
(2007) 12 DEL CK 0040

In the Delhi High Court

Case No : IAs No. 4006, 7842 and 7843 of 2007 in CS (OS) No. 644 of 2007

Preeti Suparia Company

APPELLANT

Vs

Narain Dass Tulsani and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Citation : (2008) 37 PTC 552

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Tarun Singla, for the Appellant; Manmohan Singh, for the Respondent

Judgement

S.N. Aggarwal, J.—All these three applications have been taken up for disposal together because they are inter-connected.

2. IA No. 4006/2007 is an application under Order 39 Rules 1 and 2 CPC filed by the Plaintiff against the Defendants for restraining them from manufacturing, selling, marketing or advertising their confectionery products using the impugned trademarks/labels i.e. GARAM MASALA, LOVE LINE MANGO, AAM MODAK, CHATAK MATAK, PUJABI SANTRA, MIX FRUITS, BALLE BALLE, MIRCH MASALA mentioned in para 4 of the plaint.

3. Vide interim order passed by this Court on 04.04.2007, the Defendants were restrained from selling, marketing, advertising or using the impugned trademarks/labels mentioned here-in-above. After the Defendants were served with the copy of the interim injunction order passed by this Court against them, the Defendants filed two separate applications, one is under Order 39 Rule 4 CPC being IA No. 7842/2007 for vacating the ex-parte interim order dated 04.04.2007 and the second is under Order 39 Rules 1 and 2 CPC seeking a restraint order against the Plaintiff restraining it from manufacturing, marketing or selling its confectionery products using the similar marks. The Defendants have claimed themselves to be the prior users of the impugned trademarks/labels.

4. In para 4 of the plaint, the Plaintiff has alleged that it came into the confectionery business on 01.01.2004 and bona fidely adopted the following trademarks/labels in reaction to its various products:

MIRCH MASALA,

BALLE BALLE,

MIX FRUIT BALLS,

NAGPURI SANTRA,

CHATAK MATAK,

AAM MODAK,

LOVE LINE MANGO AND

GARAM MASALA,

5. In para 9 of the plaint, the Plaintiff has given the figures of its sale for three years i.e. 2004-2005, 2005-2006 and 2006-2007. The sale of the year Plaintiff for the year 2004-2005 as stated in para 9 of the plaint was Rs. 28,47,838, in the year 2005-2006 the sale dropped to 17,27,620 whereas the sale expected for the year, 2006-2007 was estimated at Rs. 30 lacs.

6. The Plaintiff has not given any figure of the amount allegedly spent by it on advertisement for making its brand popular amongst the general public.

7. There are five Defendants in this case. Defendants No. 3 to 5 are firms whereas Defendants No. 1 and 2 are individuals. Defendants No. 3 to 5 are stated to be family firms engaged in confectionery business since 1967. Defendants Nos. 4 to 5 are stated to proprietorship firms. Ms. Deepa Tulsani is stated to the sole proprietor of Defendant No. 4 firm. Mr. Anil Tulsani is stated to be the sole proprietor of Defendant No. 5 firm. Ms. Deepa Tulsani who is stated to the sole proprietor of Defendant No. 4 firm has not been impleaded as party-Defendant in the present suit. Defendants No. 1 and 2 are stated to be the partners of Defendant No. 3 firm and besides them two more persons namely Ms. Deepa Tulsani and Mr. Hitesh Tulsani are also stated to be its partners. Ms. Deepa Tulsani and Mr. Hitesh Tulsani in their capacity as partners of Defendant No. 3 firm are also not before the Court as they have not been impleased as parties-Defendants in the case.

8. Mr. Singh Learned Counsel appearing on behalf of the Defendants has vehemently argued that the Defendants are in confectionery business for more than four decades since 1967. He has further argued that the Defendants were using the trademarks viz. MIRCH MASALA, BALLE BALLE, MIX FRUITS BALLS, NAGPURI SANTRA, CHATAK MATAK, AAM MODAK, LOVE LINE MONGO GARAM MASALA etc. besides other marks in relation to their confectionery products for last more than 40 years and when they came to know around the end of March, 2007 that the impugned trademarks which they were using for a long time have

started to be used by third person, they filed an FIR being FIR No. 78/2007 against the distributors of the Plaintiff with the Police at Bikaner. Mr. Singh Learned Counsel appearing on behalf of the Defendants has argued that the Plaintiff in order to steel a March over the rights of the Defendants with regard to the impugned trademarks filed the present suit just after three days of the lodging of the FIR on 03.04.2007 and succeeded in obtaining an ex-parte injunction order against the Defendants with regard to the impugned trademarks on 04.04.2007 by concealing from the Court about the fact of lodging of the aforementioned FIR by the Defendants against the distributors of the Plaintiff besides other misrepresentations made in the plaint.

9. The bone of contention of Mr. Singh Learned Counsel appearing on behalf of the Defendants is that the Defendants are prior users of the impugned trademarks and in order to establish his point, he has referred to several documents at pages 5, 11, 26, 35, 39, 43, 48, 63 and 77 of the Defendants' documents in Part III file. I have gone through all these documents shown by the Learned Counsel for the Defendants. A bare look to these documents would show that the Defendants had claimed themselves to be the prior users of the impugned trademarks in the Trademarks Registry much before the dispute with regard to the use of the said marks was raised by the Plaintiff in the present suit. A reference to the documents of the Defendants at pages 26, 43 and 48 would demonstrate that the Defendants had applied in the Trademark Registry for registration of their trademarks "CHATAK MATAK, GARAM MASALA" and "MIX FRUIT" in January, 2003 i.e. much before the Plaintiff allegedly adopted the said marks in relation to its product which were allegedly adopted by the Plaintiff on 01.01.2004 as per averments contained in para 4 of the plaint.

10. Mr. Singh Learned Counsel appearing on behalf of the Defendants has further drawn attention of this Court to pages 36 to 66 of the Plaintiff's documents in Part III file in order to show that all these documents are copies of cash bills which do not contain the particulars of the persons to whom the goods were allegedly sold during the period referred in these bills. The Plaintiff has not filed any prima-facie evidence on record to establish that it was the prior user of the impugned trade marks.

11. The Defendants have given the figures of sale and advertisement in respect of two of their firms i.e. M/s D.M. Food Products (Defendant No. 4) and M/s A.D. Food Products (Defendant No. 5) at pages 25 to 38 of the Defendants' documents in Part III file and a perusal of the same would show that the said two firms of the Defendants are in business of confectionery since 2000-2001 and have got tremendous sale far exceeding the sale of the Plaintiff for the years 2004-2005 and 2005-2006. This further establishes the goodwill and reputation of the Defendants in relation to impugned trademarks particularly in view of documents at pages 5, 11, 26, 35, 39, 43, 48, 63 and 77 of the Defendants' documents in Part III file.

12. Mr. Singla Learned Counsel appearing on behalf of the Plaintiff when

confronted with the documents referred and relied upon on behalf of the Defendants, could not give any satisfactory reply in regard to the said documents except he contended that all the documents on which reliance is placed by the Defendants are fabricated documents and do not inspire confidence. The Learned Counsel for the Defendants has controverted this contention of the Plaintiffs Learned Counsel saying that most of the documents referred above are official documents and by no means can be said to be fabricated documents. Be that as it may, the plea of alleged forgery and fabrication of the documents taken by the Plaintiff would require evidence and no opinion on this aspect can be expressed at this stage. In view of the documents relied upon by the Defendants, a prima facie case is made out by them for vacating the interim order passed by this Court on 04.04.2007 and also for grant of ad interim injunction as prayed for by them against the Plaintiff.

13. In view of the above and having regard to all the facts and circumstances of the case, this Court is of the opinion that the Defendants have succeeded in establishing a prima facie case that they are the prior user of the impugned trademarks in relation to their confectionery products and since the Plaintiff is also using the similar trademarks in relation to its products, the Plaintiff is passing off its goods as that of the Defendants.

14. In the facts and circumstances of the case and for the reasons given herein, the interim order passed by this Court on 04.04.2007 is hereby vacated and the ad interim injunction order is passed in favour of the Defendants and against the Plaintiff restraining it from using the impugned trademarks viz. MIRCH MASALA, BALLE BALLE, MIX FRUITS BALLS, NAGPURI SANTRA, CHATAK MATAK, AAM MODAK, LOVE LINE MANGO and GARAM MASALA in relation to its confectionery products till the final disposal of this suit.

15. Anything said or observed in this order shall not influence the merits of the decision.

16. All these IAs stand disposed of accordingly.

C.S. (OS) No. 644/2007

List the case for admn/denial of documents before the Joint Registrar on 04.04.2008.