

(2004) 05 DEL CK 0078

In the Delhi High Court

Case No : IA No. 11214 of 2003 in CS (OS) No. 2054 of 2003

Vashist Food Pvt. Ltd.

APPELLANT

Vs

Vashisth Agrotech (P) Ltd.

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Citation : (2004) 05 DEL CK 0078

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Pawan Upadhyay, for the Appellant;

Judgement

R.C. Chopra, J.—from using the trade name `VASHISTH" whether in full or part or in any other trading style which may be identical or deceptively similar to the plaintiff's trade name `VASHIST" and from passing off their goods under the said trade name.

2. The facts relevant for the disposal of this application, briefly stated, are that the plaintiff has filed a suit for permanent injunction and damages alleging that the plaintiff-Company is engaged in the business of manufacturing the processing machinery since 1983. The plaintiff-Company is using trade name `VASHIST" and has acquired therein substantial goodwill and reputation in India and abroad. Its business runs into crores of rupees, the details of which have been given in paragraph 2 of the plain and its business operations are in 18 States in India apart from U.K., Lebanon and Sri Lanka. It is alleged that the defendant No.2, Gopal Vashist (Vashistha), joined the plaintiff in the year 1997 as an employee. He left plaintiff's service abruptly on 31st August, 2001 and thereafter the plaintiff started receiving complaints regarding the defects in the machinery supplied by them. On enquiries, the plaintiff-Company came to know that the defendants had started using the trade name `VASHISTH" on similar goods which were being manufactured by the plaintiff and had started publicizing also in magazines including caution notices stating that some people were misrepresenting by using its name `VASHISTH" on similar looking products. It is

alleged that the defendant No.2 was well aware that the plaintiff was using the trade name 'VASHIST' for the last about 20 years and had acquired substantial reputation and goodwill therein on account of continuous usage but still the defendants with a view to pass off their products copied the trade name of the plaintiff 'VASHIST' by suing an identical name 'VASHISTH' on their products which was mala fide, illegal and motivated to encash upon the goodwill and reputation of the plaintiff. The application under Ord.

3. The defendants have filed their written statement and reply admitting that defendant No.2 was in service of the plaintiff till 30th January, 2001. It is stated that the defendant No.1 has been incorporated as a Company under the name of 'G. Vashistha Aggrotech Pvt. Ltd'. It is stated that the defendants are giving competition to the plaintiff and are producing quality products and as such the plaintiff is trying to nip in the bud an upcoming competitor. It is stated that the defendant No.1 has been incorporated on 28th March, 2003 but so far it has not started manufacturing or marketing its products. It is also added that defendant No.2 was born in "Vashistha" family and as such "Vashistha" is his surname and as such its use in the name of defendant No.1 cannot be objected to. The averments made by the plaintiff in paragraphs 3,4 and 5 are not specifically answered and it is merely stated that they need no reply from the defendants. It may be mentioned here itself that in paragraphs 3,4 and 5, the plaintiff has given details of its incorporation in 1983, the use of the trade name 'VASHIST' and the acquisition of goodwill and reputation on account of its excellence and large scale advertisements in 18 States in India apart from U.K., Lebanon and Sri Lanka. It is admitted by the defendants that defendant No.2 was an employee with the plaintiff since 1997.

4. Learned counsel for plaintiff contends that in view of prior user of the trade name 'VASHIST' and the acquisition of substantial reputation and goodwill therein by the plaintiff, the act of the defendants in introducing themselves in the market for the manufacture and sale of similar products under the name 'VASHISTH' is mala fide and a mere attempt to encash upon the trade reputation and goodwill of the plaintiff-Company which it has acquired over a period of time by spending large amounts on advertise advertisements. On the other hand, the plea of learned counsel for defendants is that the defendant No.2 himself is a "Vashistha" and as such he is well within his rights to incorporate a Company and manufacture and sell his products under the trade name 'VASHIS H'.

5. plaintiff-Company which has acquired substantial trade reputation and goodwill in the trade name 'VASHIST' has a prima face case to restrain the defendants from using the trade name 'VASHISTH' on their products as the said action of the defendants is an act of passing off their products as those belonging to the plaintiff and thereby deceive the unsuspecting consumers. The pleadings of the parties and the evidence on record prima facie shows that since 1983 or so, the plaintiff has been manufacturing and selling its food processing plants

and machinery under the trade name 'VASHISTH' not only in India but outside India also and as such this trade name has acquired a distinctiveness and the consumers have come to associate the said trade name with the plaintiff-Company. The defendants action in using the trade name 'VASHISTH' upon similar products is nothing but an attempt to pass off their products by creating an impression that the same have been manufactured by the plaintiff-Company. This action of the defendants is bound to harm the plaintiff's reputation, goodwill as well as business interests. Prima facie case of passing off, Therefore, is made out. The plea of the defendants that defendant No.2 is also a "Vashistha" and as such has a right to use the trade name 'VASHISTH' is not tenable for the reason that the plaintiff which has acquired trade reputation and goodwill in the said name cannot be harmed by taking shelter under the plea that defendant No.2 belongs to a similar caste and has been using the trade name as his surname. The mala fides of the defendants are writ large as it appears that the defendant No.2 was an employee of the plaintiff-company and that after leaving the job, he has incorporated defendant No.1 with the object of encashing upon the reputation and goodwill of the plaintiff-Company with which he was working as an employee. The products being manufactured by the plaintiff-Company are such that the purchasers thereof may not be highly educated or literates to differentiate between the two names which are deceptively similar and as such the plaintiff has a good prima facie case in its favor to show that the defendants are passing off their products as those of the plaintiff-Company which would cause irreparable loss/injury to the plaintiff. The balance of convenience is also more in favor of the plaintiff inasmuch as the defendants themselves have admitted that they have not so far started marketing or selling their products under the said trade name and they are merely on templing to do the same.

6. Strained from using the trade name 'VASHISTH' or 'VASHIST' or any other name which is identical or deceptively similar thereto on any of the products being manufactured and sold by them.

7. Nothing stated herein shall be taken as an expression of opinion on the merits of the suit pending before this Court.

8. The application stands disposed of.