

(2007) 11 DEL CK 0073

In the Delhi High Court

Case No : IA No. 4503 of 2007 in CS (OS) No. 720 of 2007

Super Seals India Limited

APPELLANT

Vs

Sos Automotive Components Private Limited

RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:

Copyright Act, 1957 — Section 17, 19

Citation : (2008) 36 PTC 247

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Pinky Anand, Anjoo Jain and Hitesh Sachar, for the Appellant; C. Mukund, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The plaintiff has filed a suit for permanent injunction restraining passing off, infringement of copyright, rendition of accounts, delivery up, etc. in respect of Oil Seals under the reference numbers, part numbers and other layouts or any identical/deceptively similar layout prescribed. The plaintiff also claims infringement of copyright and trademark over part numbers/reference numbers and trade name.

2. The plaintiff was incorporated in the year 1960 and is stated to have started operations of manufacturing Oil Seals in the year 1962. In 2002 it became a deemed public limited company. The plaintiff claims to be manufacturing oil seals, water pump seals, valve stem seals, mechanical seals, etc. for the automotive and tractor industry since its inception. The plaintiff had given different part numbers to the different oil seals used by different automobile companies. The plaintiff claims that the said part numbers were being used for more than four (4) decades and Therefore, the plaintiff has acquired legal rights over the said part/reference numbers. The customers of the plaintiff are stated to be identifying the products of the plaintiff with the said part numbers.

3. The history of the plaintiff company has been set out in the plaint, which is material to appreciate the controversy involved in the present suit. The plaintiff company was originally controlled by the Talwar family comprising of Mr. Anil Talwar, Mr. Deepak Talwar and Mr. Kamal Talwar. The trademark "SS logo" was registered on 24.12.1965 under Class 12 for rubber parts in motor land vehicles. In order to have the division of business between the family members another company in the name and style of M/s. Super Seals Hydraulic Limited ("M/s. SSHL" in short) came to be incorporated by the owners of the plaintiff, who jointly formulated a scheme of re-construction on 1.4.1996. A deed of family settlement dated 27.3.1997 was consequently entered into between different members of Talwar family. Under the said family agreement, the effective date was to mean as the date of approval by the Delhi High Court of the scheme of re-construction between the two companies. The division was three ways between Anil Group, Deepak Group and Kamal Group. "Oil Seals" was defined to mean as Oil seals and water pump seals for automotive applications. In terms of the recital of the said agreement it is recorded that under the jointly formulated scheme of re-construction w.e.f 1.4.1996 the seals division of the plaintiff would stand vested in M/s. SSHL and in consideration thereof M/s. SSHL issued to every shareholder of the plaintiff four (4) equity shares for five (5) equity shares held in the plaintiff company.

4. Clause 3 of the agreement deals with the sale of business. In terms of Clause 3.1 Anil Group was to cause the Seals Division to transfer to Kamal and Deepak Groups and/or their nominee along with machinery/equipment and movables owned by the Seals Division as per Annexure A to the agreement within 45 days of the effective date. Similarly the Anil Group was to also cause Seals Division to transfer to the Kamal and Deepak Groups the goodwill of the Seals Division insofar as it concerned and related to Zone A as defined in Annexure B.

5. Another material term is Clause 3.3, which stipulates that upon said sale, Anil Group was to have the exclusive right to do the business of Oil Seals in Zone A for a period of three (3) years from the effective date while Kamal and Deepak Groups were refrained from doing the business within the specified limit of Zone A. Para materia Kamal and Deepak Groups were to have such rights for Zone B. The different set of provisions were made for different businesses. This inter alias provided the Kamal and Deepak Groups to give up their rights, title and interest in "SS logo" upon consideration specified. However, as per Clause 5.2 Kamal and Deepak Groups and the plaintiff was permitted to continue to use the trademark "SS" on products until one (1) year after the effective date within which period the plaintiff was to delete the logo "SS" from the moulds. Thereafter the exclusive rights were to vest in the Anil Group subject to the payments to be made in terms of the agreement.

6. The aforesaid scheme was filed before the Delhi High Court in CP No. 67/1997 and orders were passed on 25.5.1997. The scheme of arrangement as proposed was sanctioned declaring the scheme to be binding on all members and creditors.

The scheme was so sanctioned in pursuance to what is set out in the earlier part of the order and for convenience of reference is reproduced herein under :

...It is stated that a scheme of arrangement has been propounded whereunder the Seals Division of M/s. Super Seals India Limited (Transferor Company) will stand transferred to M/s. Super Seals Hydraulics Limited and by which the entire properties, assets, investments, claims, authorities, etc., as well as the entire undertaking of the Seals Division of the transferor company would vest with the transferee company. It has also been propounded that all employees of the Seals Division of the transferor company will also become employees of the transferee company without any break or interruption in the service. The effective date is given as 1.4.1996....

7. The aforesaid order thus recognises that the Seals Division of the plaintiff was to stand transferred to M/s. SSSL. Not only that the entire property, assets, investments, claims, authorities, etc. as well as the entire undertaking of Seals Division was to vest in M/s. SSSL.

8. On 5.6.1997 the name of M/s. SSSL was changed to M/s. Super Oil Seals India Limited (SOSIL) for which the certificate of change of name was issued by the Registrar of Companies.

9. The pleadings show that in January 2001, Mr. Anil Talwar unfortunately passed away and his son took over the business but the business suffered losses leading to financial crisis. SOSIL is stated to have assigned the trademark "SS logo" in favor of M/s. SOS Automotive Component Private Limited with full rights in respect thereof. Thereafter the dispute started with the plaintiff herein. The plaintiff filed CS (OS) No. 750/2004 against the said M/s. SOS Automotive Component Private Limited claiming that it had Intellectual Property Rights in respect of the same, however, no interim orders were passed in favor of the plaintiff and the defense taken in the said suit was that the Intellectual Property Rights already stood assigned to the defendant in the suit.

10. An application was registered with the Trade Marks Registry on 2.12.2005 for the "SS logo" by M/s. SOS Automotive Components Private Limited. On 20.1.2006 M/s. SOS Automotive Components Private Limited are stated to have further assigned its trademark "SS logo" in favor of the defendant in the present suit along with full rights, title and interest in the trademark in relation to the goods for which the trademark had been used and registered together with the goodwill accrued to the said trademark and the business relating to the goods in respect of which the said trademark had been used and registered. The defendant company in turn has filed CS (OS) No. 2232/2006 in respect of its claims of trademark. It is thereafter that the present suit has been filed once again by the plaintiff on the ground that the mentioning of the same reference/part numbers as assigned by the plaintiff especially in the outer packaging containing the label depicting the mark amounts to infringement of its copyright M/s. Super Oil Seals Limited is stated to have closed its business since the year

2001 and since then the plaintiff claims to be exclusively using the numbers and the trademark.

11. The plaintiff is also aggrieved by the advertisement issued by the defendant which is alleged to be misleading since it reads "Original choice since 1962" and "Hara Dabba Dekhkar Hi Original Super Oil Seals Kharidein".

12. The plaintiff thus claims that the defendant is trying to induce the public at large with imperfect memory, recollection and/or understanding which can be misled, assuming the product of the defendant to be emanating from the plaintiff.

13. The plaintiff along with the present suit has filed an application for interim relief, which the subject matter of consideration at present.

14. The suit of the plaintiff is resisted by the defendant company which claims that in view of the family settlement dated 27.3.1997 read with the order of the Company Judge of the Delhi High Court dated 21.5.1997, the Seals Division business actually stood vested exclusively in the Anil Group from whom the defendant is stated to have acquired its rights. It is, thus, pleaded that the present suit is only a counter-blast to the suit of the defendant being CS (OS) No. 2232/2006 in respect of the trademark. Learned Counsel has referred to the Deed of Assignment dated 20.1.2006, the recitals of which show how SOS Automotive Company Private Limited acquired both exclusive trademark and Copyright in respect of Oil Seals business. Learned Counsel has also referred to a letter dated 20.1.2006 of M/s. SOS Automotive Company Private Limited to the defendant stating that they were enclosing the Deed of Assignment for transfer of all rights and trademark along with packaging, advertising, marketing and stationery, which was vested in them as per the family settlement.

15. Learned Counsel for the plaintiff had opened her arguments with the plea that the original business or the family business, in view of the closure of other groups, with all the rights vested in the plaintiff and the defendant had no right to carry on the business under the trademark "SS logo". The real substratum of the submission of the learned Counsel for the plaintiff was that the defendant in any case cannot use part numbers/reference numbers, which are peculiar to the plaintiff.

16. At the stage when learned Counsel for the defendant opened his arguments in defense, the family settlement dated 27.3.1997 was read in extenso by inviting the attention of this Court to the aforesaid clauses referred to and it was contended that the Seals Division business vested in the Anil Group from which the defendant got its right and thus the plaintiff had no case much lesser prima facie case. Learned Counsel for the plaintiff faced with this position on 12.11.2007 sought an adjournment to take necessary instructions. However, on 19.11.2007, the counsel appearing for the plaintiff pleaded that after obtaining instructions her submission would be that there were exclusive rights given to the two Groups in respect of the Seals Division in Zone A & B for three (3) years and after that it was fair play for both the parties to deal with the business of

that division and since the plaintiff belonged to the original family Group they were carrying on the trade much earlier.

17. It was pointed out to the learned Counsel that this submission in fact ran contra to the earlier submission advanced that it is the plaintiff who had exclusive rights. Learned Counsel for the plaintiff also sought to explain away the order of the Company Court of the Delhi High Court that there may be some mistake in the same.

18. Learned Counsel for the plaintiff further pleaded that the copyright in part numbers and reference numbers could not have been assigned to the defendant and in any case in view of the provisions of Section 19 of the Copyright Act, 1957, such an assignment had to be in writing.

19. In my considered view the submissions advanced on behalf of the plaintiff have only to be stated to be rejected. The rights and obligations of the parties are governed by the family settlement dated 27.3.1997 read with the order of the learned Company Judge of this Court dated 21.5.1997. It is not permissible for the plaintiff to plead that there was some error in the order of the Company Court. In any case such an alleged error has never sought to be corrected. The intent and purport of both the agreement and order are abundantly clear that the Seals Division business after the expiry of three (3) years vested exclusively in the Anil Group for which the plaintiff was also paid amounts. The arrangement provided for division of territories into Zone A & Zone B for only the initial three years period to give a gestation period to the plaintiff for re-arranging its business. On the expiry of three years, the Anil Group had the exclusive rights for all the territories. Thus, the plaintiff can hardly claim any rights in respect of the same.

20. The defendant claimed right under the Deed of Assignment dated 20.1.2006. No doubt the said Deed referred to assignment of trademark but there is also a letter dated 20.1.2006 which refers to "other associated rights". It has further been observed that the "associated rights" include copyrights. Thus, the plea of the plaintiff has no merit even u/s 19 of the Copyright Act, 1957.

21. Even for the sake of argument if it be assumed that such a requirement has some defect the fact remains that the plaintiff did not have any rights. It has also been pointed out that such part numbers/reference numbers are really in reference to the particular parts used for the particular brand name of the vehicle.

22. Learned Counsel for the defendant also sought to support his claim with reference to the judgment of the Supreme Court in R.G. Anand Vs. Delux Films and Others, where in paragraph 46 it has been observed as under:

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or

historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

23. A reference was further made of the Supreme Court in *Vicco Laboratories and Another Vs. Art Commerciale Advertising Pvt. Ltd. and Others*, where in paragraph 30 it was observed as under:

13. So far as the contentions raised on the basis of Section 17 of the Copyright Act is concerned, it is clear that the petitioners were not able to establish that

the respondent Nos. 1 to 4 produced the said Serial (1) as the agents of the petitioners; (2) in the course of their employment with the petitioners; (3) for valuable consideration paid by the petitioners to them; and (iv) at the instance of the petitioners. When these factors had not been established and the suit is itself not dependent on the interpretation of Section 17 of the Copyright Act, pleadings and issues raised did not attract the same. On appreciation of evidence, the courts below have come to the conclusion that the respondents did not make the said Serial for valuable consideration at the instance of the petitioners and in view of the findings of fact, the claim of copyright or ownership in respect of the Serial u/s 17(b) and (c) would not arise at all.

24. The defendant, thus, contended that the plaintiff had failed to establish any rights as the same could have been proved only on some material being shown as to how they derived their rights from the Anil Group. On the other hand, the defendant has placed material on record to show, at least prima facie, that the defendant had acquired rights from the Anil Group both of trademark and copyright.

25. The plea advanced by learned Counsel for the defendant, in my view, has force. The family division divested the plaintiff of all the rights in the trademark and all other aspects of the Seals Division except the protection available for the first three years in Zone A, which period has elapsed. There is nothing on record to show that at any subsequent stage the rights vested with the plaintiff. If the plaintiff has acted in breach of the family settlement that cannot give rise to a cause of action in favor of the plaintiff especially when the defendant has placed on record material to show the rights having flowed from the Anil Group to the defendant. The plaintiff is only attempting to seek advantage of the fact that the defendant had to ultimately close its business but that cannot deprive the right of the defendant to the trademark in the Seals business as also the copyright, which has been assigned in favor of the defendant. The plaintiff, in fact, started with the wrong foot forward by setting up a case of exclusive rights which stood demolished on the submission of the learned Counsel for the defendant based on the specific terms of the family settlement and it is thereafter in order to save its case that the plaintiff sought to take a U-turn to claim certain rights arising from the stoppage of the business of the defendant. This can hardly be permitted.

26. In order for the plaintiff to succeed the three ingredients of prima facie case, balance of convenience and irretrievable injury have to be satisfied by the plaintiff. A prima facie case is a pre-requisite for grant of interim injunction. The plaintiff had surrendered rights in terms of the family settlement dated 27.3.1997 except for a period of three years for Zone A. The three year period is long over. The plaintiff has received consideration for transferring the rights to the Anil Group. The defendant derives its rights as assignee from the Anil Group. There is, thus, no prima facie case in favor of the plaintiff. Thus, the very first ingredient required for grant of interim injunction is not present. There is, thus no question of any irretrievable injury or balance of convenience being in favor of

the plaintiff.

27. The application is without any merit and is dismissed with costs of Rs.5,000.00.

28. Needless to say that any observations made in this order would not prejudice the final result of the suit.