
(2020) 08 MP CK 0297

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 806 Of 2020

Matadin Goyal

APPELLANT

Vs

Yogendra Bansal

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2
Trademarks Act, 1999 — Section 28, 29(5), 35, 134

Citation : (2020) 08 MP CK 0297

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Ankur Mody, Suresh Agarwal

Final Decision : Dismissed

Judgement

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this appeal has been taken up through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

With the consent of the learned counsel for the parties, the matter is finally heard.

The present appeal is being filed challenging the order dated 9.11.2019 passed by the Third Additional District Judge, Morena, whereby the application filed under Order 39 Rule 1 and 2 of CPC has been rejected.

It is alleged by the counsel for the appellant that he is 83 years old and his son is 52 years old and they are owners of the Medical Shop in the name of 'Matadin Medical Store', situated near Station Road, Morena. It is argued that the 'Matadin Medical Store' is continuously given their plausible services to the consumers since the year 1962 and by virtue of the same the appellant is enjoying the

individual reputation and goodwill. The appellant has acquired the trademark for the word 'Matadin Medical Store' bearing Trademark No.3720573, copy of which is filed as Annexure A/2. The trademark registration is dated 6.1.2018. It is argued that the appellant has not granted permission for uses of his registered trademark i.e. 'Matadin Medical Store' under the Trademarks Act, 1999 to the respondent or any other person. The respondent with an ill intention and just to damage the reputation of the appellant is running his business by the name of 'Matadin Medical Agency' which is very similar to that of the present appellant. It is argued that the same is causing deception to the buyers and is therefore, infringing the petitioner's registered trademark under the Trademarks Act, 1999. The use of mark by the respondent is only with an intention to ride on the reputation which the appellant's has earned during his long tenure since 1962. It is argued that the customers being getting confused with the similar names are distracted by the respondent. After making the best efforts when the respondent has refused to stop the use of the name 'Matadin Medical Agency' then the appellant's was forced to file a civil suit against the respondent which was registered as Civil Suit No.110/2019 on 31.7.2019 claiming the relief for grant of permanent injunction against the respondent from using the trademark name 'Matadin Medical Agency'. Similar facts have been produced in the plaint. The response to the plaint was filed by the defendant/respondent herein denying all the averments and stating that the appellant/plaintiff is not the manufacturers of the goods which are being sold. It is argued that the provisions of the Trademarks Act, 1999 are not applicable in the facts and circumstances of the case and the civil suit itself was not maintainable. It is submitted that the similar name is not being used by the respondent/defendant as he is running the business in the name of 'Matadin Medical Agency' for which he has got the license from the year 2014 itself, whereas the Trademark Registration of the appellant/plaintiff is of the year 2018.

The appellant along with the civil suit has filed an application under Order 39 Rule 1 and 2 of CPC claiming temporary injunction against the respondent and for restraining him from using the name 'Matadin Medical Agency' during the pendency of the civil suit. Counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court in the case of Power Control Appliances and others Vs. Sumeet Machines Private Limited, 1994 (II) SCC 448, wherein it has been observed that there can only be one mark, one source and one proprietor, it cannot have two origins. He has further relied upon the judgment passed in the case of Metropol India (Pvt.) Ltd. Vs. Praveen Industries, India, 1997 PTC (17) 779 (DB), wherein the Division Bench has observed that the mark "CLEANZO", a registered mark and "CLEANJO" which was the alleged infringing mark and the Division Bench observed that the use of word "CLEANJO" whether with the prefix "PRAVEEN" or otherwise, was definitely likely to have an effect of creating confusion in respect of the cleaning goods and was likely to deceive the purchaser of the goods. He has further placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of Ramdev Food Vs. Arvindbhai

Rambhai, AIR 2006 SC 3304 and also in the case of Montari Overseas Ltd. Vs. Montari Industries,

1996 PTC (16) 142 (Del). He has further relied upon the judgment passed by the High Court of Delhi in the case of Bloomberg Finance Lp vs Prafull Saklecha & Others, 2013 (56) PTC 243 Delhi. It is submitted that the learned Trial Court has failed to consider the legal proposition laid down by the Hon'ble Supreme Court in number of cases and has out-rightly rejected the application filed under Order 39 Rule 1 and 2 of CPC on the ground that still evidence is required to be led by the parties before the Trial Court and in such circumstances the plaintiff claiming an interim relief which amounts to final relief cannot be granted at this stage. The application was rejected vide impugned order. It is submitted that in view of the aforesaid legal proposition the case for grant of temporary injunction is clearly made out against the respondent.

Counsel for the appellant has placed reliance upon section 28 of the Trademarks Act, 1999 and on section 29 (5) of the statute, which is reproduced in the appeal memo which clearly provides that even the similar names cannot be used and can be deceptive to the customers. He has further relied upon section 35 of the Act, 1999. He has prayed for setting aside the impugned order with the direction for grant of interim relief to the appellant and has also filed an application under section 151 of CPC for grant of interim relief being I.A.No. 427/2020.

Per contra counsel for the respondent/defendant has opposed the arguments advanced by the counsel for the appellant and has argued that the civil suit itself was not maintainable under section 134 of the Trademarks Act, 1999 for restraining the defendant from using the name 'Matadin Medical Agency'. It is submitted that the two names are entirely different i.e. 'Matadin Medical Store' and 'Matadin Medical Agency'. It is argued that the respondent/defendant has got obtained the drug license in the year 2014 and has got himself registered under the VAT and GST and he has a Shop Registration on 19.8.2019. The respondent running the business after taking due permissions from the relevant authorities. There is no resemblance with the name of the appellant's Medical Store as defendant is running his business in the name of 'Matadin Medical Agency'. It is argued that the registration under the Trademarks Act, 1999 was got obtained in the month of July, 2019 by the plaintiff/appellant and the defendant has got obtained his license in the year 2014 i.e. much prior to that of the present appellant. It is submitted that what loss is being caused to the appellant by the defendant by using the name of 'Matadin Medical Agency' is a matter of evidence and evidence has not yet started before the Trial Court. The learned Trial Court has rightly considered the aforesaid aspects of the case and has rightly rejected the application filed under Order 39 Rule 1 and 2 of CPC as the relief of temporary injunction claimed by the defendant/appellant amounts to grant of final relief and he has prayed for dismissal of the appeal.

Heard the learned counsel for the parties and perused the record.

It is seen from the record that the appellant has applied for the trademark by filing an application on 6.1.2018 and thereafter the trademark was issued on 2.7.2018 and Annexure P/1 is filed by the appellant along with the appeal to the aforesaid effect. It is mentioned in the certificate of trademark that under the heading of the user detail that the aforesaid name has been used by the appellant/plaintiff since 21.4.1962, but it is not disputed that the trademark certificate was got issued on 2.7.2018, meaning thereby the aforesaid trademark in the name of Matadin Medical Store, Morena was got registered on 2.7.2018. It is also not disputed that the respondent is carrying on his business since the year 2014 and the documents to the aforesaid effect are being filed by him. The learned Trial Court has considered the aforesaid aspect of the case and has arrived at the conclusion that the respondent/defendant is carrying on the business in the name of 'Matadin Medical Agency' since the year 2014 and the plaintiff/appellant has got obtained the registered trademark in the name of 'Matadin Medical Store' on 2.7.2018. Thus, the aforesaid clearly goes to show that there was no dispute since 2014 as it is clearly mentioned in the plaint that the cause of action arose on 2.7.2019 i.e. after the trademark in the name of 'Matadin Medical Store' has been registered on 2.7.2018 and thereafter when the defendant has denied to use the aforesaid name, but the fact remains that the defendant was carrying on his business in the name of 'Matadin Medical Agency' since the year 2014 itself. No document is being filed by the appellant/plaintiff to show that since when he was carrying on his business in the name of 'Matadin Medical Store' except the endorsement made in Annexure P/1 that he is carrying on his business since the year 1962, but the fact remains that the aforesaid name i.e. 'Matadin Medical Store' was not registered under the Trademarks Act, 1999 prior to 2.7.2018. Thus, while considering the application for grant of injunction the three prima facie conditions are required to be seen. The plaintiff/appellant has failed to show that he was carrying on the business under the registered trademark prior to year 2014 i.e. the date on which the respondent has initiated his business in the name of 'Matadin Medical Agency'. The loss or the infringement/deception being caused by the respondent in the business of the plaintiff appears to be a matter of evidence. Thus, the learned Trial Court has rightly rejected the application filed under Order 39 Rule 1 and 2 of CPC. Even otherwise the interim relief is being claimed which appears to be final relief of the civil suit itself. The same cannot be granted to the appellant.

Accordingly, finding no merits in the appeal, this Court affirms the order passed by the learned Trial Court. Appeal is hereby rejected.