infosys Technologies Ltd. Vs. Data Infosys Ltd. and Others

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SooperKanoon Citation : sooperkanoon.com/948491

Court : Delhi

Decided On : Jul-17-2012

Judge : Valmiki J. Mehta

Appeal No. : CS(OS) No.1376 of 2003

Appellant : infosys Technologies Ltd.

Respondent : Data Infosys Ltd. and Others

Judgement :

VALMIKI J. MEHTA, J. (ORAL)

IA No.6857/2012(for condonation of delay) Delay is condoned. IA stands disposed of.

IA No.6856/2012

1. This is an application filed by the defendants under Section 124 of the Trade Marks Act, 1999 (hereinafter 'the Act') for stay of the proceedings initiated against them before the Intellectual Property Appellate Board (IPAB) by the plaintiff. The proceedings before IPAB seek rectification of the register qua the mark 'Data Infosys' of which registration was obtained by the defendants.

2. The present suit is a suit by the company-M/s. Infosys Technologies Ltd., an Indian multinational, claiming rights in the trade mark Infosys and seeking restraint

etc against the defendants from infringing/using the same. During the pendency of the suit the defendants obtained registration of the trade mark ‘Data Infosys’. To incorporate this aspect in their written-statement, the defendants filed an amendment application. This application for amendment was allowed. Issues were also re-framed taking notice of the registration obtained by the defendants for the trade mark ‘Data Infosys’.

3. The plaintiff thereafter initiated before IPAB proceedings under the Trade Marks Act, 1999 for rectification i.e. cancellation of registration obtained by the defendants with respect to the mark ‘Data Infosys’, and these are the proceedings before the IPAB that the defendants seek stay of by means of the present application under disposal.

4. Learned counsel for the applicants/defendants has placed reliance upon the judgment of a Single Judge of this Court in the case of **Astrazeneca UK Ltd. and Anr. vs. Orchid Chemicals and Pharmaceuticals Ltd. 2007 (34) PTC 469 (Del)** as also a judgment passed by a Division Bench of this Court on 13.4.2012 in IA No.18464/2011 in CS(OS) No.1421/2005 titled as **Astrazeneca UK Ltd. and Anr. vs. Orchid Chemicals and Pharmaceuticals Ltd.,** to canvass the proposition that since no prior permission had been obtained from this Court under Section 124 of the Act, proceedings for rectification with respect to a registered mark cannot be initiated or contained by the plaintiff. Learned counsel for the applicants/defendants has invited attention of this Court to the observations which have been made in the aforesaid two judgments to that effect. It is accordingly argued that once a Division Bench of this Court has clearly observed that a party to a suit cannot apply for rectification proceedings without permission of the Court, and since no prior permission of this Court was obtained, the proceedings initiated by the plaintiff before the IPAB ought to be stayed.

5. In my opinion, the arguments urged on behalf of the defendants are wholly misconceived. This I say so because the provision of Section 124 of the Trade Marks Act, 1999 relied upon by the applicants/defendants, and the observations in the aforesaid two judgments in the case of **Astrazeneca UK Ltd.(supra),** provide for the situation where a person seeks to get proceedings in the **suit** (not IPAB

proceedings) stayed on the ground that he has filed rectification proceedings after filing of the suit and thus in such situations to avoid bringing to a halt the progress of the suit, Courts have required that prior permission of the Court would have to be obtained where the suit is already pending and only thereafter the rectification proceedings are commenced. It is in that context that the aforesaid two judgments in the case of **Astrazeneca UK Ltd.(supra)** hold that the proceedings in the suits cannot be stayed by invoking Section 124 of the Trade Marks Act, 1999 merely because rectification proceedings have been filed before the appropriate authority under the Trade Marks Act, 1999. What the defendants seek to do here is the opposite i.e. seek stay of the IPAB proceedings, and which is not the scope of Section 124. The judgments relied upon by the applicants/defendants do not hold that Section 124 of the Trade Marks Act, 1999 provides that proceedings before the IPAB have to be stayed unless permission of this Court is obtained under Section 124 of the Trade Marks Act, 1999 for continuing with the proceedings before IPAB. Once there is no issue of stay of the suit, inasmuch as the plaintiff who has initiated proceedings for rectification is not seeking stay of this suit, the ratio of **Astrazeneca UK Ltd.(supra)** does not come into play. In my opinion, the defendants want to unnecessarily bring issues which have no relevance or bearing so far as the disposal of the present suit is concerned, and, the object of this application is to unnecessarily delay the progress of the suit i.e. the very object which the ratio of the judgments in **Astrazeneca UK Ltd.(supra)** cases seek to prevent.

6. I am fortified in the observations that Section 124 of the Trade Marks Act, 1999 does not in any manner require any prior permission of the Court where the suit claiming infringement of the trade mark is pending for initiating proceedings for cancellation of the registered trade mark, by the observations of a Division Bench Judgment of the Madras High Court in the case reported as **B.Mohamed Yousuff vs Prabha Singh Jaswant Singh, Rep. by its Power of Attorney Mr. C.Raghu and Ors., 2008 (38) PTC 576(Mad).** The relevant observations of the Division Bench of the Madras High Court are contained at page 605 of the PTC report and where it is clearly held that no prior permission of the Court is required to initiate rectification proceedings.

7. In view of the above, there is no merit in the application. I hold that it is not the law that before initiating proceedings for cancellation of the registered trade mark, prior permission of the Court, (where proceedings alleging infringement of the trade mark are pending), has to be taken under Section 124 of the Trade Marks, 1999. The application is therefore dismissed.

IA No.17961/2011(u/O.XXII R.10 CPC)

8. This application has been wrongly titled under Order XXII Rule 10 CPC, because really the application is either under Order 6 Rule 17 CPC; or Section 151 CPC; read with Section 23 of the Companies Act, 1956, and more particularly Section 23 sub-Section 3 seeking to bring on record the changed name of the plaintiff-company from Infosys Technologies Ltd. to Infosys Ltd. The application is opposed on behalf of the defendants by placing reliance upon a judgment in FAO No.400/2006 titled as **Vishwa Ahimsa Sangh vs. Panchsheel Marketing (P) Ltd.** and FAO No.401/2006 titled as **Vishwa Ahimsa Sangh vs. State Bank of Bikaner and Jaipur Ors.** decided on 5.7.2011. Reliance is placed upon this judgment to argue that provision of Order XXII Rule 10 CPC has no application to the facts of the present case.

9. Section 23 of the Companies Act, 1956 reads as under:-

“23. Registration of change of name and effect thereof.-

(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the

company by its former name may be continued by or against the company by its new name."

10. Sub-Section 3 of Section 23 therefore makes it more than abundantly clear that mere change of name does not affect the rights or obligations of the company, or render defective any legal proceedings by or against it. This sub-Section further provides that the legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name. Sub-Section 3 of Section 23 is a complete answer to the opposition by the defendants to this application, which obviously is nothing but a frivolous defence. It is well settled law that quoting of a wrong provision cannot defeat an application and therefore wrongly stating that the application is filed under Order 22(10) cannot mean that the application has to be dismissed.

11. The present application is therefore allowed. Amended memo of parties filed alongwith this application is taken on record. IA stands disposed of.

CS(OS) No.1376/2012

12. Issues in this case were originally framed on 4.2.2008 and thereafter on account of registration of the mark 'Data Infosys' having been obtained by the defendants, issues were re-framed on 17.4.2009.

13. The plaintiff has already filed affidavits by way of evidence. 14. List before the Joint Registrar for fixing dates for cross-examination of witnesses of the plaintiff on 30th August, 2012. 15. Since this is a ten years old suit, the Registrar will be entitled to impose costs on any party which seeks unnecessary adjournments. Registrar also depending on the circumstances, if so required, may also pass adverse orders against the party which is unnecessarily or continuously delaying the disposal of the suit.