

Creative Width Design Solutions Vs. Print Adda and Ors

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Court : Delhi

Decided On : Dec-22-2014

Judge : Manmohan Singh

Appellant : Creative Width Design Solutions

Respondent : Print Adda and Ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Order delivered on:

22. d December, 2014 % + CS(OS) No.3974/2014 CREATIVE WIDTH DESIGN SOLUTIONS Plaintiff Through Ms.Pratibha M. Singh, Senior Advocate with Mr. Nishant Nigam, Ms.Anusuya Nigam and Mr.Varun, Advocates versus PRINT ADDA & ORS Through Defendants None CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) I.A. No.25962/2014 This is an application filed by the plaintiff under Section 151 CPC seeking exemption from filing original documents. For the reasons stated in the application, the same is allowed, subject to original documents being produced at the time of admission/denial of the documents. The application is disposed of. I.A. No.25963/2014 This is an application filed by the plaintiff under Section 151 CPC seeking exemption from filing dim documents with insufficient left side margin. For the reasons stated in the application, the same is allowed, subject to the same being produced at the time of admission/denial of the

documents. The application is disposed of. I.A. No.25964/2014 (U/s 149 CPC) Learned senior counsel for the plaintiff states that she would be filing the Court fee within one week. In view of the statement made by the learned Senior counsel, the application is disposed of. CS(OS) No.3974/2014 Let the plaint be registered as a suit. Issue summons to the defendants through all modes of service including e-mail in addition, returnable on 22nd January, 2015. I.A. No.25961/2014 (u/o XXXIX R.1 & 2 CPC) 1. Issue notice to the defendants, returnable on 22nd January, 2015.

2. The plaintiff has filed the suit for permanent injunction seeking to restrain infringement of copyright, passing off, unfair competition, damages/rendition of accounts, delivery up etc. against the defendants.

3. It has been stated that the plaintiff is a design agency working in the field of graphics and web design solutions, who actively engages in designing creative and communicative designs/artworks while working closely with various corporate and retail clients. It is stated that the Plaintiff has been engaged in the business of manufacturing artistic Wall Decals and wall stickers under the brand name CREATIVE WIDTH.

4. It is stated that the Plaintiff firm was established in the year 2012, when Ms. Viral Gada along with her husband, Mr. Gaurav Saxena and a group of designers got together to explore the unique and upcoming field of designing and marketing wall decals and stickers.

5. The plaintiff has been in the business of designing wall decals and stickers under the name CREATIVE WIDTH since the year 2012 and began manufacturing and selling the said wall decals and stickers commercially through online and offline modes since September 2013. The plaintiff firm commenced business in September 2012 and have had average sales turnover of about Rs.40,00,000/- (Forty Lakhs only) annually. The sales turnover of the plaintiff company was approximately Rs.10,00,000 for the last quarter of the year 2013, and about Rs.8,00,000 for the first quarter of the year 2014.

6. The online modes of sale include the plaintiffs own website, namely, www.creativewidthdecor.com and other e-commerce websites namely, www.amazon.in, www.fabfurnish.com, www.ebay.in, www.pepperfry.com. The offline modes include sale through a network of dealers situated in cities like Chennai (Tamil Nadu), Gurgaon (Haryana), Pune (Maharashtra) and Kota (Rajasthan).

7. The plaintiff has applied for the registration of the copyright in its artistic works contained in plaintiffs brochure on 29th August, 2014 vide diary No.53409/2014-CO/A, titled Wall Sticker Designs and the same is pending before the Registrar of Copyrights. It is submitted that the plaintiff is the author and original owner of the said artistic works, and the said application has been made by Ms. Viral Gada, the proprietor of the plaintiff firm.

8. It is submitted by the plaintiff that the defendants have been blatantly, illegally and willfully copying the patterns, styles and artistic works being the wall decals created by the plaintiff and displayed in the plaintiffs brochure, and have also proceeded to sell the same through their own website, namely, www.destudio.in and also through other e-commerce websites similar to those engaged by the plaintiff by selling the said products under the name and style of DeStudio wall decals and stickers.

9. The screen shots from the website of the plaintiff and defendants are displayed hereinbelow : Plaintiffs Product CS(OS) No.3974/2014 10. It is submitted by the plaintiff that the defendants are willfully selling infringing products which are exact replicas of the products of the plaintiff on the same e-commerce websites in order to create confusion in the mind of the customer and thereby pass off their products as those of the plaintiff to gain undue advantage which they are neither entitled nor eligible to, and with a view to ride piggy back on the plaintiffs reputation and goodwill. It is averred in the plaint that the said acts of the defendants are resulting in and amounting to the infringement of the rights of the plaintiff in the unique artistic works contained in the plaintiffs brochures, as also passing off and unfair competition, and the same ought to be restrained by way of an order of the Court.

11. In view of the averments made in the plaint and documents placed on record prima facie it is evident that the defendants have copied the features of the plaintiffs artistic works such as the unique and artistic wall decals, the arrangement of furniture in the sample room in the image, the colours of the walls and the other features of the rooms, the colours of the decals and the unique names given to each design.

12. The plaintiff has provided an illustrative chart showing the difference in the pricing of the plaintiffs products and the defendants impugned products which are averred to be of inferior quality : Price Comparison S. No.1 Product Name Enjoy With Band Wall Sticker CS(OS) No.3974/2014 Starting Price Plaintiff Defendants 699 2 3 4 5 6 7 8 9 10 13. Birds Paradise Wall Sticker Rosy Girl Wall Sticker Natures Paradise Wall Sticker Taj Mahal Wall Sticker Lets Dance Wall Sticker Resting Buddha Wall Sticker Morning With Nature Wall Sticker Lady With Glasses Wall Sticker Beautiful Lady Wall Sticker 2799 1099 2599 1799 1899 1549 1899 399 399 399 399 399 399 399 1349 1299 399 399 The defendants goods are being sold through same trade channel as that of the plaintiff, i.e through their own website, as also through other online market places such as www.amazon.in, www.ebay.com, www.yebhi.com. www.snapdeal.com, www.junglee.com, As defendants infringing products are often listed along with the plaintiffs designs on the said third party websites, this leads to a real and reasonable apprehension on the part of the plaintiff that there would arise likelihood of confusion as to the source of the said products in the minds of average consumers. This apprehension is further strengthened by the fact that the defendants have priced their infringing products at lower prices than those of the plaintiff, thereby resulting not only in likelihood of confusion, but also loss of business and profit which rightfully would accrue to the plaintiff.

14. In light of the above, it is clear that the plaintiff has been able to make out a strong prima facie case in their favour. The balance of convenience also lies in favour of the plaintiff and against the defendants. In case the interim orders are not issued, the plaintiff would suffer irreparable loss and injury.

15. Till the next date, the defendants themselves and through their servants, agents, franchisees or any one acting for and on their behalf are restrained from making, selling, offering for sale, advertising, directly or indirectly dealing in any kind of wall decals, stickers, wallpapers, ornamentation and/or depiction of the plaintiffs artistic works being wall decals/stickers that result in or amount to the infringement of the plaintiffs copyright in its artistic works or of a substantial portion or colourable imitation thereof in 2dimensional or 3-dimensional form either in print, electronic or any other form for any products or services and selling, offering for sale, advertising, directly or indirectly dealing in any kind of wall decals, stickers, wallpapers, ornamentation and/or depiction of the plaintiffs artistic works being wall decals/stickers that result in or amount to passing off, unfair competition or dilution in any respect whatsoever.

16. The compliance of Order XXXIX Rule 3 CPC be made within one week from today.

17. Copy of order be given dasti to the plaintiff under the signatures of Court Master. (MANMOHAN SINGH) JUDGE DECEMBER22 2014

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