2007

Larsen and Toubro Limited

APPELLANT

Vs

Chagan Bhai Patel

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Trade Marks Act, 1999 — Section 134(2)

Citation : (2009) 39 PTC 538

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Purnima Seth and Darpan Wadhwa, for the Appellant; Exparte, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff being the registered proprietor of the trademark / trade name LARSEN and TOUBRO, on coming to know of the application of the defendant for registration of the mark LARSON in relation to plywood, veneer wood, venners, wood panelling, wood pulp board, timber, partitions not of metal, moldable wood, door frames not of metals, door panels not of metals, doors not of metals, building timber, boards not of metal in class 19, instituted this suit for permanent injunction to restrain the defendant from using in relation to its business the mark/logo LARSON or any other similar mark or name deceptively similar to that of plaintiff and for restraining the defendant from passing off its goods and business as that of the plaintiff. Ancillary reliefs of damages and delivery were also claimed.

2. Vide ex parte order dated 31st August, 2007, the defendant was restrained from using in relation to any of its business/ goods/ services/products including those in class 19, the mark LARSON or any other deceptively similar mark. A Court Commissioner was also appointed to visit the premises of the defendant to seize and take the infringing material into custody.

3. The defendant, in spite of being served with the summons of the suit, failed to appear. Though initially the counsel for the plaintiff informed that the defendant

had approached for settlement but subsequently it was informed that the defendant had failed to contact the plaintiff also and on 30th November, 2007 the defendant was ordered to be proceeded against ex parte and the order dated 31st August, 2007 aforesaid confirmed during the pendency of the suit.

4. The plaintiff has led ex parte evidence. The defendant remains ex parte. A perusal of the application of the defendant advertised before acceptance in the Trademark Journal has been proved as Exhibit PW1/6. The same shows that the defendant intends to write the name LARSON in capitals and has claimed use of the aforesaid name/mark since 1st November, 2002. The plaintiff has proved notarized copy of its certificate of registration which it was permitted to do as Exhibit PW1/3. The plaintiff also writes LARSEN in capitals. The plaintiff is engaged in a large number of businesses and services including construction related business. The mark of the plaintiff is a well known mark. The witness of the plaintiff has deposed that the plaintiff came to be known by the said mark/name in conjunction with TOUBRO since the same were the names of the partners of the firm which was the predecessor-in-interest of the plaintiff.

5. There is no difficulty in coming to the conclusion that use by the defendant of name/mark LARSON in relation to building related goods only is an attempt to take advantage of the reputation and goodwill of the plaintiff and to pass off its goods and business as that of the plaintiff, to its illegal enrichment and to the detriment of the plaintiff. The name LARSEN AND TOUBRO is so well known, so as to lead a person to believe that LARSON alone also may be related to the plaintiff. It is significant that LARSEN or LARSON are not surnames or names in India and not only has the defendant failed to appear to explain /justify the choice of such name but there appears to be no explanation whatsoever for the same, except as aforesaid.

6. The defendant is at Chattisgarh. However, the territorial jurisdiction of this Court has been invoked on the basis of the plaintiff carrying on business at Delhi and Section 134(2) of the Trade Marks Act.

7. The counsel for the plaintiff has relied upon a number of judgments related to names viz Kirloskar Diesel Recon Pvt. Ltd. and another Vs. Kirloskar Proprietary Ltd. and others, , Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra and Mahindra Ltd., , K.G. Khosla Compressors Ltd. Vs. Khosla Extrakting Ltd. and Others, as well as of Division Bench of this Court dated 8th February, 2008 in FAO(OS) 601/2006 wherein on the plea of the plaintiff herein only, the opposite party therein was restrained from using the trademark /name LNT/ELENTE or other deceptively similar mark. However, need is not felt to deal with in detail with the said judgments as the plaintiff is found to be entitled to the relief of permanent injunction.

8. The court commissioner appointed by this Court has reported that he found the stickers bearing the name/mark LARSON which were deposed to be used on plywood and block board whenever the defendant received orders for ISI brand

goods. No goods bearing the infringing trademark were found. From Exhibit PW1/6 aforesaid, it transpires that the defendant has been using the impugned trademark for five years prior to the institution of the suit. Though no evidence on assessment of damages has been led but the defendant having been found to have adopted the mark LARSON without any basis and having failed to give any explanation for the same and held as aforesaid to have adopted the same in an attempt to take advantage of the reputation and goodwill of the plaintiff, it would be encouraging such violators of intellectual property, if the defendant notwithstanding having not contested the suit is not burdened with punitive damages. Though nothing has been deposed / disclosed as to what happened to the application of the defendant for registration, the said act of the defendant also shows that had the plaintiff not been vigilant, the defendant may have even succeeded in registering a mark intended to deceive. The defendant is thus for his such act, is burdened with punitive damages in the sum of Rs 5 lacs inclusive of costs of this suit. In view of the court commissioner's report that only stickers infringing name/mark are affixed to the goods, no useful purpose would be served in ordering delivery.

9. The suit of the plaintiff is decreed in terms of the prayer paragraphs (a) and (b) of the plaint and a decree for damages in the sum of Rs 5 lacs inclusive of costs is also passed in favour of the plaintiff and against the defendant. The decree sheet be drawn up.