
(2020) 02 DEL CK 0366

In the Delhi High Court

Case No : Civil Suit (COMM) No. 375 Of 2019, Miscellaneous Application No. 9986 Of 2019

Sporta Technologies Pvt. Ltd. & Anr

APPELLANT

Vs

Edream 11 Skill Power Private Limited

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 3

Citation : (2020) 02 DEL CK 0366

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Shwetasree Majumder, Prithvi Singh, Pritika Kohli

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

1. The plaintiffs are involved in providing online fantasy sport leagues through their website www.dream11.com, whereby participants draft virtual

teams on the platform provided by the plaintiffs and, based on real life matches, compete with other participants. The winning participants are

rewarded monetarily. The plaintiffs allege infringement of their trademark and trade-name, "DREAM 11", and passing off by the defendant,

which uses the mark "EDREAM 11" for an online fantasy cricket league.

2. The plaintiff no. 1 is a private limited company incorporated in 2007, and is a wholly owned subsidiary of plaintiff no. 2, which is incorporated under

the laws of Delaware, United States of America.

The plaintiffs launched their online gaming portal, www.dream11.com, in 2012. They claim to have rights from various sporting bodies including

cricket, hockey, basketball, football and kabbaddi. As far as cricket is concerned, they claim to have arrangements in place with the International

Cricket Council [ICC] and the Board of Control for Cricket in India [BCCI], including for the Indian Premier League [IPL]. It is also submitted by the

plaintiffs that they power the "IPL Season Long Fantasy", which is owned by the BCCI for fan engagement.

3. The plaintiffs own the registered trademark "DREAM 11" and various variants thereof. The plaintiffs have enumerated a list of their registered

trademarks, in various classes, in paragraph 9 of the plaint and have also filed certificates of registration in respect thereof. Plaintiff no. 2 is the

registrant of the domain name www.dream11.com. The word mark "DREAM11 CHAMPIONS" has also been registered by the plaintiffs. The

plaintiffs further claim to have various brand ambassadors including well known cricketers. It is stated in the plaint that the plaintiffs' business has

attracted large scale investments and has also received various awards.

4. The plaintiffs entered into a central sponsorship program with the BCCI for the IPL 2019 season and are also designated as the "official fantasy

sports provider" by the ICC for all its tournaments. They claim to have over 7 crore subscribers across various fantasy league games.

5. The plaintiffs' allegation in this suit is that the defendant is using the mark "EDREAM 11" as part of its trade name, company name and

domain name to provide a fantasy league cricket platform very similar to that of the plaintiffs. The defendant's business is carried on through its

impugned website, www.edream11.com, and mobile application, and it also accepts payments for the same. The plaintiffs also claim that the

defendant has various social media accounts using the impugned mark. The plaintiffs' allegation is that the defendants have merely affixed the letter

"E" to the registered trademark of the plaintiffs, "DREAM 11", and is providing services identical to that of the plaintiffs.

6. The plaintiffs have placed on record a screenshot of an email received from one Alifya Basrai, dated 04.07.2019, by which the plaintiffs were

informed of the infringing activities being carried out by the defendant. Screenshots of the impugned website have also been placed on record to

demonstrate that the activities of the defendant are in violation of the plaintiffs' intellectual property rights. The materials placed on record show that

the impugned website has an "Add Money To Your Wallet" option, which indicates that the activities of the defendant are of a commercial

nature. The plaintiffs claim that the aforesaid activities of the defendant violate the statutory protection granted by the Trade Marks Act, 1999, and

also amount to passing off the defendant's offering as that of the plaintiffs.

7. On the basis of the above allegations, the plaintiffs seek the following reliefs in the suit: -

33. In view of the facts and circumstances disclosed hereinabove, the Plaintiffs most respectfully prays that this Hon'ble Court may be

pleased to pass:

a) A decree of permanent injunction restraining the Defendant, its directors, representatives and/or others acting for and on their behalf

from using the mark edream11 or any deceptively similar variant thereof, as a trademark and tradename, which amounts to infringement of

the Plaintiffs Dream 11 trademarks as listed in the plaint.

b) A decree of permanent injunction restraining the Defendant, its directors, representatives and/or others acting for and on their behalf

from using the mark edream11 or any deceptively similar variant thereof, as a trademark and tradename, which amounts to passing off the

services and business of the Defendant as that of the Plaintiff.

c) An order for rendition of accounts of profits directly or indirectly earned by the Defendant from the infringing activities and wrongful

conduct and a decree for the amount so found due to be passed in favour of the Plaintiff.

d) A decree for the sum of INR 2,00,01,000/- for damages as valued for the purposes of this suit towards loss of sales, reputation and

goodwill of the Plaintiffs Dream11 trademarks caused by the acts of the Defendant.

e) An order for costs of the present proceedings.

f) Such further orders/ reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be

passed in favour of the Plaintiffs and against the Defendant.

8. The suit was first listed on 26.07.2019, when summons were issued and an ex parte ad interim order was granted in favour of the plaintiffs in the

following terms: -

â??xxxx xxxx xxxx

12. The Court has perused the pleadings and the documents. A perusal of the website of the Defendant shows that www.edream11.com is

hosting gaming services which are identical to that of the Plaintiff under an identical/ similar name â??edream 11â?. The website also

shows that the Defendant is providing fantasy cricket games and is also accepting payments for the same. Any customer based in Delhi

would also be able to create an account on the â??edream 11â? platform. The same is also being promoted on social media platforms such

as Facebook, Twitter, etc.

13. The marks/names â??Dream11â? and â??edream 11â? are absolutely identical and there is a high chance of confusion, especially on

the internet where the difference between such domain names would not be easily discernible. Further, considering the nature of the

internet where it is possible for similar sounding website names to be presumed as being affiliated, use of such similar sounding domain

names and that too for identical services inevitably results in passing off of one service as that affiliated, sponsored or connected with the

other.

Moreover, since the defendant's website is also a paid platform, there could be immense monetary gain to the Defendant, by creating such

confusion and loss would be caused to not only the Plaintiffs but also to innocent users who may make payments presuming that the

defendant's website is the same as the Plaintiffs's.

14. Till the next date of hearing, the Defendant is restrained from using the domain name www.edream11.com or 'Edream' or any other

mark/ domain name or trading style which is similar or identical to 'Dream 11' or www.dream11.com. The Defendant is also restrained

from promoting its fantasy gaming services with the name 'edream' on social media platforms.

15. Compliance of Order XXXIX Rule 3 be made within three days.

16. The Id. counsel for the Plaintiff is permitted to approach the Registrar GoDaddy.com/NIXI for implementation of the above order in

order to ensure that the website under the identical domain name www.edream11.com is blocked with immediate effect.

xxxx xxxx xxxxâ??

9. By the order of the Joint Registrar dated 21.11.2019, it was recorded that the plaintiffs had duly served the defendant through email, and despite

service of summons the defendant has neither entered appearance, nor has it filed its written statement. Learned counsel for the plaintiffs has also

placed an affidavit of service dated 06.08.2019 on record to demonstrate compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908.

The documents filed with the said affidavit includes a BlueDart tracking report which shows that the suit paper book and documents were received at

the address of the defendant on 30.07.2019. The defendant is therefore set ex-parte.

10. In view of the fact that access to the impugned website has, in fact, been blocked in accordance with the orders of this Court, and the defendant

has not entered appearance to contest the suit, Ms. Shwetasree Majumder, learned counsel for the plaintiffs, limits the reliefs sought to a decree

against the defendant in terms of paragraphs 33(a) and 33(b) of the plaint. No other relief is pressed.

11. Ms. Majumdar relies upon the judgment of this Court in Satya Infrastructure Ltd. & Ors. vs. Satya Infra & Estates Pvt. Ltd., 2013 (54) PTC 419

(Del) [CS(OS) 1213/2011, decided on 07.02.2013] wherein it was held that in an uncontested suit of this nature, it is not necessary to require the

plaintiffs to lead evidence, and a summary disposal of the suit is permissible, on the basis of the contents of the plaint, supported by the statement of

truth and declaration under the Commercial Courts Act, 2015.

12. In Satya Infrastructure (supra), this Court held as follows: -

â??4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead

ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of

accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of

affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the

amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any

additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being

put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs

on merits qua the relief of injunction.â??

In the facts and circumstances aforesaid, the view taken in Satya Infrastructure (supra) is squarely applicable to the present case also.

13. The plaintiffs have placed on record several materials from the defendant's website, www.edream11.com, and social media pages (Facebook

and Twitter) to show that the defendant is indulging in infringement and passing off the plaintiffs's registered mark, "DREAM 11". A perusal of

the materials placed on record shows that the defendant is using a mark which has near identity " phonetic, structural and visual " to that of the

plaintiffs. The impugned mark, "EDREAM 11", is clearly used as part of the corporate name of the defendant, the domain name of its website

and its logo. The description of the defendant's platform as contained on its website reveals that its services are identical to those of the plaintiffs. .

It is clear therefrom that the defendant, through its website, is accepting payments from the public for the services it provides. The plaintiffs's

averments regarding the goodwill and reputation of its business have not been rebutted. Consequently, the defendant is also passing off its " services

as that of the plaintiffs. Further, the defendant has elected to not appear before the Court, despite service of summons on 26.07.2019, and no

communication on behalf of the defendant has been placed on record in respect of the allegations of the plaintiffs in this suit.

14. In view of the above, the plaintiffs have succeeded in establishing their claim for a permanent injunction against the defendant, both on the grounds

of infringement of their registered trademarks and passing off. The suit is therefore decreed in their favour in terms of paragraphs 33(a) and 33(b) of

the plaint. It is made clear that, by virtue of this decree, the defendant is also restrained from using the impugned mark "EDREAM 11", as part of

its corporate name, trade name, domain name and/or website. No other relief is pressed.

15. The plaintiffs are also entitled to actual costs of the suit, including court fees and counsel's fees. The plaintiffs will file an affidavit of actual costs within two weeks.

16. Decree sheet be prepared accordingly.

17. The suit and pending applications are disposed of in these terms.