

Devidayal Cable and Co. Vs. Devidayal Cable Industries Ltd.

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Court : Delhi

Decided On : Apr-06-1971

Reported in : 1971RLR31

Judge : P.N. Khanna, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39

Appeal No. : First Appeal No. 131 of 1970

Appellant : Devidayal Cable and Co.

Respondent : Devidayal Cable Industries Ltd.

Judgement :

P.N. Khanna

(1) The respondent-company, Devidayal Cable Industries Limited, is the registered proprietor of the trade mark 'DEVIDAYAL' (word per se) in class 9 in respect of rubber and plastic insulated electric wires, cables and conductors. The appellant Devidayal Cable Company is a partnership firm, of which appellants Nos. 2 and 3 are partners. The appellants Nos. 4 to 8 are the dealers, dealing in the goods of the appellant No. 1 firm. The respondent-company has placed two certificates issued by the Deputy Registrar of Trade Marks, certifying that the trade mark 'DEVIDAYAL' (per se) is registered under No. 252069 as on date October 4, 1968 in class 9 in respect of rubber and plastic insulated electric aluminium wires and

insulated electric cables and electric conductors, in the respondent's name. The registration of the said trade mark was to remain in force for a period of seven years from October 4, 1968, renewable at the expiration of that period and each succeeding period of seven years.

(2) The registration of the aforesaid trade mark gives the registered proprietor thereof, the exclusive right, under section 28 of the Trade and Merchandise Marks Act, 1958, herein called 'the Act', to the use of the trade mark in relation to the goods in respect of which it is registered and to obtain the relief in respect of infringement of the trade mark in the manner provided in the Act. Appellant No. 1 firm, dealing in electric cables and wires adopted the name 'Devidayal Cable Company'. The electric cables and wires sold by it are packed in card-board cartons, which in their size, design, colour, scheme and get-up are almost identical with the card board cartons used by the respondent company. The words 'DEVIDAYAL Cable COMPANY' are printed in a circle each with the word (Delhi) in small letters on the said cartons used by the appellant. There also appear words Ddc in a monogram. The words 'DEVIDAYAL CABLES' in similar arch design with the words 'Made in India' in small letters appear printed on the respondent's cartons. On the bottom right of both cartons there are pasted yellow labels. The respondent's label carries the word 'DEVIDAYAL', while the appellant's label has on it the words 'DEVIDAYAL Cable CO.' On both the cartons the words 'DEVIDAYAL CABLE' are very much conspicuous and boldly printed along with other words. The action of the appellant No. 1 firm in printing the words 'DEVIDAYAL Cable Company, as if printing its own trading name and style, obviously appears to be a use by it of the respondent-company's trade mark or in any case of a mark which is identical with or deceptively similar to the trade mark, in relation to the goods, in respect of which it has been registered in the respondent company's name. This use is in the course of the appellant Nos. 1's trade and is in such manner as renders the use of the said words likely to be taken as if the words are being used as a trade mark. The use for trading purposes in relation to the goods for which the respondent's mark is registered and for which (the respondent's exclusive 'right to use exists, of the said word 'DEVIDAYAL' as a mark which is identical with and in any case deceptively similar to the respondent's registered mark or in conjunction with other words of comprising some of its

essential features or parts, in such manner as to cause the appellants goods to be likely to be mistaken for the respondent's goods by an ordinary purchaser, having the average memory, is definitely an infringement of the respondent's trade mark. In an action for infringement of the trade mark, or for passing off, the relief which the Court may grant includes an injunction (subject of course, to such terms, if any, as the Court thinks fit). The appellant's learned counsel was unable to show that the use by the appellant of the mark complained of is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the respondent's goods and the goods complained of. It is not shown as to why, therefore, an injunction should not be granted if the infringement has taken place, as prima facie it appears to have taken place. At this stage, it appears to be a fit case, where a temporary injunction should be granted.

(3) The learned counsel for the appellants contended that the respondent's suit did not relate to infringement of a registered trade mark, nor was it a suit relating to any rights in registered trade mark, nor was it a suit for passing off, arising out of the use by the appellants of any trade mark which was identical or deceptively similar to the respondent's trade mark. The plaint, according to him was defective and ambiguous and reliefs prayed for therein were not in accordance with law. The suit, therefore, urged the learned counsel, was not likely to succeed. According to him, the prerequisite for the grant of a temporary injunction was the existence of a prima facie case in favor of the plaintiff. This essential feature not being present, owing to aforesaid shortcomings in the plaint, the respondent was not entitled to the grant of a temporary injunction.

(4) The plaint in this case, may not have been properly worded and it may be a case of inartistic and careless drafting. But this defect may be curable by suitable amendments. (After nothing plaintiffal legations judgment proceeds).

(5) The suit, thus, is based on the respondent-company's rights as the registered proprietors of the trade mark 'DEVIDAYAL' and the defendants having infringed the said registered mark by selling and offering for sale and advertising their goods under the said mark or under a name which includes the said mark. The suit is also based on the alleged 'passing off'. In the prayer clause, likewise, a perpetual

and absolute injunction against the defendants has been asked for, restraining them from using the receptacles bearing the plaintiff's trade mark, and restraining them from offering, advertising, price listing, selling preparation, under the trade mark 'DEVIDAYAL', etc. It is, however, made clear that this order does not express any opinion on the form of the plaint being proper or otherwise and its effect, if any. But the matter at this stage is being viewed simply to find out a prima facie case, which it does. The objection of the learned counsel for the appellant, accordingly is not well founded. The learned counsel then submitted that the injunction as given by the trial court goes to extremes in as much as it has restrained the* appellants from removing their stored goods, articles, cash memos, price list, etc. from their possession, to any other place till the decision of the suit. According to the learned counsel, this restriction is unnecessary. There is no restraint on the appellant from doing any of these things, in respect of goods, if they do not bear the word 'DEVIDAYAL' or are not packed in cartons bearing the said mark or are not dealt with in any manner under the said name. No case has been made out to interfere with the discretion, which has been exercised by the trial court.

(6) In the circumstances, there is no merit in this appeal and the same is dismissed with costs.

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