

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

**M/s. Add Print (India) Enterprises Private Limited by its Manager, Kerala Vs.
M/s. Mohan Impressions Pvt Limited by its Director, Kolkatta**

**M/s. Add Print (India) Enterprises Private Limited by its Manager, Kerala Vs.
M/s. Mohan Impressions Pvt Limited by its Director, Kolkatta**

SooperKanoon Citation : sooperkanoon.com/1186992

Court : Chennai

Decided On : Nov-18-2016

Judge : C.V. Karthikeyan

Appeal No. : CS.No. 556 of 2010

**Appellant : M/s. Add Print (India) Enterprises Private Limited by its Manager,
Kerala**

Respondent : M/s. Mohan Impressions Pvt Limited by its Director, Kolkatta

Judgement :

(Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act 1999 read with Section 22 of the Design Act, 2000.)

1. This civil suit has been filed to pass a judgement and decree, against the Defendant:-

a. granting perpetual injunction, restraining the Defendant, from in any manner, infringing the plaintiff's registered trademark 'SUN STAMPER' by use of the trademark 'Presto INSTANZA' or any other mark deceptively similar to the plaintiff's registered trademarks.

b. granting perpetual injunction restraining the Defendant from in any manner infringing/pirating the plaintiff's registered design of 'Box type pre inked rubber Stamp' carrying design registration no.207586 in class 19-02 by manufacture, advertisement and/or sale of pirated box type pre inked rubber stamp.

c. granting perpetual injunction restraining the Defendant from in any manner passing off the trademark of the Plaintiff SUN STAMPER by use of the trademark of the Defendant 'Presto INSTANZA' or deceptive trade dress, design, model, size, colour scheme, getup, layout or by use of any other mark deceptively similar to the plaintiff's registered trademarks or registered design.

d. directing the Defendant to surrender to the Plaintiff for destruction all labels, dies, blocks, moulds, screen prints, advertisement and promotional materials, packing materials, pre inked box type rubber stamps and any other materials bearing the same design with trademark 'Presto INSTANZA' or any other mark and design deceptively similar to the trademark of the Plaintiff or any other design which is an imitation of the design of the Plaintiff, besides to disclose the details of manufacturers of the Defendant's pirated box type pre inked rubber stamps and imitative designs.

e. directing the Defendant to render true account of profits made by the use of the trademark and design and final decree be passed in favour of the Plaintiff after the Defendant has rendered the accounts.

f. directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff is that the Plaintiff, a Private Limited Company incorporated under the Companies Act, in the year 1998 has been carrying on the business of manufacturing and marketing of rubber stamps, marking systems and promotional gifts. The Plaintiff is the manufacturer and seller of pre inked box type rubber stamps under the name and style of 'SUN STAMPER' vide registered trademark no.1375324. For the said product, the Plaintiff is having clients all over the world. The Plaintiff had also manufactured number of new models in different designs of pre inked rubber stamps. The Plaintiff had also registered their designs of the pre inked box type rubber stamps vide Nos.207580 to 207586 in Class 19-

02 in respect of the said stamps. The pre inked rubber stamps of the Plaintiff are distinct and tailored to meet the requirements of the end consumers and the said stamp is a unique product with modern quality, which gives 30000 impressions of the stamp. The sales turn over was increased from Rs.1,18,445/- in the financial year 1999-2000 to Rs.14,100,000/- in the financial year 2009-2010.

3. It is the further case of the Plaintiff that the Plaintiff came to know that the Defendant is also manufacturing and marketing the pre inked rubber stamps in the box type, which are similar in size, design, model and get up to that of the Plaintiff, under the name 'Presto INSTANZA'. In other words, the Defendant had pirated the original registered design of the Plaintiff under registration no.207586 in Class-02. The products of the Defendant in the market will lead the consumers to falsely believe that the product of the Defendant originate from the house of the Plaintiff leading to confusion as to source. The Defendant is committing the acts of piracy of the registered design, infringement of registered trademark and act of passing off their goods as that of the Plaintiff. By taking advantage of the reputation of the Plaintiff in the market, the Defendant is enriching themselves unauthorisedly, stealthily and unlawfully. Though the Defendant had filed an application to revoke the design of the Plaintiff before the Registrar of Design at Kolkatta, unless and until the said registration is revoked, the right of the Plaintiff is subsisting. Unless the Defendant is restrained by an order of permanent injunction restraining the Defendant from infringing the registered design and trademark of the Plaintiff and from passing off of their goods as that of the Plaintiff, grave prejudice and hardship will be caused to the Plaintiff. In such circumstances, this civil suit has been filed for the reliefs as stated above.

4. Though the Defendant was served on 03.12.2015, no written statement has been filed by the Defendant and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 17.02.2016.

5. One P.Gopalakrishnan, Manager of the Plaintiff Company had filed the proof affidavit for his chief examination and receipt of 14 documents. In the Exparte

Evidence, the said Manager examined himself as PW.1 and marked Exs.P1 to P14 as documentary evidence.

6. In this civil suit, the Plaintiff had sought for reliefs, relating to infringement and passing off the trademark and also the design of the Plaintiff by the Defendant. The Plaintiff has also sought for a relief for surrender of the materials for destruction by the Defendant and for another relief of rendering of accounts of profits by the Defendant.

7. In so far as the reliefs, relating to infringement and passing off the trademark of the Plaintiff and surrender of materials for destruction thereon, are concerned, as per the plaint averments and the oral and documentary evidence adduced by the Plaintiff, it is seen that the trademark of the Plaintiff is 'SUN STAMPER' and the trademark of the Defendant is 'Presto INSTANZA'. Though the Defendant did come forward to let in oral and documentary evidence and remained exparte, on comparison of the said two trademarks, on the phase of it, it is apparent that they are made up of different words, different appearance and different pronunciation and hence, there is no similarity whatsoever between the said two trademarks. Hence, this court holds that there will not be any infringement or passing off in respect of trademark of the Plaintiff, namely, 'SUN STAMPER' by the Defendant, as alleged by the Plaintiff. Therefore, the reliefs relating to infringement and passing off the trademark 'SUN STAMPER' would not lie and consequently, the relief for surrender of materials for destruction in respect of the trademark would also not lie.

8. In so far as the reliefs, relating to infringement and passing off the design of the Plaintiff and surrender of materials for destruction thereon, are concerned, apart from the fact that the Defendant did not let in evidence whatsoever, this court finds that there are valid evidence, both oral and documentary, adduced by the Plaintiff. Therefore, taking into consideration the materials on record and there was also payment of court fee by the Plaintiff, this Court is of the view that only the reliefs relating to design as prayed for by the Plaintiff can be granted along with costs.

9. In so far as the relief (e), namely, to pass a judgement and decree, directing the Defendant to render accounts of profits made by the Defendant on account of the

usage of the design of the Plaintiff by the Defendant is concerned, though for non filing of the written statement, the Defendant had been set exparte, which resulted in recording of the exparte evidence, in order to sustain such a claim for rendering of accounts of profits, there should be valid evidence on the side of the Plaintiff, but, on a perusal of the oral and documentary adduced by the Plaintiff, this court finds no valid evidence both oral and documentary to show that the Plaintiff had sustained loss of profit because of the use of the design of the Plaintiff by the Defendant. The Plaintiff also did not produce any evidence to show that the Defendant had unlawfully gained against the Plaintiff. Therefore, in the absence of any evidence, showing that the Plaintiff has directly suffered and incurred business loss owing to the usage of the design of the Plaintiff by the Defendant, this court holds that the relief (e) sought for by the Plaintiff for a direction to render accounts of profits would not lie and accordingly, the same cannot be granted.

10. In the result, considering the oral and documentary evidence, viz. Ex.P1 to Ex.P14 adduced by PW.1, this Court is of the view that the Plaintiff has proved the suit claim only in respect of the reliefs relating to design and the Plaintiff has failed to prove the relief (e) by letting in legally acceptable oral and documentary evidence. Accordingly, this civil suit is decreed only in respect of the reliefs relating to design with costs. In so far as the relief (e) and the other reliefs relating to the trademark 'SUN STAMPER' are concerned, this civil is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com