

(2014) 07 RAJ CK 0031

In the Rajasthan High Court

Case No : SB Civil Transfer Application No. 25/2012

Rajeev Gandhi Computer Saksharta Mission

APPELLANT

Vs

Rajeev Gandhi Saksharta Mission

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 7 Rule 10, 10, 24

Citation : (2015) 2 CDR 726 : (2015) 62 PTC 341

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

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

Judgement

Alok Sharma, J.?This application under section 24 of the Code of Civil Procedure, 1908 (hereinafter "the Act of 1908) has been filed seeking transfer of suit No. 34/7/2011 titled as M/s. Rajeev Gandhi Computer Saksharta Mission v. M/s. M/s. Rajeev Gandhi Computer Saksharta Mission, pending before the Court of Addl. District Judge (Fast Track) No. 2, Alwar to the appropriate Court at Jaipur.

2. The case of the petitioner- M/s. Rajeev Gandhi Computer Saksharta Mission (here-in-after "the petitioner trust") is that it is registered under the Public Trust Act, 1860 and Public Charitable Act, 1882 and has been imparting education in the field of Computer Science since 1996 albeit the petitioner Trust came to be registered only in or about 2005. The petitioner trust has adopted a LOGO "RGCSM" and had moved an application No. 1375529 with the Registrar of Trade Mark on or about 4.8.2005. It has been submitted that the respondent also M/s. Rajeev Gandhi Computer Saksharta Mission (hereinafter "the respondent firm") is also engaged in the business of imparting Computer Education and has its registered office at Jaipur. The respondent has a registered trade mark under the said name of M/s. Rajeev Gandhi Computer Saksharta Mission with the Registrar of Trade Marks effective 31.3.2008.

3. It is submitted that on it coming to the notice of the petitioner trust that the

respondent firm was engaged in a similar nature of work in the field of Computer Education & Science with a name similar to that of the petitioner, a notice dated 24.12.2010 was issued to the respondent firm and also published in a newspaper. The notice and the publication in the newspaper was followed by a suit for injunction filed by the petitioner trust in the Court of the Addl. District Judge No. 5, Jaipur Metropolitan City at Jaipur on 6.1.2011 against the respondent firm under the provisions of the Trade Mark Act, 1999 (here-in-after "the Act of 1999"). It was submitted that however the respondent firm pursuant to the notice dated 24.12.2010 had itself laid a suit for permanent injunction against the petitioner trust at Alwar on 3.1.2011. In the circumstances on that respondent's application in the petitioner's suit for permanent injunction at Jaipur under section 10 CPC, the petitioner's suit has been stayed.

4. Counsel has submitted that aside of the suit for injunction filed by the respondent firm at Alwar against the petitioner, the respondent firm also filed a suit for permanent injunction against one "RGCSM" 645-A/520B, Janki Vihar Colony, Jankipuram Sector-1, Lucknow as defendant with regard to the alleged infringement of the respondent's trade mark by the defendant in the said suit. It was submitted that in the respondent's suit for permanent injunction against the said RGCSM which is pending in the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur a written statement has been filed by the "RGCSM" categorically asserting that it was a Franchisee of the petitioner trust which had the right to use the Trade Mark/name Rajeev Gandhi Computer Saksharta Mission as a prior user in-spice of the respondent's registration of the said name as its mark.

5. Counsel submitted that another suit has also been filed by the petitioner trust against the respondent firm before the learned Addl. District Judge No. 9, Jaipur Metropolitan City, Jaipur under the provisions of the Copy Right Act pertaining to the dispute also arising from conducting of Computer Education in the name and style of M/s. Rajeev Gandhi Computer Saksharta Mission by the respondent firm. Counsel has submitted that the registered office of the respondent firm being at Jaipur and a dispute with regard to the right of the petitioner trust and "RGCSM" to the use the trade mark on the ground of prior user in-spice of the registration of the trade mark in the name of the respondent effective 2008 is pending at Jaipur. In the circumstances a similar dispute pending in the Court of Addl. District Judge (Fast Track) No. 2, Alwar in the injunction suit laid by the respondent firm against the petitioner trust should be transferred to the Court of Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur in the exercise of the discretionary power of this Court under section 24 CPC both for reason of convenience of the contesting parties and interest of justice.

6. Per contra Mr. G.D. Bansal, counsel appearing for the respondent firm submits that the subject matter of suit No. 184/2013 filed by the firm against RGCSM presently pending in the Court of Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur is a matter wholly foreign to the dispute between the parties in the

respondent's suit against the petitioner at Alwar. It was submitted that the RGCSM, Lucknow- the defendant in suit No. 184/2013 is a party independent and unconnected with the petitioner trust. Counsel has drawn attention of this Court to an application made by the RGCSM, Lucknow before the trade mark authority wherein it had categorically claimed to be an independent entity unconnected the petitioner trust. The said application was however subsequently withdrawn. Counsel has further submitted that as the petitioner trust has already participated in the proceedings before the learned Addl. District Judge (Fast Track) No. 2, Alwar by moving an application under Order 7 Rule 10 CPC which is still pending. Counsel further submitted that the petitioner trust is doing its business throughout India and no inconvenience will be occasioned to it by contesting the respondent's suit laid at Alwar. It is therefore, prayed that the transfer application be therefore, be dismissed.

7. I have heard the counsel for the parties and considered the respective submissions.

8. From the facts on record it transpires that the dispute between the petitioner trust and the respondent firm is with regard to the right to use the name M/s. Rajeev Gandhi Computer Saksharta Mission and the LOGO/S in respect thereof in their respective businesses of providing computer education. Multiple suits have been filed in respect of the dispute. The defendant firm no doubt has registration of a trade-mark in the name of M/s. Rajeev Gandhi Computer Saksharta Mission. The petitioner trust however, claims its right to use the name M/s. Rajeev Gandhi Computer Saksharta Mission and the LOGO "RGCSM" on the basis of prior user stating that it has been using the said name and LOGO since 1996 and in-fact had applied for registration under the said name before the competent authority under the Act of 1999 as early as 4.8.2005 albeit the application was rejected. The respondent firm has filed a suit for injunction seeking to restrain the petitioner trust from using the name M/s. Rajeev Gandhi Computer Saksharta Mission dissimilarities of computer education. The same issue to my mind can also said to be pending in the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur in the respondent's own suit for permanent injunction against "RGCSM, Lucknow". And in the written statement to the plaint in the respondent firm's suit for permanent injunction before the learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur the defendant RGCSM, Lucknow has categorically stated that it is a Franchisee of the petitioner trust. Further, an application under Order 1 Rule 10 CPC is also stated to be pending at the instance of the petitioner trust in the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur for impleadment in the defendant's suit against RGCSM, Lucknow. It is thus obvious that the issue of "prior user" of the name M/s. Rajeev Gandhi Computer Saksharta Mission by the petitioner trust and its right to continue to engage in the dissemination of Computer Education the said name with related LOGOS is similar in both the suits i.e one laid by the defendant firm before the learned Addl. District Judge (Fast Track) No. 2, Alwar and the other, the suit laid by the defendant firm against "RGCSM" Lucknow in the Court of

learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur. Continuation of the two suits in two different jurisdictions has the potential of conflicting judgments. Aside of the aforesaid, it is an admitted fact that the registered office of the defendant firm is at Jaipur and no inconvenience is likely to be caused to the defendant firm if the suit laid by it and now pending before the ADJ No. 2, Alwar is transferred in the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur.

9. The Hon''ble Apex Court in the case of Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others, has observed that for the purpose of exercising discretion of a Court under section 24 CPC, the convenience of the parties to the litigation making sure that no party is prejudiced and also interest of justice are inter-alia to be considered.

10. In my considered opinion both two grounds for exercise of the discretion of this Court under section 24 CPC as referred herein-above are made out. The transfer petition is accordingly allowed. Civil suit No. 34/7/2011 for permanent injunction laid by the defendant firm M/s. Rajeev Gandhi Computer Saksharta Mission against the petitioner trust and now pending in the Court of learned Addl. District Judge (Fast Track) No. 2, Alwar is transferred to the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan City, Jaipur.

11. Both the parties agree that subsequent to the transfer of the suit in issue from the Court of learned Addl. District Judge (Fast Track) No. 2, Alwar to the Court of learned Addl. District Judge No. 8, Jaipur Metropolitan, the application under Order 39 Rules 1 and 2 CPC in the said suits be decided within 30 days from the date of receipt a certified copy of this judgment. It is accordingly directed.