
(2010) 10 KAR CK 0086
In the Karnataka High Court
Case No : Writ Petition No. 32722 of 2010

Six Continents Hotels INC and Another	APPELLANT
Vs	
Cehd Corporation and Others	RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 144

Citation : (2010) ILR (Kar) 5000

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Shreyas Jayasimha, for the Appellant;

Judgement

A.N. Venugopala Gowda, J.—The Petitioners/Plaintiffs have instituted O.S. No. 16134/2003 in the City Civil Court, Bangalore, against the Respondents/Defendants for the following reliefs:

- (i) A decree of permanent injunction to restrain the Defendants jointly and severally their directors, partners, proprietors, servants and agents from infringing Plaintiff No. 1's registered trademarks Nos. 416297, 416299 and 416300 being HOLIDAY INN CROWNE PLAZA (registered in Class 3, Class 16 and Class 25 respectively) by use of the mark, word or name Crown Plaza or any other mark, word, name or expression deceptively or otherwise similar thereto as its trading style, corporate name or as a part thereof;
- (ii) A decree of permanent injunction to restrain the Defendants, its directors, partners, proprietors, servants and agents from "passing off their products and business as that of the Plaintiffs by use of the mark, word or name Crown Plaza or any other mark, word, name or expression deceptively or otherwise similar thereto as its trading style, corporate name or as a part thereof;
- (iii) A decree against the Defendants to render an account of profits earned by them from the time they first adopted and used the name Crown Plaza as their corporate name and trading style;

(iv) A decree against the Defendants directing the Defendants jointly and severally to pay an amount of Rs. 1,00,000/- (One lakh only) as damages to the Plaintiffs"

(v) A decree of mandatory injunction directing the Defendants to provide the Plaintiffs an affidavit, undertaking the destruction of all peripherals such as blocks, brochures, trade circulars, labels, cartons, stamps, dies, visiting cards, menu cards, tariff cards, stationery and other printed materials, towels, crockery, cutlery, key chains/rings and diverse goods relating to its hotels and resorts and/or furnished/unfurnished serviced apartments or any other businesses that the Defendants may be engaged in presently or in future bearing the Crown Plaza word or name or any words, names or expressions deceptively similar thereto

2. The Respondents filed written statement contesting the suit and have made a counter-claim. The Petitioners being un-successful in obtaining an order of temporary injunction, filed MFA No. 2858/2006, which having been dismissed by a judgment dated 25.09.2006, had filed SLP No. 3582/2007.

3. By an order dated 07.03.2007, the Hon"ble Supreme Court of India has dismissed the SLP No. 3582/2007. However, the Trial Court was "requested" to expedite the hearing of the matter, if possible, within four months. The proceedings of the suit having not been expedited, the Petitioner filed W.P No. 13322/2010. By an order dated 22.04.2010, the Trial Court was directed to make all efforts to dispose of the suit as expeditiously as possible.

4. The trial of the suit is complete as is evident from a memo dated 01.10.2010 filed in the suit. The memo reads as follows:

It is respectfully submitted that the Plaintiffs have concluded the oral arguments on merits on 18.08.2009 and thereafter have filed written arguments on 02.11.2009. The Defendants have addressed arguments on merits on 05.12.2009. This Hon"ble Court on 28.05.2010 and 17.06.2010 has recorded that the Plaintiff Counsel is heard in full. The Defendants have addressed arguments in part on 15.07.2010, 19.07.2010 and have concluded the arguments on merits on 07.08.2010. There is no further reply arguments by the Plaintiff as noted by this Hon"ble Court on 07.08.2010 that the reply of the Plaintiff has been heard.

WHEREFORE, since both the Counsels for the Plaintiffs and the Defendants have concluded arguments on merits, it is respectfully prayed that this Hon"ble Court be pleased to post the above matter for Judgment, in the interests of justice and equity.

On 1.10.2010, the Trial Court has recorded as follows:

Memo is filed by the counsel for Plaintiff. Call on for citations and to hear Defendants finally by 18.10.2010

5. The grievance of the Petitioners is that, the Trial Court has not given effect to

the orders passed by this Court on 22.04.2010 in W.P. No. 13322/2010 and that of the Apex Court on 07.03.2010 in S.L.P No. 3582/2007. This writ petition filed is for quashing the order dated 01.10.2010 and to direct the Trial Court to dispose of the suit within one month from the date of communication of the order.

6. Sri Shreyas Jayasimha, Learned Advocate appearing for the Petitioners contends that, the Trial Court has violated the order/ direction issued by the Apex Court and this Court, by repeatedly adjourning the matter without any justifiable ground and has not been showing any eagerness for disposal of the suit and the delay has denied the worldwide the trade mark of the Petitioners, which is getting diluted as it is being used by the Respondents with impunity and the Petitioners are subjected to loss.

7. Keeping in view the grievance of the Petitioners and the nature of the order that is being passed, it is unnecessary to notify the Respondents.

8. In the case of Bayer India Ltd. and Others Vs. State of Maharashtra and Others, , the Appellants had approached the Apex Court for relief The Apex Court had directed it to file a review petition, which was directed to be disposed of within four months from the date of the order (See AIR 1991 SCW 355). The said order was not complied with. An application was filed complaining of non-disposal of the matter despite more than two years period having been elapsed. The Apex Court has held as follows:

5. We are saddened to notice that inspite of the Court's request contained in this order dated 6-2-1991, the High Court has not disposed of the review petition till now. The High Court was requested to dispose of the said writ petition within four months from the date of the said order and, at any rate, by 30-9-1991. It is more than two years since the order was made. While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all Courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to. We hope and trust that the delay in the disposal of the review is either accidental or on account of some or other procedural problem. Be that as it may, the present situation would not have arisen if only the review petition had been disposed of within the time contemplated in the order dated 6-2-1990.

9. In the case of Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, , a submission was made that there was no direction in the order which was only by way of "request" and suggestion. The submission was not accepted and it was held as follows:

Any "request" of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to

disregard the same.

10. In the case of *Spencer & Co. Ltd. and Anr. v. Vishwadarshan Distributors Pvt. Ltd. and Ors.* (1995) 3 SCC 259, while dealing with the binding nature of the order passed by the Hon''ble Supreme Court, referring to the provisions of the Articles 141, 142 & 144 of the Constitution, significant observations have been made to the following effect:

10. The afore-narrated words, we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the Constitution to act in aid of this Court. That the High Court is one such judicial authority covered under Article 144 of the Constitution is beyond question. The order dated 14-1-1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out. The language of request oftenly employed by this Court in such situations is to be read by the High Court as an obligation, in carrying out the constitutional mandate, maintaining the writ of this Court running large throughout the country.

11. In W.P. No. 13322/2010, by an order dated 22.04.2010, Trial Court was directed to make all efforts to dispose of the suit as expeditiously as possible. The memo dated 01.10.2010 (*supra*) indicates that, the Trial Court has not made efforts to expedite the proceedings of the suit either in terms of the request made by the Apex Court or the specific direction issued by this Court.

12. Out of courtesy, the Apex Court requested the Trial Court to expedite the hearing of the matter, if possible, within four months from 07.03.2007. It has been said that, judicial language is always chaste. The request made in the case was contained in the judicial order, which ought to have been given effect to, atleast when this Court directed to make all efforts to dispose of the suit as expeditiously as possible. The language of "request" oftenly employed in judicial orders is to be read as an obligation, in carrying out the constitutional mandate, maintaining the authority of the Apex Court and this Court. There is inaction on the part of the Learned Trial Judge.

13. In the hierarchy of Courts, if the higher Court either makes a request or issues direction to the sub-ordinate Court, there is an obligation on the part of the Court concerned to give effect either to the request or the direction as the case may be. Time bound directions issued will have to be adhered to strictly. This Court has come across cases, wherein the lower Courts have not been disposing off the matters within the stipulated period. Such action does no credit to the Court when the request/direction is not given effect to.

For the foregoing reasons, the Trial Court is directed to dispose of O.S. No. 16134/2003 at an early date but not later than 18.12.2010 and submit compliance report to this Court.

Writ petition stands disposed of accordingly.

Registry is directed to send copy of this order to the Trial Court forthwith.