

Regency Industries Ltd. Vs. Kedar Builders

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Court : Delhi

Decided On : Oct-25-1989

Reported in : 41(1990)DLT684; 1990(19)DRJ59

Judge : Mahinder Narain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 16

Appeal No. : Interim Application No. 5570 of 1989 and Suit No. 2013 of 1989

Appellant : Regency Industries Ltd.

Respondent : Kedar Builders

Advocate for Pet/Ap. : N.K. Anand,; A.K. Goel,; Kalpana Gupta,;

Judgement :

Mahinder Narain, J.

(1) The plaintiff has filed the suit for permanent injunction, seeking to restrain the defendant, their servants, agents, representatives, dealers and all other persons from dealing in real estate and construction business or any other business under the name Regency Estate, or any other name identical or deceptively similar to the plaintiff's . name/mark REGENCY- The plaintiff has moved the interim application bearing I.A. No. 5570 of 1989, in this matter, and by this order, I propose to deal with the said interim application.

(2) The plaintiff asserts that Regency Industries Ltd. is the current name of the plaintiff, and that initially the plaintiff was incorporated on 9-7-1984 under the name and style M/s. Regency Apartments India (P) Ltd., and thereafter changed its corporate name to M/s. Regency properties Ltd. in the year 1985, and once again changed its name to the present name M/s. Regency Industries Ltd. in the year 1987. The plaintiff asserts that it is carrying on. since 1984, the business of real estate and construction business, as also other business activities. It is asserted in para 5 of the plaint that a number of commercial/residential complexes and Farm Houses have been built up by the plaintiff under the name Regency, which are as under :

(A) REGENCY TOWER-A six storeyed Commercial Complex in Lucknow having total outlay of Rs. 9 million, was successfully commissioned in July 1986. (b) Regency AVADH-A 12 storeyed shopping/residential building in Lucknow having air conditioned shops and Deluxe apartments, at a total cost around Rs. 45 million, was successfully commissioned in 1987. (c) Regency Plaza I-A 8 storeyed office complex in Lucknow, at a total cost around Rs. 12 million, was successfully commissioned in 1988. (d) Regency Plaza II-A commercial complex in Kanpur, was cosigned in the year 1988 and very soon to be completed. (e) Regency ARCH-A 10 storeyed residential complex at Ghaziabad, was commenced in the year 1989 and very soon to be completed. (f) Regency FARMS-A project to develop farm houses was commenced at Lucknow in the year 1986 ; Delhi-Asola in the year 1987, Delhi-Bhatti in the year 1988 and at Haryana-Gurgaon in the year 1989 and the same is nearing completion, (g) The plaintiff has also undertaken turn-key construction projects like: (i) Expansion of Sugar Mill at Ramala in the year 1987. (ii) a 15 storeyed complex at Kaushambi in the year 1988, and, (iii) 131 houses at Meerut in the year 1988. (h) The plaintiff has also undertaken a project to develop a Resort at Nainital.'

(3) The plaintiff, therefore, asserts that in view of the aforesaid activities of the plaintiff, the name Regency, or mark Regency which has been adopted bonafide and honestly by the plaintiff in the year 1984 with respect to real estate and construction business, has been continuously and uninterruptedly in use by the plaintiff without any hindrance from any corner.

(4) It is asserted by the plaintiff that the plaintiff was the first one to adopter originate the mark Regency with respect to the real estate and construction business since the year 1984. The plaintiff asserts that it has given wide publicity to its name REGENCY/mark Regency through various advertising media, and asserts that the name REGENCY/mark Regency is exclusively associated and identified by the public and trade with the plaintiff and its business.

(5) The defendant Kedar Builders, the plaintiff asserts, has recently started using the name Regency Estate with respect to the defendant's construction Real Estate Project (shops, flats, commercial complex) at Gurgaon, with dishonest intent and full knowledge of the association of Regency with the plaintiff's name. The plaintiff has also filed advertisements which were published by the plaintiff in the newspapers, along with the plaint. It is asserted that the plaintiff has suffered injury, and will suffer injury in its business, name and reputation unless the defendant is restrained by a restraint order.

(6) The defendant had filed a caveat through Mr. Ajit Singh, Advocate. and when the matter came up for admission, he appeared in Court and accepted summons on behalf of the defendant.

(7) Written statement was filed by the defendant on 14-8-1989 Various objections were taken as preliminary objections, inter alia, that as the defendant's Regency Estate complex is situated at Gurgaon in Haryana, this Court has no jurisdiction; that the suit is dot properly valued for the purposes of court fee and jurisdiction; that there is no fiduciary capacity between the plaintiff and the defendant and suit for rendition of account is not maintainable ; that the plaint does not comply with the provision of Order Vii Rule 2 of the Code of Civil Procedure, and therefore liable to be rejected ; that the plaintiff has no locus standi to file the present suit ; that the owners of the properties mentioned in para 5 of the plaint are necessary proper parties to this suit. There was denial of other assertions in the plaint. Para 6 of the written statement is parimateria with para 6 of the reply to the application under Order 39 Rules 1 and 2. Para 6 of the said reply to the application read as under :-

'6. Each and every statement made in para 6 of the application is not admitted and is denied. It is denied that the Regency is a mark of the plaintiff or the plaintiff has adopted Regency as trade mark in the year 1984 or at any time at later stage. It is also denied that the plaintiff is using the word Regency in respect of any goods. It may be that the plaintiff name contains Regency as alleged in the application. However, it cannot be a trade mark of the plaintiff as the trade mark is used on vendable goods. In India service marks are not considered as trade marks and are not registerable trade marks. The word 'mark' has been misused in the entire application. The plaintiff has been changing its name from time to time as admitted in para No. 2 of the application. The plaintiff has been using different suffix with it which change the mark. The plaintiff has no right whatsoever to allege and claim that by using different names at different times it becomes entitled or gets any monopoly for the word REGENCY. It is wrong, incorrect and self contradictory that the plaintiff has been regularly, continuously and uninterruptedly and without any hindrance using the name of the plaintiff.'

(8) The defendant contends that the plaintiff is not entitled to the grant of injunction sought.

(9) It is contended by Mr. N.K. Anand that this Court has the jurisdiction to hear and decide the matter in view of the fact that advertisements of the defendant have appeared in the national newspapers, like Times of India which is circulated in Delhi, and also in the Tribune, which has circulation in Delhi. These advertisements, Mr. Anand says, relate to the construction of the defendant's building at Gurgaon, and as such this Court has jurisdiction to entertain this suit. In addition he states that as far as the plaintiff is concerned, it has reputation in the mind of the public within the Union Territory of Delhi where the advertisements of the plaintiff vis-a-vis that its construction activities in various parts of U.P. including Gurgaon, have been the subject-matter of advertisements in the newspapers. He also contends that inasmuch as the defendant has its office at flat No. 240-B Ansal Chamber-II, 6, Bhikaji Cama Place, New Delhi, as it is carrying on business at and from Delhi, this Court has jurisdiction to entertain the suit.

(10) As against this. Mr. Anoop Singh relies upon Section 16 of the Code of Civil Procedure, and says that as the construction of the defendant's building is taking place at Gurgaon, this Court has no jurisdiction to try the suit. He also relies upon : AIR1973 All555 (Om Prakash and another v. Anar Singh & Others), in support of his proposition that the suit cannot be entertained by this Court. Section 16 of the Code of Civil Procedure reads as under:-

'16, Subject to the pecuniary or other limitations prescribed by any law, suits- (b) for the partition of immovable property. (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (d) for the determination of any other right to or interest in immovable property, (e) for compensating for wrong to immovable property, (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate : Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate. or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.'

(11) In my view : AIR1973 All555 has no application to the instant case. The Allahabad case related to disputes with respect to a tube well, and the Court held that the suit will be within the jurisdiction of the Court in which the tube well was situated.

(12) In the instant case, the dispute relates to the name that is given to a building which is being constructed at Gurgaon in the State of Haryana. Admittedly there is no dispute as to any rights in that immovable property which is being constructed at Gurgaon. The dispute only relates to the name by which that building is called, not the building itself. In this view of the matter, the provisions of Section 16(a) to (f) of the Code of Civil Procedure have no application, as there is no disputed immovable property. 'As regards the name to be applied to that immovable property, the relief with respect thereto can be entirely obtained through the

personal obedience, and therefore, the suit can be instituted either in the local limits of whose jurisdiction the said immovable property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain. This is what is postulated by proviso to Section 16 of the Code of Civil Procedure. It is not in dispute that the defendant is carrying on business at and from flat No 240-B, Ansal Chamber-11, 6, Bhikaji Cama Place, New Delhi, within the jurisdiction of this Court. This Court has, therefore, jurisdiction to entertain the suit.

(13) As stated above, the dispute in the instant case entirely relates to the name which the defendant has chosen to give to the property being constructed by it in Gurgaon. The defendant has called it 'REGENCY ESTATE'. The case of the plaintiff is that the plaintiff has been naming the buildings and other properties with which the plaintiff has been concerned, 'REGENCY'. The plaintiff says that some of the buildings constructed by it are Regency Tower, Regency Avadh, Regency Plaza, Regency Plaza-11, Regency Arch, Regency Farms, and has also undertaken turn-key construction projects like Expansion of Sugar Mill, a 15 storeyed complex at Kaushambi etc.

(14) It is also the case of the defendant that the suit as filed, is not maintainable, inasmuch as the suit has been filed alleging that the defendant is attempting to pass off the building being constructed by it at Gurgaon, as a building being constructed by the plaintiff.

(15) It is asserted by the defendant that passing off can, in law, relate to goods and merchandise. For this purpose, learned counsel refers to the provisions of Sections 2(g), 27(2) and 105 of the Trade and Merchandise Marks Act, 1958. The aforesaid provisions read as follows :-

'2(G). 'goods' means anything which is the subject of trade or manufacture. 27(2). Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. 105. Suit for infringement etc., to be instituted before District Court.- (a) for the infringement of a registered trade mark ; or (b) relating to any right in a registered trade mark ; or (c) for passing off arising out of the use by the defendant

of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.'

(16) In my view, the goods as used in the Trade and Merchandise Marks Act is relatable, inter alia, to any merchantable or saleable material, whether same is in the shape of articles and things, or in the form of services. Section 27 of the Trade and Merchandise Marks Act, which relates to passing off, reads as under :-

'27.No action for infringement of unregistered trade mark :- (1) No person shall be entitled to institute any proceeding to prevent, or recover damages for the infringement of an unregistered trade mark. (2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.'

(17) The relevant parts of Section 106 of the Act reads as under :-

'106.Reliefs in suits for infringement or for passing of :- (1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 105 includes an injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for delivery-up of the infringing labels and marks for destruction or erasure. (2) Notwithstanding anything contained in Sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or by account of profits in any case-- (a) , (b) (c) where in a suit. for passing off the defendant satisfies the court--- (i) that at the time he commenced to use the trade mark complained of in.the suit he was Unaware and had no-reasonable ground for believing that the trade mark of the plaintiff was in use ; and (ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.'

(18) A perusal of Section 27(2) of the Act makes it clear that passing. off actions as to goods, are outside the scope of the Trade & Merchandise Marks Act. 1958. There is no other provision in the Act which relates to passing of actions. Section 27(2) is only to indicate that -all passing off actions, in as far as they relate to

goods, are outside the scope of the Act. It is well established that a passing off action is a common law remedy.

(19) The instant case relates to passing off with respect to name of buildings, not buildings themselves. ' What the plaintiff says is that the- defendant is not entitled to use the name 'REGENCY' in connection with the estate or building built by the defendant at Gurgaon, inasmuch as by prior use and association of the word 'REGENCY' with the name of the plaintiff, and use of the 'word 'REGENCY' in connection with the buildings constructed by the plaintiff, the word 'REGENCY' is associated, when applied to buildings, with the plaintiff, i.e. the Regency Industries Ltd' The plaintiff asserts that it uses the word 'REGENCY' as a part of the name that it gives to the buildings constructed by it for the reason that the plaintiff is carrying on business under the name and style ie M/s. Regency Industries Ltd. Even prior to carrying on the business in the name and style of M/s. Regency Apartments Industries Pvt. Ltd. Thereafter Regency Properties Ltd. and' it was in 1987 that the plaintiff adopted the name of Regency Industries Ltd , and continues to carry on its activities under the last name. Thus the plaintiff asserts, that it is natural for the plaintiff to use the word 'REGENCY' jointly with another word or words, or group of words to indicate that a particular building had been constructed by it The plaintiff asserts that it has had various advertisements published in the national newspapers like Nav Bharat Times, Times of India and papers like Tribune, and, thus as a result of the aforesaid publicity, the word 'REGENCY' in so far as it relates to construction of commercial buildings have come to be associated with the plaintiff company.

(20) The defendant's contention that a name, or a word or a mark can only be associated with goods, is not right. It already stands established that names can be associated with services. (See Vol. 64 R'PC 103 Sales Affiliates, Ltd. v Le Jean Ld. at page 109; and Vol. 63 R'pc 39 Office Cleaning Services, Ltd. v. Westminster Window and General Cleaners, Ltd.). In my view, prima facie, a building which is being constructed with the sole object of selling different portions of it as individual units to separate persons, is also trading in immovable property; The sole object of construction of building being to, sell off various parts of it, or portions of it as individual units to different persons, and there is no reason or logic why these

portions of a building which are capable of being sold as distinct units, should be treated differently from goods. In all cases- of exclusive right to 'the use of any name or mark, relevant question to be asked' is, has the plaintiff shown that a name is associated in the public mind with the activity being carried on by the plaintiff, or the goods being sold by the plaintiff. On a prima facie basis, I think the plaintiff has adequately shown that the word 'REGENCY' has been associated with its trading name, at least since the plaintiff started carrying on business. . The plaintiff has also shown that fairly wide publicity was being given in the national, newspapers which had already been circulated, like Nav Bharat Times, Times of India ; and papers like Amrit Prabhat and Pioneer which are regional papers As against this, the defendant has not given any justification, whatsoever, for adopting the name 'REGENCY ESTATE' for the building which is still being constructed by the defendant. That the defendant has to show this, is established by '(1984) Rpc 5.01 String-fellow and Am. v. McCain Foods (G.B.) Limited and nor) The defendant is carrying on business as Kedar Builders. Kedar Builders are stated to be a partnership concern. The partner who has supported the reply by an affidavit, is Ms. Nisha Malhotra, Neither the name or the surname of Ms. Nisha Malhotra appears to have any link with the word 'REGENCY'.

(21) There is a natural link of the names 'REGENCY TOWER' 'REGENCY, AVADH', 'REGENCY PLAZA' etc. with 'REGENCY Industries LTD.' or the erstwhile name of the plaintiff company. Such a link is missing in the case of the defendant's business name or in the name of one of the partners. Significantly it is not stated that any partner other than Ms. Nisha Malhotra is associated with the 'REGENCY' either in the written statement or in the reply to the application filed in the court.

(22) The law relating to passing off is fairly well settled. The principle underlying the action is that no man is entitled to carry on his business in such a way as to lead to the belief that he is carrying on the business of another man, or to lead to belief that the business he is carrying on has any, connection with the business carried on by another man. The Regency Industries Ltd., the plaintiff, is carrying on business, inter alia, of constructing various commercial complexes, and-to ensure its mark upon the buildings it gives names to the buildings which have the

word 'REGENCY' combined . with another word as a distinct name to each distinct buildings. In this way, they indicate to the public at large that the buildings have been constructed by the same persons, i.e. Regency Industries Ltd.

(23) Kedar Builders none of whose partners' are associated with the word 'REGENCY' in any manner, whatsoever, cannot be permitted to carry on their business in such away that any person is likely lobe misled into believing that what their building at Gurgaon is in any way, connected with the Regency Industries Ltd. On a prima facie basis, thereforee, the plaintiff is entitled to the injunction which ii seeks.

(24) The balance of convenience is also in favor of the plaintiff. The building which the defendant is constructing, is at early stages, admittedly the, basement is toeing constructed. volt of activity has to be done before the building can be-completed. No possible prejudice 'can be caused to the defendant by it being restrained from calling the building that it is constructing . 'REGENCY ESTATES'. They-can easily .call 'the building 'Malhotra Building' or any other name by associating the surname' 'Malhotra' of one of its partners, or by any other name by which the business name-Kedar can be associated with the building built. The balance of convenience is, thereforee, in favor of the plaintiff, in the grant of injunction.

(25) It is one Of the objections of Mr. Anoop Singh that the suit is not maintainable. He says' that the suit is not maintainable inasmuch as the relief which is sought in the plaint is for an account of profits made. and not for specified amount of damages. I apprehend that the said contention is merely an ipsi dixit of Mr. Anoop Singh. He has cited no authority for the proposition that he advanced. In fact it has been held in : AIR1983 Delhi161 (M/s. Kala Niketan Karol Bagh, New Delhi v'. M/s Kala'Niketan, G-10 South Extension Morket-I. New Delhi), that in the passing off action rendition of accounts can be claimed, but ordering rendition of account, it can do so, but whether it will be ultimately granted to it, will be upon final determination at the end of the trial of the case. The plaintiff cannot be non-suited. merely because he has sought rendition of accounts in passing off action.

(26) A large number of cases have been Cited by both the counsels. The cases cited by Mr. N. K. Anand are ; 64 R. P C. 103 (Sales affiliates Ltd. v. Le Jean, Ld) ;

(supra) 64 Rpc 41 (Music Corporation of America and another v. Music Corporation (Great Britain), Ltd); : AIR1986 Delhi181 (M/s. K G. Khosla Compressors Ltd v. M/s. Khosla Extractions Ltd and Others) Air 1986 Delhi 245 (Globe Super Parts v Blue Super Flame industries) 41 R.P.C. 74 (Harrods Limited v. R Harrod Limited) ; R.PC 269 (The Clock Ltd. v. The dock House Hotel. Ltd.) ; : AIR1978 Delhi250 (Century Traders v. Roshan Lal Duggar & Co. and Others) ; AIR 1965 Bom 35 (Consolidated Foods Corporation v Brandon and Co. Pvt Ltd), 1984 F.S R. 96 ; (1980) R PC. 31 (Erven Harnink B V and another v. J. Townend & Sons (Hull) Ltd); 32 R.P.C 273 (A.C. Spalding & Bros. v. A N. Gamage Ltd) : AIR1915 All263 (Mahmud Ali and Others v. Yawar Beg) (The Tata Oil Mills Co. Ltd. v. Hansa Chemical Pharmacy) (Smt. Sheila Devi & Ors v. Shri Kishon Lal Kalra & Ors.) The cases cited by Mr. Anoop Singh are 1973 All 555 ; 84 Federal Supplements' Kitty Kelly Shoe Corporation v. Stallings) ; (1984 . R.P.C. 501 (String fellow and another v. McCain, Foods (G.B) Limited & another) ; 28 R.PC 308 (George Outran &Co. Ltd v. London Evening Newspapers Co Ltd.) ; : 23(1983)DLT401 (Gora Mal Hari Ram v. Bharat Soap & Oil Industries). For the present stage of proceedings, in my view, the cases referred to above by me, are sufficient to decide this interim matter. The other .cases and authorities and texts c{ted, may be needed to be considered at the time of final adjudication at the end of the trial.

(27) In view of what is stated hereinabove, in my view, the plaintiff is entitled to the injunction prayed for, and I accordingly restrain the defendant from dealing in real estate construction business under the name of 'REGENCY' Estate or any other name deceptively similar to the plaintiff's adopted name 'REGENCY'.

(28) I.A. No. 5570 of 1989 stands disposed of with the observation that the interim view expressed herein, is not final in any way.