

**TS (Com) – 90/2024**

**Present :: Neyaz Alam  
Judge Commercial Court at Rajarhat  
North 24 Parganas**

**CNR:WBNP19-000038-2024  
J.O Code – WB01398**

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**22.03.2024**

No caveat is filed as per note of the office.

The plaintiff/petitioner filed a put up petition in order to move an application under Order XXXIX Rule 1 & 2 and read with Section 151 of CPC on the ground of urgency. Leave is also sought to move the injunction application without exploring the mandate of section 12(A) of Commercial Court Act on the ground of urgency. Leave is granted as the ground of urgency made out.

Heard, considered and allowed.

Issue notice upon the respondents calling upon them to show cause within 15 days from the date of receipt of the notice as to why the temporary injunction as prayed for shall not be granted against them.

Perused the plaint, injunction application and the annexures filed on behalf of the plaintiff/petitioner.

Considered the submissions advanced by the Ld. Counsel for the plaintiff/petitioner.

Plaintiff/petitioner filed the suit for damages, permanent injunction, and declaration.

Plaintiff is a body corporate duly registered under the provisions of the Companies Act, 1956 and is engaged in the business of offering warehousing facilities to different local and multinational companies in or around Kolkata and West Bengal.

Defendants are carrying on the business under the name and style of 'TWC Services' and the defendant no. 2 is the husband of the defendant no.1.

Plaintiff company was formed in 1975 as a partnership concern and since then, it has been providing warehousing services to various companies including Tata, Hindustan Unilever, Girnar Tea, etc. The warehousing company over the year has generated reputation as one of the top warehousing service providers in or around Kolkata and West Bengal.

It is stated on or about 2010, the partnership concern was converted into a Private Limited Company i.e. the present plaintiff which took over the business of the

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erstwhile partnership as also its assets, including intellectual rights over the name "Tewari Warehousing Company" (TWC).

Over the past 49 years of its business, the plaintiff company has gained great goodwill and reputation among the importers, exporters, wholesalers, etc., within and outside the territorial jurisdiction of this Learned Court.

Further stated the plaintiff company has received payments for its services from both local and multinational companies for over 49 years, which clearly indicates its present market position and goodwill and enjoys esteemed respect with regard to warehousing services within and outside the jurisdiction of this Learned Court.

It is alleged that the plaintiff company has always been using the trademark "Tewari Warehousing Company" of its business activities. In the business community especially in relation to warehousing services within and outside Kolkata and jurisdiction of this Court. The plaintiff has become famous using "TWC" being an acronym for longer conversion of the name "Tewari Warehousing Company" has always been associated with the plaintiff company and their clients and business associates/vendors have identified the acronym "TWC" only with the plaintiff company. The plaintiff is using its trademark "TWC" in its 'Logo' and such Logo is presently showing in its letter pads, calendars and diaries, bills and invoices.

Further alleged the documents and continuous business interactions generated goodwill and reputation of the plaintiff company warehousing TWC in its trademark/tradename is known to all associated with warehousing industry within and outside the jurisdiction of this Learned Court. The said trademark has been used by the plaintiff company for over 49 years and no other company and/or community has used the same, prior to the plaintiff herein. The plaintiff has also started websites being <http://twctea.co.in/> and [twc.net.in](http://twc.net.in), wherein the services provided by the plaintiff company are clearly enumerated and the same can be accessed within and outside the jurisdiction of the Learned Court through the world wide web.

It is submitted the defendants are carrying on the business under the name and style of TWC Services. The defendant no. 2 is the also the husband of the defendant no.1.

On or about 1 March, 2024, the representatives of the plaintiff company were shocked to find that the defendants were operating an unregistered firm being "TWC

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Services" and passing it off as a part and parcel or as an extension of the plaintiff company.

The defendant no.2 has used his position to obtain all trade secrets of the plaintiff company and has approached various vendors and clients of the plaintiff company to provide similar services under the tradename "TWC Services". It is stated that the defendants have also started using website being <https://twcsve.com/> which is accessible from within and outside the jurisdiction of this Learned Court, in which they are using the acronym "TWC" and have also used photographs of machinery belonging to the plaintiff in order to confuse the plaintiff's clients and further pass off their services as that of the plaintiff.

Further stated the defendants have further given the details of machinery which were only known to the plaintiff in order to pass off their service as that of the plaintiff. A perusal of the plaintiff's website which can also be accessed within and outside the jurisdiction of this Learned Court would indicate that the same machinery is also shown therein.

As such the defendants more particularly the defendant No.2 had stolen trade secrets of the plaintiff company for undue profit and to infringe upon the trademark and tradename of the plaintiff company.

It is contended the plaintiff company apprehends that the defendants and/or its consultant/agent and/or assignee will take immediate steps to approach various clients and vendors of the plaintiff in order to try and pass off their services as that of the plaintiff causing immense harm and injury to the goodwill and trademark/tradename of the plaintiff.

The defendants and more particularly the defendant No.2 has already stolen valuable trade secrets of the plaintiff company and is using the same for their personal benefits causing immense harm and injury to the plaintiff company.

Lastly stated the domain name being used by the defendants is deceptively similar to that of the plaintiffs. The same is being used to target the commercial business and clients within and outside the jurisdiction of this Learned Court. The domain name is a business identifier and the defendants are using such domain name to pass off their services as that of the plaintiff company, hence preventive relief is prayed for.

**:: *Findings of the Court* ::**

Deducing the factual matrix it transpires that the plaintiff/petitioner is a body corporate duly registered under the provisions of the Companies Act, 1956 and is engaged in the business of offering warehousing facilities to different local and multinational companies in or around Kolkata and West Bengal.

Defendants/respondents are also carrying on the similar business under the name and style of 'TWC Services' and the defendant no. 2 is the husband of the defendant no.1.

It is alleged that the plaintiff/petitioner company was formed in the year 1975 initially as partnership concern and thereafter, private limited company has/had been using the trade mark "Tiwari Warehousing Company" in respect of his business activity and uses the acronym "TWC" in its logo affixed on letter pads, calendars and diaries, bills and invoices.

The plaintiff/petitioner has generated immense, goodwill and reputation in the market and also started its own website being <https://twctea.co.in> & <https://twc.net.in>

It is submitted that the plaintiff/petitioner was shocked to see on an about 1<sup>st</sup> March, 2024 that the defendants/respondents were operating an unregistered firm being "TWC Services" and passing it off as part and parcel or an extension of the plaintiff/petitioner company.

Further submitted the defendant No. 2 is a director and shareholder of the plaintiff/petitioner company and used his position to obtain all trade secrets of the plaintiff/petitioner company and has approached various vendors and clients of the plaintiff/petitioner company to provide similar services under the tradename "TWC Services". Further the defendants/respondents have also started using website which is accessible from within and outside the jurisdiction of the Court, in which they are using the acronym "TWC" and have also used photographs of machinery belonging to the plaintiff/petitioner in order to confuse the plaintiff's/petitioner's clients and further pass off their services as that of the plaintiff/petitioner.

The defendant no.2 also used his position to obtain all trade secrets of the plaintiff/petitioner company and has approached various vendors and clients of the plaintiff/petitioner company to provide similar services under the tradename "TWC Services" and also started using website being <https://twcsve.com> in which they are using the acronym "TWC" and have also used photographs of machinery belonging to the

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plaintiff/petitioner in order to confuse the plaintiff's/petitioner's clients and further pass off their services as that of the plaintiff/petitioner.

The defendants/respondents more particularly the defendant No.2 had stolen trade secrets of the plaintiff/petitioner company for undue profit and passed off the trademark and tradename of the plaintiff/petitioner company.

The plaintiff/.petitioner company apprehends that the defendants/respondents and/or its consultant/agent and/or assignee will take immediate steps to approach various clients and vendors of the plaintiff/petitioner in order to try and pass off their services as that of the plaintiff causing immense harm and injury to the goodwill and trademark/tradename of the plaintiff/petitioner.

It is contended the domain name being used by the defendants/respondents are deceptively similar to that of the plaintiffs/petitioners. The same is being used to target the commercial business and clients within and outside the jurisdiction of the Court. The domain name is a business identifier and the defendants/respondents are using such domain name to pass off their services as that of the plaintiff/petitioner company.

From the chronological conspectus of facts it appears that the plaintiff/petitioner operates business warehousing facilities to different local and multinational companies using the trade mark "TWC" and on the other hand, the defendants/respondents being also unregistered entity using almost similar trade mark being "TWC Services" in similar type of business. The logo used by the plaintiff/petitioner also resembled/copied by the defendants/respondents in its logo. Further the plaintiff/petitioner usage of domain being <https://twctea.co.in> & <https://twc.net.in> have a deceptively similar domain being <https://twcsvc.com> which is being used by the defendants/respondents company to deceive the customers of the plaintiff/petitioner company which is causing harm to the reputation and goodwill of the plaintiff/petitioner as well as financial loss in the business. Therefore, plaintiff/petitioner has made out a good prima facie arguable case in his favour which required to be adjudicated at the time of trial. The balance of convenience and inconvenience is also inclined in favour of the plaintiff/petitioner and the plaintiff/petitioner has been suffering irreparable loss and injury on account of infringement of trade mark by the defendants/respondents.

Therefore, the petitioners have successfully qualified the requirement or touchstone of three principles in the grant of temporary injunction viz.

a. Prima facie case,

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b. Balance of convenience and inconvenience,

c. Irreparable loss and injury.

At this preliminary stage the court is restricted to the petition, sworn statement of the plaintiff/petitioner with annexed documents, together with the averments made therein. Thus, the law on the issue emerges to the effect that an ex-parte ad-interim injunction shall be granted by the Court after considering all the pros and cons and preferably after issuing short notice but in exceptional cases, equitable and discretionary jurisdiction can be exercised, but the instant matter requires short notice be given to the defendants before considering granting temporary relief.

Hence, ad-interim relief sought for in the injunction application is hereby refused at this stage.

Issue notice upon the defendants/respondents to show cause within 15 days from the date of receipt of notice as to why the petitioner/plaintiff prayer for temporary injunction as prayed for shall not be granted.

Requisite at once.

To date.

**Sd/- Neyaz Alam**  
**Judge**  
**Commercial Court,**  
**Rajarhat, North 24 Parganas**