

(2014) 09 DEL CK 0373
In the Delhi High Court
Case No : CS (OS) No. 1483/2011

Maruti Suzuki India Ltd.

APPELLANT

Vs

Kavisha Motors Agra Pvt. Ltd.

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Trade Marks Act, 1999 — Section 2(zg)

Citation : (2014) 09 DEL CK 0373

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Surjeet Singh Malhotra and Suryajyoti Singh Paul, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The plaintiff has filed a suit for permanent injunction and rendition of accounts, damages, delivery up etc. against the defendant.

Case of the plaintiff

2. The plaintiff is a subsidiary of Suzuki Motor Corporation of Japan and is India's largest passenger car company, accounting for majority of the domestic car market. The plaintiff is a well known reputed and established company duly incorporated on 24th February, 1981. The plaintiff consistently and prominently displays and advertises its goods and products under its registered trademark "MARUTI SUZUKI" with logo in the trade. The plaintiff is registered proprietor in India for the trademark "MARUTI SUZUKI" in various classes under the provisions of the Trade Mark Act, 1999, (hereinafter referred to as the "Act") the details of the registered trademarks are given in para 10 of the plaint.

3. By virtue of long and extensive use and being excellent quality products bearing the trademark "MARUTI SUZUKI", the plaintiff has acquired a global reputation and goodwill and the purchasing public/customer associate the trademark "MARUTI SUZUKI" with the products of the plaintiff. The mark

"MARUTI SUZUKI" is a well known mark within the meaning of Section 2(zg) of the Act and has registered its domain name www.marutisuzuki.com. The plaintiff's products have been promoted under the registered trade mark "MARUTI SUZUKI" in print and other forms of mass media. Case against the defendant as alleged by the plaintiff.

4. The defendant was the former dealer of the plaintiff company and vide Dealership Agreement dated 1st April, 2007 the defendant was made authorized dealer to deal with the products of the plaintiff and further be face of the company with the customers of the company in the area. After a period of over three years the dealership agreement was terminated vide notice dated 1st June, 2010 and public notice to this effect was published in Hindi daily Jagran in their publication dated 5th June, 2010. Thereafter, the defendant was required to discontinue with the usage of registered trademarks of the plaintiff and further return all the equipments on which lien was with the plaintiff. Despite repeated request the defendant failed to honor the terms of the Dealership Agreement.

5. It is stated that in the month of March 2011, the field representatives of the plaintiff company informed the plaintiff that the defendant was continuously using the registered trademark and logo of the plaintiff company and was further soliciting customers for the service and repair of cars originating from plaintiff company and that the defendant was also infringing the plaintiff's trademark by running the Maruti Driving School, Maruti Service Workshop and Maruti True Value Pre Owned Cars. It is further stated that the word "Maruti Suzuki" has been deliberately used by the defendant in their show room including Maruti Driving School and True Value Pre Owned Cars only with sole intention of defrauding the plaintiff.

6. It is stated that on account acts of omission and commission by the defendant, the plaintiff company sent the defendant a cease and desist notice vide communication dated 15th April, 2011 but the defendant intentionally refused the said communication.

7. It is stated that the photographs of the showroom of the defendant taken on 10th May, 2011 shows that the defendant is blatantly usurping the valuable registered intellectual proprietary rights of the plaintiff company and intended to harm the reputation and cash in on the reputation of the plaintiff's trademark "MARUTI SUZUKI" and logo. The defendant has no legitimate interest in their showroom except to cause consumer confusion, including the likelihood of association with the plaintiff's well known trademark "MARUTI SUZUKI".

8. It is stated that the defendant's use of the "MARUTI SUZUKI" mark dilutes the distinctive quality of the famous MARUTI SUZUKI mark. It is further stated that defendant's unauthorized use of the MARUTI SUZUKI mark is likely to cause confusion, mistake or deception as to the source, sponsorship or approval of the defendant's products. The relevant unsuspecting public/customers and the people in the trade are likely to believe that defendant's products originate with

the plaintiff, are licensed, sponsored or approved by the plaintiff or are in some way connected with or related to the plaintiff.

9. The matter was listed before this court and summons were issued to the defendant. Defendant was duly served however no one appeared on behalf of the defendant and hence, the defendant was proceeded ex-parte vide order dated 25th August, 2011.

10. In ex-parte evidence, the plaintiff filed affidavit dated 28th January, 2013 of Mr. Thakur Kiran Singh as PW1 working as a Senior Manager Corporate Legal and I.P with the plaintiff reiterating the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex. PW1/13 in support of its case. The documents exhibited are as follows:

? Certified copy of Memorandum of Articles of Association of the plaintiff, Ex. PW1/1.

? Certified Board Resolution dated 24th December, 1981, Ex. PW1/2.

? Power of Attorney dated 3rd May, 2012, Ex. PW1/3.

? Annual Report of plaintiff company, Ex. PW1/4.

? Power of Attorney of the plaintiff's company in favor of Sh. S. Ravi Aiyar, Ex. PW1/5.

? Legal certificates for the Trademark Registration No. 677876, 993942, 1461799, 1455442, 1455440, 1336400, 1336398 Ex. PW1/6.

? Advertisement material, Ex. PW1/7.

? Copy of Dealership Agreement dated 1st April, 2007, Ex. PW1/8.

? True copy of Notice dated 1st June, 2010, Ex. PW1/9.

? Copy of Public Notice dated 5th June, 2010, Ex. PW1/10.

? Photographs dated 10th May, 2011 of the defendant's showroom, Ex. PW1/11.

? True Copy of cease and desist Notice dated 15th April, 2011, Ex. PW1/12.

? Original Envelope of Registered Post of cease and desist notice, Ex. PW1/13.

11. The ex-parte evidence was closed vide order dated 13th May, 2014. The evidence filed by the plaintiff has gone unrebutted as no cross-examination of the plaintiff's witness was carried out, therefore, the statements made by the plaintiff are accepted as correct deposition.

12. Under these facts and circumstances, the plaintiff is entitled for a decree of permanent injunction in terms of prayer clause 1 to 3 of the plaint.

13. With regard to award of damages and compensation, there are various judgments pertaining to the aspect of damages where this Court has previously

granted both exemplary and punitive damages against the defendant in ex-parte matters of similar nature in various industries ranging from software to automotives, chocolates to pharmaceuticals, stationary to luxury brands, etc. Some of such decisions are as under:

(i) In Time Incorporated Vs. Lokesh Srivastava and Another, while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that "time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

(ii) In Microsoft Corporation Vs. Rajendra Pawar and Another, decided on 27th July, 2007, this Court held that "Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective."

14. Keeping in view the infringement committed by the defendants, I am of the opinion that a sum of Rs.1,00,000/- as punitive/exemplary damages as well as damages on account of loss of reputation and goodwill of the plaintiff. This prayer made in prayer clause 4 is granted to the above extent. The plaintiff is also awarded Rs.30,000/- as costs of the suit.

15. The decree be drawn accordingly. The suit is disposed of accordingly.