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

+ RFA(OS)(COMM) 9/2019 and CM No.53275/2019

HINDWARE LTD.

..... Appellant

Through: Mr. Manav Gupta, Mr. Sahil Garg,  
Mr. Abhinav Jain & Ms. Devanshi  
Rangi, Advs.

Versus

SANJAY CERAMIC WORKS AND ANR.

..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**06.09.2022**

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1. The appellant (hereafter '**Hindware**') has filed the present intra-court appeal impugning a judgment dated 08.01.2019 (hereafter '**the impugned judgment**') passed by the learned Single Judge in CS (COMM) 882/2018, whereby Hindware's suit, *inter alia*, seeking a decree for permanent injunction restraining the respondents from infringing its trademark, passing off, damages, delivery up, was partly allowed.

2. Whilst the learned Single Judge has granted a decree of injunction restraining the respondents from infringing Hindware's trademarks; the relief of damages has been rejected. Being aggrieved by denial of the claim of damages, Hindware has appealed the impugned judgement.

3. The impugned judgement is similar to the judgement impugned on 08.01.2019 in CS COMM 808/2018. The facts and the contentions advanced in the present appeal are also similar to those in the said appeal. Thus, the present appeal is also being disposed of in similar terms.



4. Hindware is engaged in the business of manufacture and sale of sanitary ware and bathroom products, faucets, kitchen appliances, container glass products etc. under the trademark/tradenames 'HINDWARE' and 'H VITREOUS'. Hindware states that it is the largest Indian manufacturer of sanitary ware products and has one-third market share in the industry. Hindware claims that it has a network of over 20,000 retailers and 300 dealers in approximately 50 cities in India.

5. Hindware states that since the year 1990, it is the proprietor of several marks including 'H VITREOUS', 'HSIL' and 'HINDWARE' and the mark 'HINDWARE' is a well-known mark under the provisions of the Trade Marks Act, 1999 (hereafter '**the Trade Marks Act**'). The aforesaid trademarks have been registered under Classes 11, 21, 37, 40 and 42 of the Trade Marks Act. Hindware also states that the mark 'HINDWARE' also forms a part of the domain name, that is, [www.hindwarehomes.com](http://www.hindwarehomes.com).

6. Hindware claims that it conducted an investigation, wherein it found that the respondents were selling sanitaryware products using a mark, which is deceptively similar to its registered trademarks. Hindware claims that the respondents are misusing its reputation, goodwill and former corporate name to sell their products, which are identical to the range of products manufactured and sold by Hindware.

7. Thereafter, on 09.12.2016, Hindware filed a suit before this Court [being CS (COMM) 1629/2016] seeking a permanent injunction and restraining the respondents from using the trademarks 'H VITREOUS'/'HINDUSTAN VITREOUS' or any other deceptive marks, on the products



manufactured by it. By an order dated 16.12.2016, this Court granted an *ex-parte* ad interim injunction in favour of Hindware and further, appointed a Local Commissioner to seize the infringing products.

8. Hindware states that pursuant to the commission executed by the Local Commissioner and in terms of his report dated 24.01.2017, 92 stickers bearing the infringing marks were seized and returned to the respondents on *superdari*.

9. Thereafter, on 23.02.2017, the respondents filed an application before this Court under Order VII, Rule 10 of the Code of Civil Procedure, 1908 (CPC) [being I.A. no 5440/2017] seeking return of the plaint on the ground of lack of jurisdiction. This Court, by an order dated 17.04.2018, allowed the application filed by the respondents and returned the plaint on the ground of lack of territorial jurisdiction. However, while returning the plaint, this Court reserved Hindware's right to re-file the suit, if permissible.

10. In view of the above, Hindware filed the present suit on 14.05.2018 [being CS (COMM) 882/2018], *inter alia*, praying as under:-:-

“a. Pass and pronounce a decree of permanent injunction restraining the Defendants, their family members, dealers, their suppliers, their franchisees, agents, sister concerns or any entity incorporated by the Defendant or their family members, Directors, distributors or anyone acting for and on their behalf from using the trademark HINDUSTAN VITREOUS or H VITREOUS or any other mark that is deceptively similar to it or to the trademarks of the Plaintiff on its products or in any manner whatsoever so as to result in infringement the trademarks of the Plaintiff; and



b. Pass and pronounce a decree of permanent injunction restraining the Defendants, their family members, dealers, their suppliers, their franchisees, agents, sister concerns or any entity incorporated by the Defendant or their family members, Directors, distributors or anyone acting for and on their behalf from using the trademark HINDUSTAN VITREOUS or H VITREOUS any other mark that is deceptively similar to the trademarks of the Plaintiff on its products or in any manner whatsoever so as to result in passing off its goods as that of the Plaintiff or in any manner misrepresenting or holding out to be connected or related to the Plaintiff in any manner whatsoever; and

c. Pass and pronounce a decree on account of damages in favour of the Plaintiff and against the Defendants for payment of a sum of Rs.1,00,00,100/- or any higher sum as may be determined/ascertained pursuant to the rendition of accounts of profits illegally earned by the Defendant by selling the infringing goods; and

d. Pass and pronounce a decree of delivery up of all the printed and electronic material whether in hard copy or soft copy form, invoices, letter heads, visiting cards, products, product packaging, carton, cardboard boxes, printing plates or any other infringing material bearing the trademark HINDUSTAN VITREOUS or H VITREOUS or any other deceptively similar mark for the purpose of destruction and erasure; and

e. Pass an order for costs of this suit and the proceedings; and

f. Any further or other order(s) which this Hon'ble Court may deem fit and proper in favour of the Plaintiff, in the facts and circumstances of the case, be passed.”

11. On 16.05.2018, this Court granted an *ex parte ad interim* injunction in favour of Hindware and against the respondents. On 30.07.2018, this Court



confirmed the *ex parte ad interim* injunction granted in favour of Hindware, till the disposal of the suit.

12. Before the learned Single Judge, Hindware contended that the respondents have their own brand name 'EAGLEWARE' and 'SANITATION', which has no relation to its registered trademarks and therefore, the respondents adopted Hindware's registered trademarks on the infringing products with a dishonest intention of causing confusion and deception amongst the customers and to take advantage of its reputation and goodwill.

13. It was also the case of Hindware that the Court had jurisdiction to deal with the said suit under Section 20 of the CPC and Section 134 of the Trade Marks Act as the trading division of Hindware is located in Delhi and it did not have any branch or subordinate office in Thangarh, Gujrat. Hindware claimed that it had credible information that the infringing products were also being sold in Delhi. Hindware also relied on the evidence filed by way of affidavits by one Mr A.K. Mohanty and Mr A.K. Thakur.

14. The learned Single Judge considered the submissions made on behalf of Hindware and found that Hindware had, *inter alia*, established a case of infringement of its registered trademarks. The learned Single Judge further opined that the respondents had "*no real prospect of defending the claim as the evidence of the plaintiff has gone un rebutted*". However, the learned Single Judge held that Hindware was not entitled to a decree of delivery of the infringing materials as the same were seized in another matter [being CS (COMM) 1629/2016]



15. The learned Single Judge further found that Hindware had not led any evidence with respect to the quantum of damages suffered by it on account of the seized goods and therefore, damages could not be awarded in view of the decision of a Coordinate Bench of this Court in ***Hindustan Unilever Limited v. Reckitt Benckiser India Limited: 2014 (57) PTC 495 [Del][DB]***. The learned Single Judge, accordingly, decreed the suit in favour of Hindware, in terms of prayer clause (a) and (b) of the plaint and also awarded costs.

16. Aggrieved by the impugned judgment, Hindware filed an appeal before this Court.

17. Mr Manav Gupta, learned counsel appearing for Hindware, contended that the learned Single Judge had erroneously rejected Hindware's claim on account of compensatory damages. He submitted that the reliance placed by the learned Single Judge in the decision of a Coordinate Bench of this Court in ***Hindustan Unilever Limited v. Reckitt Benckiser India Limited (supra)*** to reject the claim for compensatory damages, is misplaced. He submitted that the Court had found that although punitive damages could not be awarded, general damages ought to have been awarded. Accordingly, the Court had modified the judgment impugned in that case by awarding compensatory damages for a sum of ₹20 lacs.

18. This Court finds no infirmity with the decision of the learned Single Judge to reject Hindware's claim concerning damages. A plain reading of the plaint filed by Hindware indicates that there are no material averments to prove the aforesaid claim. Paragraph 53 of the plaint, which relates to court



fee valuation, contains the averments regarding the claim for damages. Hindware had merely stated that it had valued the relief of a decree for damages for the purposes of court fees and jurisdiction at ₹1,00,00,100/-. Hindware had further averred that if the respondents (defendants) were called upon to render its accounts for calculation of damages, Hindware would undertake to pay the additional court fees on the amount found due. Hindware also claimed that it was “*tentatively entitled for a sum of ₹1,00,00,100/- (Rupees One Crore and One Hundred)*”. However, the plaint is silent as to how the tentative claim of ₹1,00,00,100/- was computed. As noted above, the evidence led by Hindware is completely silent as to its claim for damages.

19. Mr Gupta had contended that although the quantum of damages had not been specifically mentioned by Hindware in the evidence tendered by way of an affidavit, reasonable damages could be calculated as per the material on record. He submits that the Local Commissioner appointed in an earlier proceeding [in CS(COMM) 1629/2016] had seized 92 stickers bearing the infringing marks, which are available on record. He contended that the value of the seized goods could be ascertained by Hindware and therefore, damages equivalent to the value of the goods for which the seized stickers could be used ought to have been awarded to Hindware.

20. This Court finds no merit in the said contention. The loss suffered by Hindware, on account of the respondents dealing in the infringing material, was required to be proved. The damages claimed by Hindware cannot be valued in by ascribing the value to the infringing material. In any event, there was no evidence for computing the damages in the aforesaid manner



(as value of infringing material). No such case was pleaded by Hindware as well.

21. The reliance placed by Mr Gupta in the case of *Hindustan Unilever Limited v. Reckitt Benckiser India Limited* (*supra*) to contend that appellant was entitled to compensatory damages, is misplaced. In that case, the plaintiff (Reckitt Benckiser India Limited) had sought damages to the extent of ₹20,00,050/- for disparagement, denigration and tarnishment of goodwill and its reputation. There was evidence on record that the appellant (Hindustan Unilever Limited) had spent ₹2.5 crores on advertisement in a single month (July 2007) for advertising its products. It had also been established that the advertisements were disparaging and therefore, would have adverse effect on the plaintiff's brand value. It was also admitted during the course of trial that the brand (Dettol), which was a subject matter of disparaging advertisements, was worth ₹200 crores. In the aforesaid circumstances, given the evidence led by the parties, the Division Bench found that the estimate of damages was not a reasonable estimate.

22. As noted above, in the present case, there are neither any effective pleadings nor any evidence to establish the loss suffered.

23. In view of the above, the appeal is, accordingly, dismissed. All pending applications are also disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**SEPTEMBER 6, 2022**

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[Click here to check corrigendum, if any](#)