



2025:DHC:1404



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

% *Date of decision: 27th February, 2025*

+ CS(COMM) 290/2023 and I.A. 36365/2024

THE LIBMAN COMPANY

.....Plaintiff

Through: Mr. Prithvi Gulati and Mr. Ritwik
Marwaha, Advocates

versus

SHANKARLAL TALASARAM
CHOUDHARY AND OTHERS

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

CS(COMM) 290/2023 and I.A. 36365/2024 (under Order XIII-A of the Code of Civil Procedure, 1908 seeking summary judgment)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from passing off of their goods as those of the plaintiff along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff is a privately held company established in 1896 in United States and originally started manufacturing wire-wound corn brooms. The plaintiff currently manufactures and sells a broad range of brooms, mops and other household cleaning supplies including brushes, sponges, scrubbers and cleaning tools under its trade marks LIBMAN and



(hereinafter 'LIBMAN marks').

3. The plaintiff's LIBMAN marks have been continuously and extensively used at least since 1971 in the United States. The LIBMAN marks have been registered in several countries including United States, Canada, Australia, Russia, China and Mexico, a list of which is given in paragraph no.11 of the plaint.

4. In the past five years, the plaintiff has made global sales of at least over USD 300 million per year and estimates global sales of USD 350 million in the fiscal year 2022-23 alone.

5. The plaintiff's products under the LIBMAN marks are widely available for sale in India on Amazon (www.amazon.in) and other third-party websites such as Ubuy (www.ubuy.co.in) since January 2015. The plaintiff has also applied for registration of the LIBMAN marks in India, which are currently pending, a list of which is given in paragraph no.12 of the plaint.

6. The plaintiff owns and operates its website under the domain name libman.com, which was registered on 26th December, 1995. The plaintiff also operates its profiles on social media platforms such as Facebook, Instagram and Twitter (now X) and has thousand of followers on these platforms.

7. The plaintiff has received several recognitions for its products and won awards for its product packaging, a few of which are mentioned in paragraphs no.8 and 9 of the plaint respectively.

8. The plaintiff's LIBMAN marks, by virtue of their continuous and



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uninterrupted use, have come to be associated exclusively with the plaintiff and none else.

9. The defendant no.2 is a director of the defendant no.3, Libman Technologies Private Limited, which is engaged in illegally manufacturing and selling brooms, mops, etc. (hereinafter ‘impugned products’) under the plaintiff’s LIBMAN marks.

10. The plaintiff, in October 2022, came across a listing of the impugned product on Flipkart under the name ‘Libman Magic Dry Bucket Mop’. The product packaging of the impugned product in the aforesaid listing also bore



the plaintiff’s logo . The plaintiff thereafter conducted an investigation to ascertain the nature of the defendants’ business, which revealed that the employees of the defendant no.3 use the plaintiff’s corporate name ‘THE LIBMAN COMPANY’ and the aforementioned logo on their visiting card, a copy of which is set out below:



11. The plaintiff’s investigator also purchased the impugned products against which an invoice was issued. The letterhead of the said invoice bore the plaintiff’s corporate name ‘THE LIBMAN COMPANY’ and the aforementioned logo in black and white. The plaintiff also placed an order



for the impugned product on Flipkart, the quality of which was significantly inferior to those of the plaintiff's products.

12. The plaintiff therefore issued a legal notice to the defendants no.1 to 3, but they chose not to reply to the same.

13. Aggrieved by the aforesaid, the plaintiff instituted the present suit seeking permanent injunction against the defendants.

PROCEEDINGS IN THE SUIT

14. Summons in the suit and notice in the application for interim injunction were issued to the defendants and were accepted on behalf of the defendants no.1 to 3 in Court on 10th May, 2023.

15. The statement made on behalf of the defendants no.1 to 3 that the said defendants do not wish to contest the present suit was recorded in the order dated 12th May, 2023. Accordingly, an *ad interim* injunction was granted in favour of the plaintiff and against the defendants no.1 to 3 on 30th May, 2023, which was made absolute on 31st July, 2023. On the same date, the defendant no.4 also submitted that it does not wish to contest the present suit. Therefore, the aforesaid interim injunction was extended to the defendant no.4 as well.

16. The matter was settled between the plaintiff and the defendants no.1 and 4 and accordingly, the suit was decreed against the aforesaid defendants on 22nd September, 2023 and 12th July, 2024 respectively. The matter, however, could not be settled between the plaintiff and the defendants no.2 and 3.

17. In view of the above, an application under Order XIII-A of the Code of Civil procedure, 1908 seeking a summary judgment against the defendants no.2 and 3 has been filed on behalf of the plaintiff.



18. To be noted, an application was filed by counsel for the defendants no.2 and 3 seeking discharge from representing the aforesaid defendants, which was allowed on 5th November, 2024. Accordingly, fresh notice in the plaintiff's application seeking a summary judgment was issued to the defendants no.2 and 3, who were served through email on 23rd January, 2025. However, no reply to this application has been filed by the defendants no.2 and 3. None appears on behalf of the defendants no.2 and 3 even today.

ANALYSIS AND FINDINGS

19. I have heard the submissions of the counsel for the plaintiff and perused the material on record.

20. The plaint has been duly verified and is also supported by the affidavit of the plaintiff's constituted attorney. In view of the statement made on behalf of the defendants no.2 and 3 on 12th May, 2023 that they do not wish to contest the present suit and the fact that no written statement has been filed on their behalf, all the averments made in the plaint are deemed to have been admitted. Further, since no affidavit of admission/ denial has been filed on behalf of the aforesaid defendants in respect of the documents filed with the plaint, the same are deemed to have been admitted in terms of Rule 3 of the Delhi High Court (Original Side) Rules, 2018.

21. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex-parte* evidence by filing an affidavit of examination-in-chief and the plaintiff is entitled to a summary judgment.

22. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it has been continuously and extensively offering its products under the LIBMAN marks in India since January 2015.

23. A bare perusal of the material on record shows that the defendants



no.2 and 3 have adopted and are using the identical mark LIBMAN in relation to the impugned products, which are also identical with the plaintiff's products under the LIBMAN marks. The dishonest adoption of the impugned marks by the aforesaid defendants is evident from the fact that while the corporate name of the defendant no.3 is Libman Technologies Private Limited, it is using the plaintiff's corporate name 'THE LIBMAN COMPANY' and an identical logo on its invoices and visiting cards.

24. The plaintiff, through its long and continuous use of the LIBMAN marks in India, significant sales made thereunder and promotion thereof on its website and social media platforms, has been able to establish its goodwill and reputation under the LIBMAN marks in India. Therefore, the defendants no.2 and 3 have been taking unfair advantage of the reputation and goodwill of the plaintiff under the LIBMAN marks and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's marks without any plausible explanation.

25. In view of the above, the plaintiff has established a clear case of passing off of the impugned products as those of the plaintiff.

26. At this stage, it is relevant to note that despite recording the statement that they do not wish to contest the suit, the defendants no.2 and 3 did not settle the matter with the plaintiff and stopped appearing before the Court. Further, neither a written statement nor any communication in respect of the plaintiff's allegations has been placed on record on behalf of the aforesaid defendants.

27. Since the aforesaid defendants have failed to take any requisite steps to contest the present suit despite having suffered an interim injunction, it is evident that the defendants no.2 and 3 have no defence to put forth on



merits.

28. In *Su-Kam Power Systems Ltd. v. Kunwer Sachdev*, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

29. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants no.2 and 3 have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the aforesaid defendants have not set up any defence, there is no compelling reason for the recording of oral evidence.

30. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiff and against the defendants no.2 and 3.



31. In view of the foregoing analysis, the present suit is decreed in terms of prayer clause contained in paragraph no.40(a) of the plaint. The said clause read as follows:

“a) An order for permanent injunction restraining the Defendants, their directors, sister concerns, partners, contract manufacturers, distributors, stockists, marketer, dealers, retailers, servants, agents and all others acting in active concert with them from manufacturing, marketing, offering for sale, selling, advertising, directly or indirectly dealing in products under the LIBMAN Marks, including the LIBMAN,



, or any other mark identical to or deceptively similar to the Plaintiff’s trademark LIBMAN Marks so as to result in an act of passing off its goods as those of the Plaintiff.”

32. Counsel for the plaintiff presses for the reliefs of damages and costs.

33. Insofar as the reliefs of damages and costs sought in prayer clause contained in paragraphs no.40(d) and 40(e) are concerned, reference may be made to the judgment in *M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr*, 2016 SCC OnLine Del 6717. The relevant observations are set out below:

“21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright.”

[Emphasis Supplied]



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34. In light of the foregoing analysis, this Court concludes that the conduct of the defendants no.2 and 3 not only warrants but also necessitates the imposition of both costs and aggravated damages. Thus, in addition to the decree passed in the terms already mentioned above and taking into account the entire facts and circumstances of this case, this Court also awards damages and costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendants no.2 and 3.

35. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

36. Let the decree sheet be drawn up accordingly.

37. All pending applications stand disposed of.

AMIT BANSAL, J

FEBRUARY 27, 2025

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