



2025:DHC:2019



\$~16

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

+ CS(COMM) 485/2023 & I.A. 13215/2023, I.A. 13216/2023

BRIDGESTONE CORPORATIONPlaintiff

Through: Mr. Pravin Anand, Mr. Dhruv Anand,
Ms. Sampurnaa Sanyal, Ms. Nimrat
Singh, Advocates (M: 9870201041)

versus

DIVI AUTOMOTIVE AND PETROCHEM INDIA & ANR.

.....Defendants

Through: Mr. Abhishek Dev, Advocate (M:
8802121996)

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

ORDER
12.03.2025

%

MINI PUSHKARNA, J (ORAL)

1. The present suit has been filed for permanent injunction restraining the defendants from infringing upon the plaintiff's registered marks,



i.e.,

and

2. It is the case of the plaintiff that the defendants are engaged in the business of manufacturing and supplying of lubricant oil products, like engine oil, gear oil, etc.

3. Plaintiff contends that the defendants were found to be using the impugned marks on their products, i.e., lubricant oils, such as engine oil, gear oil, etc., with the following marks:



and




4. The plaintiff alleges that the defendants have blatantly copied the letter 'B', as registered in favour of the plaintiff. Table of comparison between the marks of the plaintiff and defendants, is reproduced as under:

PLAINTIFF'S TRADEMARK	DEFENDANTS' MARKS	INFRINGING
		 
		
		



5. Thus, it is the case of the plaintiff that in view of the manner of use by the defendants, any customer of average intelligence and imperfect recollection, who chances upon the defendants' mark, with  written in the same stylized fashion, is bound to get confused or at the least to believe the existence of an association between the defendants and the plaintiff. Thus, the present suit came to be filed.

6. *Vide* order dated 21st July, 2023, interim injunction was granted in favour of the plaintiff and against the defendants, in the following manner:

“xxx xxx xxx

17. Accordingly, till the next date of hearing, the defendants as well as all others acting on their behalf shall stand restrained from importing, manufacturing, bare housing, selling or offering for sale, advertising or directly or indirectly dealing, in any manner, in any goods including lubricants or services bearing trademarks which are either identical or deceptively similar to the plaintiff's registered trademarks



as well as any of the



trademarks registered in favour of the plaintiff and tabulated in para 3 supra.

xxx xxx xxx”

7. This Court notes that upon service of summons, defendants had put in appearance. However, no written statement has been filed on behalf of the defendants. Consequently, *vide* order dated 06th February, 2024, the right of the defendants to file written statement, was closed.

8. When the matter was listed for hearing on 21st February, 2025, learned counsel for the defendants made a statement that the defendants had not used the mark of the plaintiff or its variants. However, the said fact was disputed by learned counsel for the plaintiff, who drew the attention of this



Court to the result of the investigation, wherein, it has been recorded that large quantity of goods with the infringing mark, were found in the premises of the defendants.

9. This Court takes note of the report of the physical investigation which has been placed on record, relevant portions of which, are reproduced as under:

“xxx xxx xxx

iii. The Defendant No. 1 - Divi Automotive & Petrochem India and Indo-Birla Lubricants appears to be listed on a few e-commerce platforms/trade directories like IndiaMart, TradeIndia and JustDial under which products of the ‘Indo Birla Lubricant’ brand are being listed. These websites allows customers to place enquiries and orders can also be placed by potential customers. The listing of the Defendant No. 1 on TradeIndia reveals that the below infringing marks are used:





xxx xxx xxx

vi. The investigator visited the premises of the Defendants on 15th July, 2023 and notice the following infringing goods at the premises:

- 300 to 400 empty bottles/ buckets of 'INDO BIRLA' brand lubricants;
- 800 to 1000 pieces of 'INDO BIRLA' brand labels; and
- Around 100 pieces of outer box packaging material bearing the infringing 'INDO BIRLA'.

vii. The investigator also purchased 2 sample bottles of the INDO BIRLA lubricant for INR 250/-.

xxx xxx xxx”

(Emphasis Supplied)

10. Learned counsel for the plaintiff also relies upon the Local Commissioner Report dated 31st July, 2023, to submit that certain goods were also discovered at the time of execution of the local commission. The relevant extracts of the said Report are reproduced as under:

“xxx xxx xxx

4. That during the execution, the following material and goods with infringing marks were found:-

7.5 Ltr. Empty Bucket with description Tractor special engineer oil with identical specialised letter "B" and mark "Indo Birla" in black on part of letter "B" left top side and the rest all in red.

Colour copy of the image of the same is annexed and marked as ANNEXURE LC/3.

ii) One transparent big size plastic bag with 2 inch tape across the bag in the middle with mark "Indo-Birla" styled and fashioned similar to one described in the Order of the Hon'ble Court.

Colour copy of the image of the same is annexed and marked as



ANNEXURE LC/4.

iii) A loose sticker to go on a 900 ml bottle with mark "Indo Birla" styled and fashioned similar to the one referred to in the Order dated 21.07.2023 of the Hon'ble Court.

Colour copy of the image of the same is annexed and marked as ANNEXURE LC/5.

iv) 5,900 ml lubricant empty new unused oil cans with embossed mark "Indo Birla" not styled or fashioned in an identical way to the above or as found in the Order of the Hon'ble Court except for the name "Birla" in "Indo-Birla".

Colour copy of the image of the same is annexed and marked as ANNEXURE LC/6.

xxx xxx xxx”

(Emphasis Supplied)

11. Accordingly, considering the fact that no written statement has been filed on behalf of the defendants, and no plausible or credible defense has been raised on behalf of the defendants, this Court proceeds under Order VIII Rule 10 of Code of Civil Procedure, 1908 (“CPC”).

12. It is noted that in the absence of any defense raised by the defendants, no useful purpose would be served in putting the matter to trial. Considering the infringing goods found by the learned Local Commissioner, and in the absence of any defense by the defendants, the submissions made in the plaint, as well as the contents of the documents filed by the plaintiff, stand admitted.

13. This Court in the case of ***Impresario Entertainment & Hospitality Pvt. Ltd. Versus Mocha Blu Coffee Shop, 2018 SCC OnLine Del 12219***, has held as follows:

“xxx xxx xxx

6. This Court while dealing with a similar application under Order VIII Rule 10 CPC in CS (OS) 873/2015 Samsung Electronics Company Limited v. Mohammed Zaheer Trading As Gujarat Mobiles has culled out the relevant law as under:—



10. *The Supreme Court in C.N. Ramappa Gowda v. C.C. Chandregowda, (2012) 5 SCC 265 has interpreted the Order VIII Rule 10 CPC as under:*

“25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.”

11. *A Coordinate Bench of this Court in Nirog Pharma Pvt. Ltd. v. Umesh Gupta, (2016) 235 DLT 354 has held as under:*

“11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be



cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.

xxx xxx xxx

28. *The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. **Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.***

12. *Another Coordinate Bench of this Court in Satya Infrastructure Ltd. v. Satya Infra & Estates Pvt. Ltd., 2013 III AD (Delhi) 176 has held as under:*

“4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record.....”

xxx xxx xxx”

(Emphasis Supplied)

14. In the facts and circumstances of the case, the plaintiff is also entitled to costs. The plaintiff has filed an affidavit pertaining to the costs. However, this Court notes the statement of learned counsel for the plaintiff that the plaintiff shall be satisfied if cost of ₹ 2,00,000/-, is imposed upon the defendants.

15. At this stage, this Court also notes the submission of learned counsel for the plaintiff that the plaintiff gives up the other prayers, except prayers



2025:DHC:2019



(a), (b) and (c) of the plaint and prayer for nominal costs.

16. Considering the aforesaid discussion, the plaintiff has established the infringing activity of the defendants.

17. Accordingly, the following directions are issued:

I. The suit is decreed in favour of the plaintiff and against the defendants, in terms of Para 52 (a), (b) and (c) of the plaint.

II. Plaintiff is held entitled to payment of costs of ₹ 2 Lacs, which shall be payable by the defendants within a period of six weeks, from today.

III. Plaintiff has the right to remit the costs received from the defendants to the plaintiff, who is stationed out of the country, in accordance with Reserve Bank of India (“RBI”) guidelines.

18. Let decree sheet be drawn up.

19. The present suit, along with pending applications, stands disposed of.

MINI PUSHKARNA, J

MARCH 12, 2025/au

Corrected & Released on:
26th March, 2025