

(2001) 09 DEL CK 0033
In the Delhi High Court
Case No : Suit No. 1046/93

Mitaso Appliances Ltd.

APPELLANT

Vs

Mehta Zinabhai Bhimjibhai

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Citation : (2001) 09 DEL CK 0033

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : A.K. Goel and Arunan Pankaj, for the Appellant;

Judgement

V.S. Aggarwal, J.—The present suit has been filed by M/s Mitaso Appliances Ltd (hereinafter described as the plaintiff) seeking a perpetual injunction to restrain the defendant, its servants, agents, representatives from manufacturing, selling or otherwise dealing in gas lighters or other goods under the trade mark MITASO or any other trade mark identical or deceptively similar to the plaintiff's trade. It also seeks a permanent injunction to restrain the defendant, its representatives or servants or from manufacturing or otherwise dealing in gas lighters and all other goods under the trade mark MITASO.

2. The facts alleged are that plaintiff is engaged in the business of manufacturing and selling of LPG gas stoves, cooking ranges, industrial burners, water heaters, electric fans, electric mixer, grinders, cooler kits and other electrical household and kitchen appliances since the year 1982. From the said year the plaintiff has been using the trade mark MITASO represented in a special particular manner for the said goods. The said trade mark is being used uninterruptedly and continuously. The MITASO also forms prominent part of plaintiff's corporate name i.e. Mitaso Appliance Ltd. The mark MITASO is an invented word having no meaning. The plaintiff is the registered proprietor of the trade mark MITASO in respect of installations of heating, steam generating, cooking and other items mentioned above.

3. It is further asserted that plaintiff is the first adopter, originator and true owner of this trade mark. It has given wide publicity to the trade mark MITASO. On account of superior quality coupled with advertising of the goods and continuous use of the trade mark MITASO since 1982 the plaintiff had acquired unique reputation and goodwill. It is asserted that the defendant has recently started manufacturing and marketing electronic gas lighter under the identical and deceptively similar trade mark MITASO. the defendant is stated to be aware of the popularity and reputation of the plaintiff but with dishonest and malafide intentions has adopted the trade mark of the plaintiff. The purchaser and unintending purchasers of the said goods and gas lighters are general public and housewives. They are unwary class of purchasers and Therefore the trade mark used by the defendant indeed can deceive the said purchasers. Keeping in view these assertions the present suit has been filed.

4. The defendant filed a written statement and asserted that plaintiff is not the proprietor of the trade mark MITASO or its registration under No. 404136 in class 11. It is asserted that plaintiff has all along known defendant is using the trade mark MITASO in relation to electric gas lighters. Moreover, the specification of goods for which the defendant has been using the said trade mark differs from the specification of the goods of the plaintiff. It is denied that plaintiff is the first adopter or originator of the trade mark MITASO. The right of the plaintiff in that view of the matter to claim the permanent injunction has been denied.

5. After the written statement had been filed this court on 16th October, 1995 had allowed the application filed by the plaintiff under Order 39 Rules 1 and 2 and restrained defendants from using the name MITASO or any other product including electronic gas lighter.

6. Subsequently the defendant had not put in appearance and on 26th February, 1998 this court had proceeded ex parte against the defendant. The evidence was led by the plaintiff by filing of the affidavit.

7. The facts as is apparent from the narration given above are clear in terms that defendant is also using the trade mark MITASO for the electronic gas lighter and this is the main grievance of the plaintiff that the defendant should not use the word MITASO.

8. The attention of the court has been drawn towards the decision of this court in the case of Mitaso Appliances Ltd. v. Joginder Singh 1995 PTC 105. In this matter keeping in view that the defendant in that case was using the trade mark META-SHOW this court had granted even an ex parte injunction restraining the defendant in that case from using the trade mark META-SHOW or deceptively similar trade mark.

9. The law in this regard in any case is well settled. This court in Dharam Pal Satya Pal Vs. Janta Sales Corporation, was concerned with a matter where the plaintiff was using the name RAJNI on Zafrani Zarda while defendant started using the word RAJANI on pan masala. It was held that when it is similarly

designed and phonetically the words are identical, Therefore, the injunction order was called for. Similar view prevailed with this court in the case of Pidilite Industries Pvt. v. Mittees Corporation and Anr. 1989 PTC 151.

10. Reference with advantage can also be made to the decision of Bata India Limited Vs. Pyare Lal and Co., Meerut City and Others, . Therein Bata Company had filed a suit for permanent injunction because defendant company was using the name Batafoam. It was held that the plaintiff had cause of action and ad interim ex parte injunction had been granted.

11. The ration decidendi of these decisions clearly apply to the fact of the present case. As mentioned above the defendant is using the similar trade mark. It is not shown that he was using the same before that of the plaintiff or for many years ago. Therefore, when the same trade mark is being used as that of the plaintiff, the plaintiff has a grievance and a right to seek perpetual injunction.

12. For these reasons the suit of the plaintiff is decreed ex parte restraining defendant, its servants, agents or representatives from manufacturing, selling or dealing in gas lighters or any other goods under the trade mark MITASO or any other trade mark deceptively similar to the plaintiffs trade mark. Parties are left to bear their own costs.