
(1987) 01 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 148 of 1982

The Punjab State Co-Operative Supply and Marketing
Federation Ltd.

APPELLANT

Vs

M/s. Sona Spices Pvt. Ltd.

RESPONDENT

Date of Decision : 19-01-1987

Acts Referred:

Trade and Merchandise Marks Act, 1958 — Section 29(2)

Citation : (1987) 01 P&H CK 0011

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : D.S. Nehra and Mr. Arun Nehra, for the Appellant; H.L. Sarin, Mr. Arun Jain, Miss Ritu Bahri, Miss Jaishree Thakur and Shri Suriya Kant Sharma, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is Plaintiff's appeal whose suit for the grant of the permanent injunction restraining the Defendant from infringing the trade mark of the Plaintiff and passing off their goods as that of the Plaintiff was dismissed by the trial Court.

2. The Punjab State Co-operative Supply and Marketing Federation Ltd., Chandigarh (popularly known as MARKFED), filed the suit for the grant of the permanent injunction alleging that it manufactured and sold edible articles including condiments and spices under the trade marks "SOHNA" registered at No. 2953728 in class 30 in respect of edible articles for human consumption since March 30, 1974. The Plaintiff acquired the name in the market on account of good quality of its products. Lot of money was spent by the Plaintiff for advertisement of good quality products. The Defendant started manufacturing and selling spices and chilies powder etc. under the trade name "SONA" which is similar to the trade mark of the Plaintiff and misleads the consumers of the Plaintiff and the common man. The packets of the products of the Defendant are

identical with the trade marks of the Plaintiff and the customers are likely to honestly believe the same products to that of the Plaintiff and thus deceived. The Defendant was thus passing off its goods as that of the Plaintiff and making huge profits. Notice dated 5/8th May, 1979. was given to the Defendants to stop using the trade mark "SONA" but the Defendants still continue to sell the goods; hence the present suit, which was filed on August 28, 1981. The suit was contested on the plea that the Plaintiff was stopped from filing the present suit. The Plaintiff was not using the said trade mark for manufacturing or selling condiments, spices and chillies. The Plaintiff used the trade mark for vegetable oil, juices, tomato-ketchup etc. The Defendants applied for the registration of their trade mark "SONA SPICES". The Plaintiff could file objections before the appropriate authority. The suit was barred u/s 29(2) of the Trade and Merchandise Marks Act. The trade name of the Plaintiff was not at all similar/identical to that of the Defendant and there was no question of any deception. The Defendants started their business in 1975 and since then they have been selling their spices under the name of Sona Spices". They had obtained a certificate of Agmark. The Defendant advertised its goods on the radio and in the newspapers and captured the market. The Plaintiff filed the replication reiterating the stand taken up in the plaint. It was stated therein that the certificate of registration obtained by the Defendant was irrelevant. It was also reiterated that the Plaintiff was manufacturing and selling spices and chillies in addition to other articles of food. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the trade mark of the Plaintiff Sohna is registered for spices and chillies ?
2. Whether the Plaintiff has been manufacturing and selling chillies and spices under the trade name of Sohna ?
3. Whether the wrappers used by the Defendants for selling spices and chillies are deceptive of the trade mark of the Plaintiff?
4. Relief

Issue No. 1 was decided in favour of the Plaintiff and it was decided that the trade mark of the Plaintiff was registered for edible articles as mentioned in class 30 of the Trade and Merchandise Marks Rules (Fourth Schedule). Under issue No. 2, it was concluded that the Plaintiff did not manufacture or sell these articles after 1975 and thus was not in a position to produce the bills after the said period. The finding under issue No. 3 was against the Plaintiff. It was held that the wrappers used by the Defendant for selling spices and chillies powder were not deceptive of the trade mark of the Plaintiff. In view of these findings, the Plaintiff's suit was dismissed.

3 The learned Counsel for the Appellant contended that the finding of the trial Court under issue No. 2 was wrong and in any case even if the Plaintiff did not manufacture or sell the said articles after 1975, even then, it was of no consequence since their sale was included in the registration of their trade mark.

Thus, the Plaintiff was entitled to the relief of injunction as prayed for. According to the learned Counsel Section 29 of the aforesaid Act, was not attracted. The findings of the trial Court under issue No. 3 were also challenged. Reference was made to the Division Bench judgment of this Court in Anglo-French Drug Co. (Eastern) Ltd. Vs. Belco Pharma, According to the learned Counsel, the trade mark used by the Defendant was deceptive. They were passing off their goods as that of the Plaintiff

4. I have heard the learned Counsel for the parties and have also gone through the relevant evidence on the record.

5. It could not be successfully argued that the Plaintiff manufactured or sold the articles after 1975. It was only in 1974 or up to the middle of 1975 that the Plaintiff was selling chillies and spices. Thereafter the Plaintiff did not do so. Thus, the finding of the trial Court under issue No. 2 is upheld.

6. As regards the finding of the trial Court under issue No. 3, strong reliance was placed by the learned Counsel on the Division Bench judgment of this Court in Anglo-French Co.'s case (Supra), wherein the question involved was whether "BEPLEX" and "BELPLEX" could be said to be phonetically and visually similar and whether the similarity was likely to cause confusion in the minds of the purchasers ? It was held therein that both the names were visually and phonetically similar and, therefore, the Defendant could not manufacture medicines under the trade name of "BELPLEX". As a matter of fact, it will be a question of fact in each case as to whether the two trade marks; one used by the Plaintiff and the other used by the Defendant, are visually and phonetically similar or not. In the present case "SOHNA" and "SONA SPICES" are quite different visually as well as phonetically. The learned District Judge after discussing the evidence on the record came to the conclusion:-

An overall opinion is to be formed as to whether the wrappers of the defendant containing the words "Sona Spices" are in any manner infringing the trade mark "Sohna" of the Plaintiff. At the outset, it may be stated that in the manner of color scheme, design and got up, the wrappers are entirely different. The words "Sona Spices" the trade mark used by the Defendants on these wrappers also differ in design from that of the Plaintiff's trade mark "Sohna". The Plaintiff merely uses the word "Sohna", in letters that an arm of the letter "h" comes over the letter "o" in some of the wrappers, otherwise, the word "Sohna" is written in capital letters on cartons Ex. P5 to P8. The design of the trade mark of the Defendant is entirely different.

From the evidence on the record, I do not find any reason to differ with the said finding of the trial Court.

7. Apart from the above, the trial Court also found that since the Plaintiff was not manufacturing and selling chillies powder for a number of years before the suit was filed, the Plaintiff was not entitled to any injunction restraining the Defendant from selling under the trade name "SONA SPICES". In the present

case, for the reasons best known to the Plaintiff, the Plaintiff has not sought any relief for rendition of accounts or for damages. The only relief sought in the plaint is that of the permanent injunction against the Defendant. That being a discretionary relief, the trial Court did not exercise the discretion on the facts and circumstances of the case in favour of the Plaintiff. I do not find any reason to differ with the same also. Shri Nehra also referred to Chhedi Lal Gupta and Others Vs. Smt. Shakuran Bibi and Another, in this behalf, but I do not find that it has got any applicability to the facts of the present case.

8. Consequently, this appeal fails and is dismissed with costs.