
(2016) 05 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 1797 of 2015.

M/s Maheshwari Tea Company Pvt. Ltd

APPELLANT

Vs

M/s Vijay Agencies

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Citation : (2016) 163 AIC 875 : (2016) AIR(Raj) 161 : (2016) 2 DNJ 961 :
(2016) 67 PTC 116 : (2017) 1 RAJ 350 : (2016) 3 RCRCivil 5 : (2016) 2
WLCRajUC 92

Hon'ble Judges : Prashant Kumar Agarwal, J.

Bench : Single Bench

Advocate : G.D. Bansal, Advocate, for the Appellant; Mahendra Sharma,
Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Prashant Kumar Agarwal, J. - Heard learned counsel for the parties.

1. The plaintiff-appellant has filed this civil misc. appeal under Order 43, Rule 1 (r) CPC against the order dated 26.3.2015 passed by the Additional District Judge No.9, Jaipur Metropolitan, Jaipur in Civil Misc. Case No.10/2015 whereby the learned trial Court has dismissed the application under Order 39, Rule 1 and 2 CPC filed by the appellant for grant of temporary injunction.

2. Brief relevant facts for the disposal of this appeal are that the appellant filed a civil suit against the defendant-respondent for rendition of accounts, damages and permanent injunction for infringement and passing off action of the registered trademark "Maheshwari" and artistic work/design of the packaging material with the averment that respondent has recently started using deceptively similar trademark "Maleshwari" with similar artistic work/design of the packaging material of the appellant. The appellant also filed an application for temporary injunction. It is the case of the appellant that it is a private limited company which was incorporated in the year 1997 and prior to it the Directors/

Promoters of the Company were carrying on business of Tea since 1961 under the name and style of M/s Maheswari Tea Company and the trademark "Maheshwari" was adopted in the year 1961. It was further averred that the appellant-company has created, invented and developed a specific artistic design of the packaging material/label of the tea with specific placement of the words combination of the colours and the said artistic work/design has inherently distinctive character from other tea manufacturers/traders. It was claimed that the appellant-company has all legal rights to use exclusively this artistic work/design under the Trademark Act, 1999. It was further averred that the appellant-company got registration of the trademark "Maheshwari" along with the said artistic work/design of the packaging material under registration No.1201204 dated 26.5.2003 which has now been renewed and is valid upto 26.5.2023. It was also averred that the defendant-respondent having fully aware about the existence of the appellant's registered trademark "Maheshwari" and specific artistic work/design of the packaging material intentionally and malafidely adopted deceptive similar trademark "Maleshwari" and even respondent adopted identical artistic work/design with prominently displayed feature upon the packaging material in respect of trading of tea. It was averred that due to adoption of deceptively similar trademark "Maleshwari" and its artistic work/design, deception and confusion has arisen among the customers, traders and other related persons of the trade. In the application for grant of temporary injunction, it was prayed by the appellant that the defendant-respondent may be restrained to use trademark "Maheshwari" and its artistic work/design which is almost deceptively similar to trade work and artistic work and design of the appellant-company. In its reply to the application for temporary injunction, defendant-respondent averred that the appellant's trademark has been registered as a device mark and the Registrar of trademark has also imposed condition/limitation/disclaimer against the registration of the appellant's trademark and registration of this trademark in favour of appellant does not give right to exclusive use of descriptive matters appearing on the label. It was further averred that design and artistic work adopted by the appellant is very much common and it is used by a number of persons in the market in respect of trading of tea and, therefore, the appellant has no legal right to use exclusively the said design and artistic work. It was further averred that the respondent adopted trademark "Maleshwari" in February 2014 in the name of his grandmother Late Smt. Maleshwari Devi and he has also applied for registration of the said trademark on 24.7.2014. Along with the reply, respondent also produced a comparative chart to show differences between two trademarks and artistic work of the packaging material. Several other objections were also raised by the defendant-respondent. Learned trial Court after hearing both the parties dismissed the application filed by the appellant leading to filing of this civil misc. appeal. It was observed by the Court below that party's label/packaging are different and, therefore, there is no question of any confusion and deception on the part of the consumers. It was observed that the colour combination, design etc of the respondent packing label is entirely different from the appellant's

packing label. For its conclusion learned Court below also relied upon the fact that the trademark of the appellant-company has been registered with the condition/limitation/disclaimer that the registration of this trademark shall give no right to the appellant for exclusive use of descriptive matters on the label. It was also held by the learned trial Court that the trademark of the appellant "Maheshwari" is a surname and the trademark of "Maleshwari" is prima facie different from appellant's trademark.

3. Learned counsel for the appellant has vehemently submitted that from the original labels used by the appellant as well as the respondent it is very much apparent that the respondent is using the label with the word "Maleshwari" which is phonetically and visually similar to the word "Maheshwari" registered under the Trademark Act. It was further submitted that learned trial Court did not properly consider the test and principles relevant to determine the question of similarity between the trademark as well as artistic work/design of the packaging material or label of both the parties. It was further submitted that learned trial Court wrongly considered the artistic work/design of the appellants packaging material which created and adopted by the appellant exclusively, the artistic work/design of the packaging material with specific colour combination and arrangement/ placement of the words/photographs/colors which come within the definition of descriptive matter. It was further submitted that this Court in the case of Navyug Commercial v. Maheshwari Tea Company Pvt. Ltd in a similar matter has held that trademark "Maheshwari" and "Mangleshwari" are quite similar as visually and phonetically both. According to learned counsel for the appellant when trademark "Mangleshwari", this Court has held to be similar to trademark "Maheshwari", in the present case, the trademark "Maleshwari" is comparatively more similar to "Maheshwari". In support of his submissions, learned counsel for the appellant relied upon several decisions.

4. On the other hand, learned counsel for the respondent defending the impugned order submitted that learned Court below after comparing the label and packaging of both the parties prima facie came to a finding that they are quite different and there is no question of confusion and deception on the part of the consumers. It was submitted that this finding given in an application for grant of temporary injunction cannot be interfered and set aside in this appeal and it would be a matter of evidence, which could be appreciated by the trial Court after both the sides have led their evidence. It was further submitted that the trademark of the appellant has been registered with the condition that the registration of the same shall give no right to the exclusive use of descriptive matters on the label and it does not come within the purview of registration of a trademark.

5. Having regard to the submissions made by the learned counsel for the parties, this Court is of the view that the appellant has established prima facie that their trademark "Maheshwari" as shown in the image registered in the registration certificate was being used since 2003 and the said certificate is now valid upto

26.5.2023. From the original labels produced by the learned counsel for the parties for the perusal of this Court, it transpires that not only the word "Maleshwari" used by the respondent is phonetically and visually similar to the word "Maheshwari", but the entire label including the color scheme, get up and design used by the respondent is also deceptively similar to the registered image of the label used by the appellant. It is well settled legal position that in an action for infringement of a trademark, the plaintiff must make out that the use of the defendant's mark is likely to deceive but where the similarity with the plaintiff's mark is so close either visually, phonetically or otherwise and the Court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. If the essential features of the trademark of the plaintiff have been adopted by the defendant, the fact that the getup, packing and other writing or mark on the goods or on the packets on which he offers the goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark, would be immaterial.

6. In view of the above, this Court finds that the present is a fit case in which interference is required to be made in the impugned order. It is well settled that the Appellate Court will substitute his discretion if it is found that the trial Court has exercised its discretion arbitrarily, capriciously, perversely, or where the Court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunction.

7. Consequently, the appeal is allowed, the impugned order dated 26.3.2015 passed by the Additional District Judge, Jaipur Metropolitan, Jaipur in Civil Misc. Case No.10/2015 is set aside and the application for grant of temporary injunction filed by the plaintiff-appellant is allowed and also the defendant-respondent, during the pendency of the suit, is restrained not to use the deceptively similar trademark "Maleshwari" to the registered trademark "Maheshwari" and not to use deceptively similar artistic work/design of the packaging material of the plaintiff's registered trademark in respect of tea.

8. In view of the above order, the stay application is disposed of.