

TM No. 135/2019

Vikas Gupta Vs. M/s Sahni Cosmetics

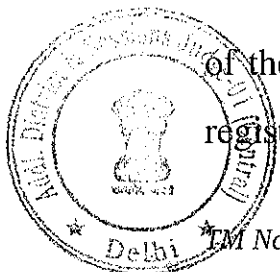
08.07.2019

Present: Sh. Sachin Gupta and Sh. Pratyush Rao, Ld. Counsels for the plaintiff.

The suit filed by the plaintiff is for permanent injunction restraining infringement of trademark, passing off along with one application under Order XXXIX Rule 1 and 2 r/w Section 151 CPC as well as an application under Order XXVI Rule 9 CPC seeking appointment of Local Commissioner.

The suit filed by the plaintiff is under Trademark Act and Copyright Act alleging that defendant has been manufacturing various cosmetic products i.e. Mehndi, oil etc. under the name of 'NEHA' and 'NEHA HERBALS', and plaintiff is using the said trademark since, 1992 and has obtained certificate from the concerned registrar. It is stated that the product of the plaintiff has attained an identification and a goodwill in the market and has its own customers, who ask for the product by its name. It is stated that in the month of May, 2019 the plaintiff came to know that defendant is also selling its products under the name NEHA which is in violation of the trade-mark of the plaintiff. It is alleged that the selling of products by the defendant under the name 'NEHA' is creating a confusion in the minds of the customer and also creates an impression that the said product is being sold by the plaintiff. The defendant is also selling its cold-cream under the mark 'NEHA'.

Plaintiff has also mentioned the details of its turn-over in para No. 5 of the plaint. It is stated that plaintiff till date has not filed any application for registration of its trade-mark for use/selling of cold-creams/face cream,



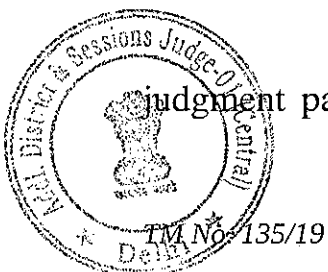
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however, it is about to enter into the arena of cold-creams/face creams etc. It is stated that defendant on earlier occasions have filed various applications seeking registration of similar trade-mark as that of plaintiff which has either been refused, abandoned or withdrawn. It is further alleged that packing of the goods is strikingly similar to that of Ayur cold-cream, however, it is sold under the name 'NEHA'. It is alleged that the goods sold by the plaintiff and defendant are cosmetic products and are sold at the same counter being used by the same class of customers and are therefore allied and cognate goods. It is alleged that apart from violation of the trademark by the defendant, it has also been infringing the trademark by passing off and are engaged in unfair competition. It is prayed that an ex-parte ad-interim may be awarded and defendant, its directors, partners or proprietors etc. may be restrained from using the registered trademark of the plaintiff i.e. 'NEHA' upon any of their product till the NDOH.

By virtue of another application filed under Order XXVI Rule 9 CPC, it is prayed that one Local Commissioner may be appointed.

Arguments on the said application also heard. Record perused from which it is revealed that plaintiff has alleged itself to be the exclusive user of the trademark 'NEHA'. It is further alleged by the plaintiff that they are dealing in goods/products which are cosmetic products i.e. Mehndi, Oil etc. It is further alleged on behalf of the plaintiff that defendant is using the registered trademark of the plaintiff i.e. 'NEHA' and selling its product i.e. cream by the name NEHA which is in violation of the registered trademark of the plaintiff.

In support of its contentions, plaintiff has also relied upon the judgment passed by the Hon'ble High Court of Delhi in case titled as "**FDC**



Limited vs. Docsuggest Healthcare Services Pvt. Ltd. and Ors.”, 237 (2017) DLT23, wherein the issue before the Hon'ble court was the use of trade mark 'ZIFI' and it is also under the name 'ZIFFI' and it was held that:-

“47. There can be no doubt, and it needs no discussion to say that the mark “Zifi” of the plaintiff and “Ziffi” of the defendant are phonetically, structurally and visually similar. In any event, this aspect is also discussed a little later. The prime issue in this case, therefore, is whether the goods of the plaintiff and the services of the defendants are allied/cognate or not.”

Keeping in mind the entire circumstances, I deem it appropriate that it would be in the interest of justice that such act on the part of the defendant is required to be restrained with immediate effect, as he is alleged to have been using the trademark of the plaintiff. There is also every likelihood that if, notices are served upon the defendant, then he might remove the stock with alleged infringing trademark from the jurisdiction of the court with an intent to defeat the legitimate claim step up by the plaintiff, therefore, I am of the opinion that plaintiff has established its claim for ad-interim ex-parte injunction as well as grounds of appointment of one Local Commissioner as well. Therefore, defendant, its directors, partners or proprietors etc. are restrained from using the registered trademark of the plaintiff i.e. 'NEHA' upon any of their product till the NDOH.

Also, an advocate namely Sh.Kartar Sharma, having Mobile No. 9958996959 is hereby appointed as local commissioner with the directions to visit the premises of the defendant at:- **M/s Sahni Cosmetics, through its**



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proprietor Inder Raj Sahni, 4650, Gali Mohar Singh, Jat Pahari Dhiraj, Delhi -110 006' and prepare an inventory of the stock with infringing trademarks "NEHA" and after preparing the inventory, he will seal them and would hand over said stock on superdari of defendant. The local police of the concerned area is directed to provide necessary assistance for execution of the commission, if asked for.

The local commissioner is permitted to break open the lock(s) and door(s) of the premises of the defendant, if so required. The report alongwith original proceedings be submitted by the local commissioner before the court within three days. The fees of the local commissioner is to be paid by the plaintiff which is fixed @ Rs.75,000/- to be paid in advance. The plaintiff is directed to supply a copy of entire paper book to the local commissioner. Plaintiff is further directed to make compliance of Order XXXIX Rule 3 CPC. Copy of this order be given dasti to the plaintiff, as per rules.

Accordingly, application filed under Order XXVI Rule 9 CPC stands disposed off.

Issue summons of the suit and notice of the application u/o XXXIX Rules 1 and 2 CPC to defendant on filing of PF alongwith RC, Speed Post, Courier returnable on **10.10.2019**.



Prashant Kumar
Keel

Prashant Kumar
(Prashant Kumar)
ADJ- 01 (Central),
THC, Delhi, 08.07.2019

अतिरिक्त जिला एवं सत्र न्यायाधीश-01
Addl. Distt. & Sessions Judge-01
केन्द्रीय दिल्ली
Central Delhi