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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 698/2016**

SANJEEV GOYAL

..... Plaintiff

Through : Mr.M.L.Mangla with Mr.Manish
Singhal, Advocates.

VERSUS

METRO IRRIGATION PRIVATE LIMITED Defendant

Through : Mr.H.S.Chaudhary with Mr.Atul Kumar
Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

ORDER

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06.09.2017

IA No.7195/2016 (u/O XXXIX R-1&2 CPC)

1. In a suit for permanent injunction, infringement of registered trade mark, passing off, claim for damages etc., the plaintiff seeks restraint order against the defendant to not use the trade mark “METRO” and / or any other similar / deceptively similar trade mark thereto in respect of “Pipes & fittings including HDPE pipes & fittings, PVC pipes & fittings” as well as in respect of similar / allied and cognate goods or business either directly or indirectly in violation of the trade mark “METRO GOLDCOIN” and trade mark / trade name “METRO” in respect of the said goods / business. It is contested by the defendant.

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2. I have heard the learned counsel for the parties and have examined the file.

3. The plaintiff is carrying on business under the name and style of M/s. Metro Udyog, it is engaged in the business of manufacturing and selling pipes & fittings including HDPE pipes & fittings, PVC pipes & fittings, electrical conduit pipes, bathroom & sanitary fittings etc. since 1997. It is urged that the plaintiff has been using a fanciful and distinctive trade mark “METRO GOLDCOIN” in respect of the said goods since then. The trade mark “METRO” forms the primary, essential and distinctive feature of the trade name “METRO UDYOG”. The trade mark / label “METRO GOLDCOIN” is the sole trade mark of the plaintiff. The said trade mark “METRO GOLDCOIN” under trade mark Nos.819934 & 819935 dated 21.09.1998 is duly registered. It is valid, subsisting and in force till date. The plaintiff has acquired exclusive right to use the said trade mark. It is urged that the defendant has infringed plaintiff’s trade mark “METRO” in its trade name / trading style “METRO IRRIGATION PRIVATE LIMITED”. The use and adoption of the word “METRO” by the defendant is deceptive and is violative of the plaintiff’s registered, reputed and well recognised trade mark “METRO GOLDCOIN”. Reliance has been placed on ‘*Midas Hygiene Industries P.Ltd. & Anr. vs. Sudhir Bhatia & Ors.*’, 2004 (28) PTC 121 (SC); ‘*Laxmikant V.Patel. vs. Chetanbhat Shah & Anr.*’, 2002 (24) PTC; ‘*S.Syed Mohiden vs. P.Sulochana Bai*’, 2015 STPL(Web) 2413 SC and ‘*Montari Industries Ltd. vs. Montari*



Overseas Ltd.’, 1995 PTR 45.

4. Learned counsel for the defendant urged that the plaintiff has no locus to institute the instant suit after dissolution of the partnership firm on 13.10.2004. The plaintiff has not coined a distinctive and descriptive trade mark / label and the trade mark / name “METRO GOLDCOIN” is just combination of two common as well as dictionary word and the plaintiff cannot claim any legal right / claim over it. The registration Nos.819934, 819935, 1383784 & 1383785 relied upon by the plaintiff is already under rectification filed by a third party. The defendant is registered / incorporated with the Registrar of Companies as “METRO IRRIGATION PRIVATE LIMITED” since 30.06.2010 and is carrying on its business under the said name and style since 2010. The word “METRO” has common dictionary meaning and is used in reference to any upcoming urban settlement. It is further stated that defendant has applied for registration of trade mark “METRO” under the Application No.2109143 in class 7 in respect of goods “SPRINKLER IRRIGATION SYSTEMS & OTHER IRRIGATION TOOLS” and the same is under process. Reliance has been placed on ‘*Schering Corporation & Ors. vs. Alkem Laboratories Ltd.*’, 2010 (42) PTC 772 (Del.)(DB); ‘*Rich Products Corporation & Anr. vs. Indo-Nippon Foods Limited*’, 2010 (44) PTC 515(Del.)(DB); ‘*Skol Breweries vs. Unisafe Technologies*’, 2010 (44) PTC 2009 (Del.) and ‘*Cadila Healthcare Ltd. vs. Diat Foods (India)*’, 2010 (44) PTC 318 (Del.)(DB).



5. The instant suit was filed on 01.06.2016; no interim relief has since been granted to the plaintiff till date. The plaintiff did not pray for ex-parte orders and was granted liberty to pray for it subsequently. The pleadings are complete and the matter is listed before the Joint Registrar for recording evidence. There, the next date of hearing is 29.11.2017 for examination of PW-1 (Sanjeev Goyal) – the plaintiff. Apparently, there is no urgency to grant interim relief when the trial is expected to be concluded soon. It is to be noted that the plaintiff has also filed a suit for permanent injunction against a third party to restrain it from using the trade mark “METRO TECH” in respect of identical or similar goods which is pending disposal. It is admitted that the said third party has filed rectification proceedings to the registered trade mark of the plaintiff under registration Nos.819934, 819935, 1383784 & 1383785. The said rectification petitions are pending disposal. The plaintiff has not disclosed if any restraint order was granted to him in the said proceedings.

6. On the face of it, this Court observes no similarity between the two trade names “METRO GOLDCOIN” that of the plaintiff and “METRO IRRIGATION PRIVATE LIMITED” that of the defendant. The defendant entity is duly registered under the Companies Act since 2010 and the business is being carried out by the defendant under the said name and style of “METRO IRRIGATION PRIVATE LIMITED” since 2010. At no stage, the plaintiff objected to the business being carried out by the defendant in the said name since 2010. In the instant case, “METRO” appears to be term lying in



public domain. Registration of the trade mark “METRO” gives no exclusive right for terms in publici juris or in public domain. Nobody can claim exclusive right to use any generic word, abbreviation, or acronym which has become publici jurisdiction or subject to the common right of the public at large. “METRO” is a common dictionary word with no association to such goods traded by the plaintiff. In *‘Astrazeneca UK Limited & Anr. vs. Orchid Chemicals and Pharmaceuticals Ltd.’*, MANU/DE/0869/2007 [(2007) ILR 1 DELHI 874], this Court in paras 19 & 20 observed :

“19. Admittedly, ‘Mero’, which is common to both the competing marks, is taken by both the appellants / plaintiffs and the respondent /defendant from the drug ‘Meropenem’, taking the prefix ‘Mero’ which is used as a prefix in both the competing marks. Both the appellants / plaintiffs and the respondent /defendant are marketing the same molecule ‘Meropenem’. Neither the appellants / plaintiffs nor the respondent /defendant can raise any claim for exclusive user of the aforesaid word ‘Meropenem’. Along with the aforesaid generic/common prefix, ‘Mero’, the appellants/plaintiffs have used the syllables ‘nem’, whereas, the respondent /defendant has used the syllable ‘mer’. It is true that the aforesaid words/trade names cannot be deciphered or considered separately, but must be taken as a whole. But even if they are taken as a whole, the prefix ‘Mero’ used with suffix in the two competing names, distinguishes and differentiates the two products. When they are taken as a whole, the aforesaid two marks cannot be said to be either phonetically or visually or in any manner deceptively similar to



each other.

20. We are informed that there are a number of such other similar names with the prefix 'Mero' which are in the market. They were also taken notice of by the learned Single Judge while dealing with the injunction application. In the decisions of the Supreme Court and this Court also, it has been clearly held that nobody can claim exclusive right to use any word, abbreviation, or acronym which has become publici juris. In the trade of drugs, it is common practice to name a drug by the name of the organ or ailment which it treats or the main ingredient of the drug. Such an organ ailment or ingredient being publici Jurisdiction or generic cannot be owned by anyone exclusively for use as a trade mark. In the Division Bench decision of this Court in SBL Limited (supra) it was also held that possibility of deception or confusion is reduced practically to nil in view of the fact that the medicine will be sold on medical prescription and by licensed dealers well versed in the field and having knowledge of medicines. It was further held that the two rival marks, 'Liv.52' and 'LIV-T', contain a common feature, 'Liv' which is not only descriptive, but also publici Jurisdiction and that a customer will tend to ignore the common feature and will pay more attention to uncommon features i.e. '52' and 'T' and that the two do not have such phonetic similarity so as to make it objectionable."

7. The common feature in both the competing marks "METRO" is only descriptive and publici jurisdiction and therefore, the customers would tend to ignore the common feature and to pay more attention to the uncommon feature. Even if they are expressed as a whole, the two do not have any phonetic similarity to make it objectionable.



8. Nothing has emerged on record to show, prima facie, that the plaintiff's "METRO GOLDCOIN" has acquired distinctiveness with its products of such nature that the consumer or user only thinks of the plaintiff's brand.

9. In the light of above discussion, the interim relief sought by the plaintiff cannot be granted at this stage. The application is dismissed.

10. Observations in the order shall have no impact on merits of the case.

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List before the Joint Registrar on 24th October, 2017 for evidence.

S.P.GARG, J.

SEPTEMBER 06, 2017 / tr