

(1995) 09 DEL CK 0070

In the Delhi High Court

Case No : Interim Application No. 75412 of 1995 and Suit No. 1692 of 1995

Rupee Gains Tele-Times Private Ltd.

APPELLANT

Vs

Rupee Times

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1995) 35 DRJ 30

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : P.P. Malhotra, S.B. Upadhyay, R.K. Anand and L. Sahni, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) This order will dispose of the application of the plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC for the grant of an order of injunction restraining Dr.Vinod Kumar, owner, publisher, editor and proprietor of "RUPEE TIMES" from using the trademark "RUPEE TIMES" in respect of journal, newspaper or any other trademark which is identical with and/or deceptively similar to the trademark "RUPEE GAIN" allegedly belonging to the plaintiff. Further injunction is sought against the defendant from using the trademark "RUPEE TIMES" so as to pass off its journals as that of the plaintiff.

(2) The facts of this case in short are that M/s.R.B.G.Freelancers Private Limited were engaged in the publication and sale of a bimonthly financial journal under the name and style of "RUPEE GAINS" since 1986; the name of the said company was subsequently changed to Rupee Gains Tele Times Private Limited; this journal is reported to have been registered with the Registrar of Trademarks under Registration No. RNI- 45792/86 and the said name is in continuous use by the plaintiff for the past about 9 years in respect of financial journal and is stated to be sold throughout India. According to the plaintiff, the said trademark "RUPEE GAINS" predominantly consists of the word "RUPEE" so as to impart a financial

significance to the journal and the plaintiff is alleged to have adopted and conceived the word "RUPEE" as a trademark in respect of a financial journal. The aforesaid trademark "RUPEE GAINS" used in the financial journal allegedly indicate to the readers and intending readers as a journal originating from the plaintiff and none other. The said trademark is alleged to be the exclusive property of the plaintiff. The word "RUPEE" also forms, according to the plaintiff, an important feature of the corporate name of the plaintiff. The said name is alleged to have acquired valuable and substantial goodwill and reputation in the market. Dr.Vinod Kumar was associated with the plaintiff as Chief Consultant Editor, till 14th June, 1995, of the journal "RUPEE GAINS". It is alleged that the defendant has started publishing a journal by adopting the trademark "RUPEE TIMES" in respect of its financial journal. According to the plaintiff, the use by the defendant of the trademark "RUPEE TIMES" in connection with and in relation to a financial journal is intended, calculated and likely to deceive purchasers and intending readers and lead them into the belief that the said journal was that of the plaintiff or an organisation associated with the plaintiff. Dr.Vinod Kumar has alleged to have advertised for "RUPEE TIMES" allegedly projecting an impression to the public that all the experienced and acknowledged team of the "RUPEE GAINS" have come out with another financial fortnight "RUPEE TIMES" and this advertisement was sent to the customers of the plaintiff company. It is alleged that the defendant is trying to trade upon the goodwill of the plaintiff company putting it to irreparable loss. The defendant by deliberately adopting the trademark "RUPEE TIMES" is trying to create a confusion in the market and is trying to deceive the intending readers. A deception and confusion, according to the plaintiff, will be caused amongst the readers in believing that the said journal "RUPEE TIMES" has come from the organisation of the plaintiff. The said adoption of the trademark "RUPEE TIMES" is stated to be dishonest and fraudulent and the defendant is alleged to be trying to pass off its goods as that of the plaintiff.

(3) Along with the suit, an application for ad-interim injunction was also filed for restraining the defendants from publishing the financial journal "RUPEE TIMES" or to pass off its journal under the trademark "RUPEE TIMES" as and for that of the plaintiff company.

(4) After summons of the suit and notice of the application had been served upon the defendant, written statement was filed. In the written statement, it has been stated that in March 1988 after some disputes had arisen between the then owners of "RUPEE GAINS", one of the erstwhile owners, Wg.Cdr. Ravi Kapoor started another paper under the name of "CORPORATE RUPEE" after getting the same registered with R.N.I. M/s.R.B.G. Freelancer Private Limited predecessor company of the plaintiff then filed a suit in this Court against Wg. Cdr. Ravi Kapoor, inter alia, seeking restraint order against the use of the word "RUPEE" in the title of the newspaper "CORPORATE RUPEE". This Court by an order passed in April, 1988, held that since the said "CORPORATE Rupee" was registered with R.N.I. after due verification with D.C.P. (Licensing) Delhi and in case logo is changed suitably of said "CORPORATE Rupee" so as to dispel the confusion which

may be caused by the similarity in the logos, the said newspaper can continue to be printed and published. The said journal "CORPORATE Rupee is still continuing uninterruptedly and is stated to be having a very wide circulation. It is also stated that the defendant had started "RUPEE TIMES" in a totally different style and setting and has a totally different logo than "RUPEE GAINS". A bare look at the two newspapers would show that no attempt has been made by the defendant to deceive and confuse the intending purchasers or intending readers. The newspaper is also stated to have been registered with R.N.I. which had granted its registration after due verification with D.C.P. (Licensing) Delhi. It is stated that there is no question of any phonetic similarity between these two newspapers nor there is any question of any deception or confusion being caused in the mind of the general public. It is stated that the market which reads these financial journals is very articulate and intelligent and can easily make out the difference in the contents and substance of the news items appearing in the newspapers. Examples of various newspapers/journals/magazines have been given to show that many financial newspapers and journals are being circulated and published in the market with almost similar names. Some of such names are : -

1.CATEGORY"A" i)Financial Pulse ii)Financial News iii)Financial Wizard iv)Financial Times (E T) v)Financial Times (London) vi)Financial Express

2.CATEGORY"B" i)Money Media ii)Money Times iii)Money Opportunities iv)Money Tech

3.CATEGORY"C" i)Business India ii)Business Today iii)Business World iv)Business Standard v)Business Line

(5) The main thrust of argument of Mr.Malhotra is that the defendant wants to take benefit of gains and reputation of the plaintiff which reputation has been developed by the plaintiff during the last 9 years. People are bound to be misled by use of the word "RUPEE TIMES" as the word "RUPEE is predominantly displayed both on the newspaper of the plaintiff as well as on the newspaper of the defendant. The defendant is, Therefore, trying to trade upon the reputation of the plaintiff.

(6) The word "RUPEE, in my opinion, is synonymous with money. It has been noticed that almost all the financial journals and publications have been using either the word business or financial or money for their journals and newspapers. Merely because one of the company has used the word "RUPEE to name its financial journal will not mean that the said word cannot be used by any other journal nor it can mean that the journal first using the said word "RUPEE has acquired trademark in the said word. "RUPEE" is a descriptive word not a distinctive word. Everything connected with trade and business is described by money, finances & rupee and it is for this reason that these words are repeatedly used by all the financial journals and it appears to be the reason that this Court had not given a stay against the publication of the journal "CORPORATE Rupee in

a suit filed by the present plaintiff. In *Habib Bank Ltd. Vs. Habib Bank Ag Zurich* reported as 1980 Aelr 650, the Court of appeal, while deciding the question of passing off, had approved five characteristics which must be present in order to create a valid cause of action for passing off and they were : -

I) A misrepresentation; ii) made by a trader in the course of trade; iii) to prospective customers of his or ultimate consumers of goods or services supplied by him; iv) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence); and v) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a *quia timet* action) will probably do.

(7) The main principle, Therefore, which may be taken into consideration while deciding the question as to whether the defendant is passing off its goods for that of the plaintiff is that such passing off is on account of mis- representation made by the trader on the course of his trade to a perspective customer and the same is calculated to injure the business and goodwill of any other trader. In my opinion, none of the said characteristics are available to the plaintiff in the present case. Mr. Malhotra has relied upon a judgment dated 10th May, 1991 in Suit No. 2751/89 to justify that when a leasing company had tried to use the word "Apple" for its company which name was already being used by a well-known international company, it created a confusion in the mind of the general public that the said company is an organisation of Apple Computers. Consequently, a stay was granted because the leasing company was not able to satisfy the Court as to why the word "Apple" had been chosen by it for its company. In my opinion, the said judgment has no applicability to the facts of the present case, in as much as the present case is a case where a financial journal is being published by both the parties and the said financial journal has necessarily to be associated with the words business, money, finance and rupee. It cannot be said that because one of the parties has started using the word "RUPEE" prior to the second party, the second party cannot, for all times to come, use the said word "RUPEE". In my opinion, there cannot be any trademark in the word "RUPEE". Reliance has also been placed by Mr. Malhotra upon *Prakash Roadline Ltd. Vs. Prakash Parcel Service (P) Ltd.*, in support of his plea that where the defendant had started business similar to that of the plaintiff and the trade name adopted by the defendant is also similar to that of the plaintiff, it was likely to cause confusion to the general public and can amount to passing off goods by the defendant as that of the plaintiff. As I have already held above that in case of a financial journal, the situation may be different than in any other competitive trade. In case, two persons are carrying on business of the same nature, naturally the person who has started the business first will be aggrieved by the subsequent person using similar name, as the same may amount to passing off the goods of the first trader by the second trader and it can also create a confusion in the mind of the general public. However, in the present case, the people who read financial journals are well-educated, writing style of both the newspapers is different and there is no similarity even in the get up or

logo of the two journals. To my mind, there cannot be any confusion or deception that can be caused in the mind of general public when they purchase the journal of the defendant and I do not see any possibility of the defendant's journal being passed off as that of the plaintiff.

(8) In the present case, the word "RUPEE GAIN" under which the plaintiff is publishing its journal clearly means that the plaintiff is trying to inform the general public about the gains which they may be getting by making investment in rupee. The word is not invented by the plaintiff but only a descriptive one. Every person who deals in money will speak about rupee. Prima facie, I am of the opinion that there has been no mis- representation by the defendant in taking out its journal "Rupee Time" nor the defendant is trying to pass off its journal as that of the plaintiff.

(9) I, Therefore, do not see any merits in the application and the same is, accordingly, dismissed.