

Satya Infrastructure Ltd and ors Vs. Satya Builders Pvt Ltd

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SooperKanoon Citation : sooperkanoon.com/957766

Court : Delhi

Decided On : Apr-30-2013

Judge : Manmohan

Appellant : Satya Infrastructure Ltd and ors

Respondent : Satya Builders Pvt Ltd

Advocate for Pet/Ap. : Mr. Sidhant Goel, Mr. Mohit Goel

Judgement :

22 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 483/2011 & I.A. 3201/2011 SATYA INFRASTRUCTURE LTD & ORS Plaintiffs Through: Mr. Sidhant Goel, Advocate with Mr. Mohit Goel, Advocate. versus SATYA BUILDERS PVT LTD Through: None. Defendant Date of Decision:

30. h April, 2013 % CORAM: HON'BLE MR. JUSTICE MANMOHAN JUDGMENT MANMOHAN, J (Oral):

1. Present suit has been filed for permanent injunction restraining infringement of trade marks, passing off, dilution of goodwill, unfair competition, rendition of accounts of profits/damages and delivery up.
2. The prayer clause in the plaint is as under:28. i) Decree for permanent injunction restraining the Defendant, its their directors, partners or proprietor as the case may be, their assigns in business, franchisees, licensees, distributors and agents from selling, offering for sale, advertising, directly or indirectly dealing in

identical or similar goods/services under the infringing mark/trading name containing the mark SATYA or any other trade mark/trading name as may be identical to or deceptively similar with or containing the trade mark SATYA or any of the composite marks of the Plaintiffs containing the mark SATYA, amounting to infringement of trade mark registered in the name of the Plaintiffs. ii) Decree for permanent injunction restraining the Defendant, its directors, partners or proprietor as the case may be, their assigns in business, franchisees, licensees, distributors and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in identical or similar goods/services under the infringing mark/trading name containing the mark SATYA or any other trade mark/trading name as may be identical to or deceptively similar with or containing the trade mark SATYA or any of the composite marks of the Plaintiffs containing the mark SATYA, as may be likely to cause confusion or deception amounting to passing off of the services and/or business of the Defendants for those of the Plaintiffs. (iii) Decree for delivery up of all the infringing stationery, hoardings, boards, printed material, dies, blocks etc., to an authorised representative of the Plaintiffs for destruction. (v) Order for rendition of accounts of profit illegally earned by the Defendant and a decree for the amount so found due or in the alternate, a decree for damages of at least Rs.21,00,000/may be passed in favour of the Plaintiffs and against the Defendant. v) An order for costs in the proceedings. vi) Any further order as this Honble Court deems fit and proper in the facts and circumstances of this case.

3. However, at the outset, learned counsel for plaintiffs states that he does not wish to press prayers 28 (iii) and (iv) to the extent of rendition of accounts and delivery up. The said statement is accepted by this Court and plaintiffs are held bound by the same.

4. The relevant facts of the present case are that the three plaintiffs are legal entities incorporated under the Companies Act, 1956, which commenced business operation in the year 1986 under the word mark SATYA.

5. Plaintiffs are stated to be in the business of construction, real estate, financial affairs, integrated townships, group housing and villas, hospitality, service sector,

commercial complexes, IT Parks, shopping complexes, multiplexes, mall development and management and infrastructure development etc. in the National Capital Region of Delhi and Madhya Pradesh.

6. It is stated in the plaint that the mark SATYA was coined by the Promoter Directors of the plaintiffs and all the projects of the plaintiffs for the last 27 years have been promoted and sold under the mark SATYA.

7. Learned counsel for plaintiffs states that plaintiffs have secured registration under the Trade Marks Act, 1999 for the exclusive use of the mark SATYA (word per se) and other marks containing SATYA as an essential feature in classes 36, 37, 41, 42, 16 and 43.

8. Learned counsel for plaintiffs further states that plaintiffs own two domain names i.e., www.satyagroup.com and www.satyadevelopers.com.

9. In the plaint, it is stated that the combined annual turnover of the plaintiffs for the year 2009-2010 was approximately Rs.32 crores and its promotional and developmental expense since 2006 was Rs.1.5 crores.

10. It is further stated in the plaint that defendant was incorporated as SATYA BUILDES PVT. LTD. on 04th February, 2010, with intent to carry on business inter alia as owners, builders, developers, promoters and colonizers etc.

11. Since according to the plaintiffs, the action of the defendant constituted infringement and passing off, plaintiffs issued a legal notice dated 11th October, 2010 to the defendant. As no reply was received, plaintiffs filed the present suit on 23rd February, 2011.

12. This Court on 28th February, 2011 restrained the defendant from using amongst others the infringing mark/trading name SATYA or any other mark identical to or deceptively similar to the plaintiffs mark.

13. Though the defendant entered appearance before this Court on 05th October, 2011, yet it subsequently stopped appearing. Plaintiffs filed their evidence by way of affidavit on 07th/08th February, 2013.

14. Learned counsel for plaintiffs submits that this Court in Satya Infrastructure Ltd. & Ors. vs. Satya Infra & Estates Pvt. Ltd. being CS(OS) 1213/2011 on 07th February, 2013 has held that the use of the trade name/trading style Satya Infra & Estates amounts to infringement. The relevant portion of the aforesaid judgment is reproduced hereinbelow:10. Once it is found that the plaintiffs have obtained registration of the mark SATYA in Classes 36, 37 & 43, the carrying on business by the defendant in the name and style of Staya Infra & Estates Pvt. Ltd. is clearly an infringement of the registered Trademark of which the plaintiffs are licensed users. Even otherwise from the documents I am satisfied that the plaintiffs are carrying on business under the Mark / Label / Logo SATYA and carrying on business by the defendant in the name and style Staya Infra & Estates Pvt. Ltd. in the same fields / areas / sphere in which, plaintiffs are carrying on business is likely to cause confusion and which in the minds of the customers/patrons of the said business, likely to cause confusion and convey an impression of the defendant belonging to the group under aegis of which the plaintiffs are carrying on business and of the business of the defendant being that of the plaintiffs.

11. I am therefore of the view that the plaintiffs have made out a case for injunction the defendant from carrying on business in the name of Staya Infra & Estates Pvt. Ltd. and / or from, in the course of its business, use the trademark SATYA of the plaintiffs or any other mark deceptively similar thereto. xxx xxx xxx 14. A decree for permanent injunction is accordingly passed in favour of the plaintiffs and against the defendant, to be operative after three months herefrom, restraining the defendant from carrying on business in the name of Satya Infra & Estates Pvt. Ltd. or in any other name identical to or deceptively similar to or containing the trademark SATYA of the plaintiffs and / or from offering, selling or offering for sale any goods or services under the trade name or mark SATYA or any other trade name or mark deceptively similar to the trademark / label/ logo SATYA of the plaintiffs.

15. Having heard learned counsel for the plaintiffs and having perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that plaintiffs have proved the facts stated in the plaint and have also exhibited the relevant documents in support of its case. Since the plaintiffs evidence has gone

unrebutted, said evidence is accepted as true and correct.

16. This Court is also of the opinion that the triple identity test is satisfied in the present case inasmuch as the competing trade marks, products and class of purchasers are the same.

17. Further, as the essential feature of the defendants mark that means SATYA is identical to the plaintiffs trade mark and the services offered by the defendant are identical to the plaintiffs, a presumption of infringement arises in accordance with Section 29(2)(c) read with Sections 29(3) and 29(5) of the Trade marks Act, 1999. In Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories, (1965) 1 SCR 737. the Supreme Court has held as under: 28.In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendants mark is likely to deceive, but where the similarity between the plaintiffs and the defendants mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiffs rights are violated.....

29. When once the use by the defendant of the mark which is claimed to infringe the plaintiffs mark is shown to be in the course of trade, the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out.....

18. In Jain Electronics Vs. Cobra Cables P. Ltd. & Ors., 2011 (45) PTC 5.(Del), this Court has held as under: 11. With there being a registered trade mark Cobra in the name of Respondent No.1, which has not been opposed by the Petitioner till date, there can be no doubt that grant of registration in respect of an identical mark in favour of the Petitioner would cause deception and confusion. The mark has been registered in favour of Respondent No.1 in respect of goods which included electrical apparatus. The Petitioner is seeking registration of an identical mark in respect of voltage stabilizers. It was sought to be urged that Respondent No.1s goods were electric cables whereas the Petitioners were voltage stabilizers and therefore the goods were different. There can be no doubt that the electric cables are used in voltage stabilizers as well. The trade channel is essentially the

same. The goods are available usually in the same place as well. Use of an identical mark in respect of the two goods is bound to cause deception and confusion in the market. The Deputy Registrar and the IPAB concurrently concluded that the triple identity test stood satisfied in the present case, particularly since the description of the goods is the same, the area of the sale and the trade channel are the same. This Court concurs with the said view. The registration in favour of Respondent No.1 dates back to 1980, whereas the Petitioners invoices, all of which do not show use of the mark in relation to goods, is only since 1984. In the circumstances, the plea of concurrent user is not available to be taken by the Petitioner.

19. Consequently, this Court decrees the suit in accordance with para 28(i) and (ii) of the plaint.

20. Further, as the defendant has deliberately stayed away from the present proceedings despite entering appearance, this Court grant damages of Rs.2,00,000/- to the plaintiffs. It is pertinent to mention that this Court in Malhotra Book Depot & Ors. vs. Mata Basanti Devi School of BioSciences & Bio-Technology, 2012 (51) PTC 32.(Del.), has held as under:36. Counsel for the plaintiff also prays for damages @ Rs.21,00,000/- for loss of reputation and business as also the cost of the present proceedings. It is trite to say that the defendant has deliberately stayed away from the present proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place. The infringement of the trademark of the plaintiff is not in dispute. Counsel for the plaintiff in support of his case has drawn attention of this court to a number of judgments (M/s. L.T. Overseas Ltd. V. M/s. Guruji Trading Co. and Anr. [CS(OS) No. 2711/1999]; and Relaxo Rubber Limited and Anr. v. Selection Footwear and Anr., 1999 PTC 578.Counsel has also placed reliance on Time Incorporated v. Lokesh Srivastava and Anr., 2005 (30) PTC 3 (Del.) where apart from compensatory damages of Rs.5 lakhs, punitive damages have also been awarded. Justice R.C. Chopra, has set out in Time Incorporateds case (supra) that punitive damages are founded on the philosophy of corrective justice.

37. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 24.12.2010 is confirmed and the suit is decreed in favour of the plaintiff and against the defendant in terms of para 33(i), (ii), (iii) & (v) of the plaint with costs and damages to the tune of Rs.5.00 lakhs. Let a decree sheet be drawn up accordingly.

21. Registry is directed to prepare a decree sheet accordingly. MANMOHAN, J
APRIL 30 2013 js

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