
(2012) 09 DEL CK 0269
In the Delhi High Court
Case No : FAO (OS) No. 465 of 2012

Prakram Singh Chaudhary	Vs	APPELLANT
P.C. Jewellers Pvt. Ltd. and Another		RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Trade Marks Act, 1999 — Section 33, 34

Citation : (2013) 54 PTC 462

Hon'ble Judges : Vipin Sanghi, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; M.L. Mangla, Manish Singhal and Mr. Ankit Mangla, for the Respondent

Judgement

Vipin Sanghi, J.

C.M. No. 16725/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

FAO (OS) No. 465/2012 & C.M. Nos. 16726/2012 & 16727/2012

1. The appellant has preferred the present appeal to assail the order dated 21.05.2012 passed by the learned Single Judge, whereby the interim

application being I.A. No. 6623/2011 preferred under order 39 Rule 1 and 2 CPC by the respondent/plaintiff has been allowed and I.A. No.

9722/2012 preferred by the appellant/defendant under order 39 Rule 4 CPC has been dismissed in C.S. (OS) No. 991/2012. At the outset, we

may note that the present appeal has been preferred belatedly. According to the applicant, there is a delay of 100 days in filing the appeal. The

only reason furnished in the application is that the appellant had a wedding in the family due to which he could not contact his counsel in Delhi. This

reason does not appeal to us, as we cannot comprehend that for a wedding in the family, the appellant was tied up for 100 days or so. The period of limitation is prescribed by the law, keeping in mind the normal course of human conduct. The period of limitation, as prescribed, takes into account all such contingencies. Even if there are any unforeseen and unavoidable circumstances, which prevent a party from preferring the appellate remedy within the period of limitation, the appellant is obliged to disclose sufficient cause to explain the delay. Apart from making a bald statement about some marriage, no further details are furnished about whose wedding it was; how is the appellant is related to the person who got married; when and where did the wedding take place, so on and so forth. Not only that, the present appeal has been preferred on the basis of typed copy of the impugned order. The certified copy of the impugned order is not on record. On our query from the Learned Counsel, he states that the certified copy has till date not been applied for. This would mean that the delay is, in fact, continuing even till date. On this short ground, the appeal is liable to be dismissed. However, we have heard Learned Counsel for the appellant on merits as well and even on merits, we find that the appeal is liable to be dismissed.

2. The appellant has not filed before this Court the pleadings in the said suit. Only selective documents have been placed on record by the appellant. We are, therefore, left to gather the pleadings and facts only from the impugned order.

3. A perusal of the impugned order shows that the respondent/plaintiff preferred the suit in question to seek permanent injunction against

infringement of the respondent's registered trademark, damages etc. The case of the respondent is that they are carrying on jewellery business

using the trademark P.C. Jewellers. Earlier, the business was being carried on by them under the name and style of P. Chand Jewellers Pvt. Ltd.

However, subsequently, this name was changed to P.C. Jewellers Pvt. Ltd. with effect from 16.10.2007. According to the appellant, the learned

Single Judge has wrongly noted the date of change of name as 16.10.2007 and that the change of name had taken place only in the year 2009.

However, no material evidence has been placed on record by the appellant to even, prima facie, substantiate this plea. Therefore, this submission

of the appellant cannot be accepted.

4. The case of the respondent is that it is an old and established user of the name ""P.C. Group"". The respondents state that respondent no. 2

started a retail outlet of precious metals including gold and silver jewellery and is popularly known as P.C. Jewellerywala in the jewellery business.

Later on, respondent no. 2 extended the business to diamond and diamond jewellery. The respondents further state that they adopted the

trademark/trade name in the year 1981. Respondent no. 1 is the proprietor of the registered trademark PC Jewellers vide registration no.

1354273 in respect of all kinds of jewellery. Being the proprietor of the trademark PC Jewellers, the respondents claim the exclusive right in the

use of the said trademark in respect of jewellery business throughout the country to the exclusion of all others.

5. The case of the respondent was that they had opened 17 showrooms across India including in Delhi, Noida, Ghaziabad, Lucknow, Dehradun,

Gurgaon, Bhilwara etc. under the trademark PC Jewellers. The respondents have given their sales figures as also the amount spent by them on

advertising their trademark, which was stated to be more than Rs. 9 crores.

6. On the other hand, the appellant had been carrying on business in textiles under the trademark PC Textiles. They claimed to have started their

business in jewellery under the trademark PC Jewellers in the year 2007. It is stated that the respondent no. 1 opened its showroom at Bhilwara in

the last week of December 2010. The appellant approached the District Judge, Bhilwara to seek an injunction order against the respondent for use

of the mark PC Jewellers. However, no injunction was granted against the respondent.

7. It appears that an ad-interim ex-parte order of injunction was passed against the appellant on 27.04.2011. The learned Single Judge while

confirming the said order observed that since the respondents had obtained registration of their trademark PC Jewellers in the year 2005, whereas

the appellant appears to have started using the same trademark in respect of its business in jewellery in the year 2007, the said user by the

appellant would tantamount to infringement of the respondents trademark. Consequently, learned single judge dismissed the appellants application

under order 39 Rule 4 CPC.

8. The submission of Learned Counsel for the appellant is founded upon sections 33 and 34 of the Trade Marks Act, 1999 (the Act). In our view,

neither of these provisions comes to the aid of the appellant. Section 33 of the Act, which deals with the effect of acquiescence, opens with the

words ""Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark,

being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark "".

9. In the present case, from the facts narrated herein above it appears that the aforesaid conditions are not satisfied. The appellant does not appear

to have set up a case founded upon section 33 before the learned Single Judge and it appears the said provision was not even relied upon before

him. It is for this reason that there is no mention of either section 33 or section 34 in the impugned order. As aforesaid, the appellant has not placed

on record either a copy of the plaint, or even his own written statement/reply to the interim application/application under order 39 Rule 4.

10. Section 34 also does not assist the appellants case since the said provision was also not relied upon before the learned Single Judge.

Moreover, the user of the trademark PC Jewellers by the appellant in respect of jewellery items started only in the year 2007, i.e. after the

registration of the said mark in favour of the respondent in the year 2005. Earlier, the use by the appellant was in respect of the trademark/trade

name PC Textiles and that too in relation to the business in textiles. The said user of PC Textiles is not relevant and cannot be equated with the

user of the mark of PC Jewellers and, it appears, that the injunction has been granted in respect of PC Jewellers and not PC Textiles.

11. The appellant cannot claim to have any vested right to adopt and use the trademark PC Jewellers in the facts as they appear from the

impugned order. Even the documents sought to be relied upon by the appellant show that the user of the mark PC Jewellers by the appellant

started only in the year 2007, and not prior to that.

12. In the face of the facts and circumstances, the registered mark of the respondent no. 1 i.e. PC Jewellers in respect of jewellery items deserves

to be protected, and we find no reason to interfere with the impugned order. Dismissed with costs of Rs. 20,000/- to be paid to the respondent

within two weeks.