

(2017) 10 DEL CK 0015

In the Delhi High Court

Case No : 1584 of 2016

THE SINGER COMPANY? LIMITD S.A.R..L. AND ANR. Vs MS. ANSHU SINGH

Date of Decision : 17-10-2017

Acts Referred:

Trade Marks Act, 1999, Section 29(5),
Section 29(1) -
Order VIIIRule 10, Section 151

Citation : (2017) 10 DEL CK 0015

Hon'ble Judges : Manmohan

Bench : SINGLE BENCH

Advocate : Anuradha Salhotra, Yatin Grover

Final Decision : Allowed

Judgement

I.A. 11105/2017

1. Present application has been filed under Order VIII Rule 10 read with Section 151 CPC.

2. It is pertinent to mention that the present suit has been filed for permanent injunction, infringement of trade mark, account of profits and declaration. The prayer clause in the present suit is reproduced hereinbelow:-

(a) A decree of permanent injunction against the Defendant, her successors, servants, agents, licencees, franchisees, representatives, assignees and any one acting for and / or on her behalf from using the trade name "SINGER AGENCIES" and / or any other trade name / trade mark identical / deceptively similar to the Plaintiff's mark SINGER as a trade mark / part of a trade mark, trade name / part of a trade name and / or in any other manner whatsoever; (b) An order directing Defendant to render to Plaintiffs an account of profits made by Defendant by trading under the trade name "SINGER AGENCIES" and a decree be passed in favour of the Plaintiffs for the amount thus found due. The plaintiffs be also awarded damages to the tune of Rs. 1,00,000,50/-; (c) That the Defendant be ordered to voluntarily withdraw / cancel all the trade mark

and / or copyright applications filed for any mark similar to the well-known trade mark SINGER Plaintiff's; (d) The Defendant be ordered and decreed to deliver to the Plaintiffs for destruction all packaging material, advertising and promotional material and other literature, signage, signboards, etc. bearing the mark SINGER and / or the trade name SINGER AGENCIES or any other mark / name deceptively similar / identical to the Plaintiff's trademark SINGER; (e) Declaration that the trademark SINGER is a well-known trademark; (f) Cost of suit in favour of the plaintiffs; (g) Any further order(s) which this Hon'ble Court deems fit and proper in facts and circumstances of the present case."

3. At the outset, learned counsel for plaintiffs gives up prayers (b), (d) and (e) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

4. On 02nd December, 2016, this Court granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendant. The relevant portion of the said order is reproduced hereinbelow:-

"I am satisfied that plaintiffs have prima facie case in their favour. By way of an ad interim ex-parte injunction the defendants, her successors, servants, agents, licensees, franchisees, representatives and assignees are hereby restrained from using the trade mark "SINGER" or any other mark identical/deceptively similar to the Plaintiffs mark "SINGER" as a trade mark, domain name, trade name/trading style, part the trade name/trading style SINGER AGENCIES or in any manner whatsoever till further orders of the case."

5. Though the defendant initially entered appearance, yet after 28th March, 2017, she stopped appearing and did not file any written statement. Accordingly, the defendant was proceeded ex parte vide order dated 25th August, 2017 and the ex parte injunction order was confirmed. Subsequently, upon an application being filed, the counsel for the defendant was discharged on 09.10.2017.

6. The contentions and submissions advanced by learned counsel for the plaintiffs are as under:-

i. The plaintiff No.1 is the registered proprietor of the trade mark SINGER in Class 7. The plaintiff No. 1 is the leading manufacturer and merchant of household appliances including but not limited to sewing machines, vacuum cleaners, juicer mixer grinders, heaters etc.

ii. The plaintiff No.1 is having more than 1500 trade mark registrations for the mark SINGER in a number of jurisdictions all over the world. In India, the plaintiffs' mark SINGER as a part of the trading style has been used since 1870 and the earliest registration for the said mark dates back to the year 1942 in Class 7. iii. Plaintiff No.2 is the licensed/permitted user of the mark SINGER in India and has been selling its goods under the said mark through a wide network of 40 showrooms and over 600 dealers pan-India.

iv. The defendant is the wife of one Mr. Praveen Kumar Singh, who was an

authorised dealer of the plaintiff No.2 from April 2010 to September, 2016 and whose dealership was terminated on 30th September, 2016.

v. After the termination of the said dealership, the defendant opened a shop using the name SINGER AGENCIES both as the business name and in respect of a retail shop for sale of sewing machines.

vi. The plaintiffs thereafter served a cease and desist notice dated 07th October, 2016 upon the defendant. However, no response to the same was received from the defendant.

7. This Court while dealing with similar applications under Order VIII Rule 10 CPC in CS(OS) 873/2015 Samsung Electronics Company Limited & Anr. Vs. Mohammed Zaheer Trading As M/s. Gujarat Mobiles & Ors. has culled out the relevant law as under:-

"10. The Supreme Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:- "25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."

11. A Coordinate Bench of this Court in Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta and Ors., 235 (2016) DLT 354 has held as under:- "11. Order VIII Rule 10 has

been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

xxxx xxxx xxxx xxxx 28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases."

12. Another Coordinate Bench of this Court in Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 III AD (Delhi) 176 has held as under:- "4. 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....."

8. This Court is further of the view that the plaintiffs are entitled to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 as the said provision empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.

9. In the opinion of this Court, the act of defendant in using the plaintiff's registered trademark SINGER as a trade/business name in respect of her retail shop for sale of sewing machines clearly amounts to infringement under Section 29(1) of the Trade Marks Act, 1999 as the defendant is not a permitted user of the plaintiffs' registered mark SINGER.

10. This Court is of the view that the use of the mark SINGER by the defendant is also an infringement under Section 29(5) of the Trade Marks Act as the said mark is being used by the defendant as its trade name i.e. SINGER AGENCIES in respect of sale of sewing machines, which are the relevant goods for which the mark SINGER registered in the name of the plaintiffs. It is pertinent to mention that the defendant is the wife of one Mr. Praveen Kumar Singh, who was

an authorised dealer of the plaintiff No.2 from April 2010 to September, 2016 and whose dealership was terminated on 30 th September, 2016.

11. Considering the fact that the plaintiffs are the prior user and registered proprietor of the mark SINGER, this Court is of the opinion that the defendant being the wife of the former dealer of the plaintiffs has no justification for the adoption and use of virtually identical trade mark as that of the plaintiffs in relation to identical products.

12. This Court is further of the opinion that there is no plausible explanation for the defendant to have adopted it other than to ride upon the goodwill and reputation of the plaintiffs' mark.

13. In any event, as the averments in the plaint have not been rebutted by the defendant nor did she bother to put forth her stand in spite of ample opportunities given by this Court, they are deemed to have been admitted.

14. Accordingly, the present application is allowed and the suit is decreed against the defendant in accordance with prayers (a) and (c) of para 30 of the plaint along with actual cost of litigation including attorney's fees. The plaintiffs are given liberty to file on record the exact cost incurred by them in adjudication of the present suit.

Registry is directed to prepare a decree sheet accordingly.