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

% *Date of decision: 28th February, 2025*

+ CS(COMM) 608/2023 & I.A. 16670/2023

ASHOK KUMAR GUPTA PROPRIETOR OF
JAI DURGA PLASTER INDUSTRIES & ANR.Plaintiffs

Through: Mr. Umesh Mishra and Mr. Amit
Kumar, Advocates.

versus

ARIF KHANDefendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (ORAL)

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright of the plaintiffs, passing off their goods and services as that of the plaintiffs and other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff no.1, Mr. Ashok Kumar Gupta is the sole proprietor of the firm namely, 'M/s Jai Durga Plaster Industries' is in the business of manufacturing, marketing and selling of Plaster of Paris (hereinafter 'P.O.P.') among other goods included in class 19.





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3. The plaintiff no. 2, 'Sakarni Plaster (India) Pvt. Ltd.', established in 2012 is a company incorporated under the laws of India, of which plaintiff no.1 is one of the directors.

4. The plaintiff no.1 assigned the work of marketing/trading of its products to plaintiff no.2 and as such the plaintiff no.1 became the manufacturer and the plaintiff no.2 its marketing/trading unit of P.O.P. under the brand name 'SAKARNI PLASTER'/ 'SAKARNI'.

5. The Plaintiff No. 2 is also doing the business of manufacturing of wall putty under the brand name 'SAKARNI WALL GUARD' and has also been doing business of white cement, emulsion and primer etc. under the said brand name.

6. The plaintiff no.1 adopted the mark 'SAKARNI'/ ' and applied for the registration of the mark '

7. The Plaintiff has been continuously and uninterruptedly using the said mark since 2004 for the said goods. The plaintiffs' table of registrations with respect to the same has been provided in paragraph 5 of the plaint.


8. The plaintiff no.1 is also original conceiver, adopter and user of the artistic work 'SAKARNI PLASTER'/ 'SAKARNI' and it has been continuously, extensively and openly using the aforesaid distinctive artistic work 'SAKARNI PLASTER'/ 'SAKARNI' having unique colour combination layout and lettering style in relation to the said goods since the year 2004. The aforesaid artistic work used by the plaintiff no.1 is an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957.



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9. The plaintiff no.1 is the registered proprietor of the original artistic work 'SAKARNI PLASTER/SAKARNI' and other artistic works under Copyrights Registration bearing no. A-79993/2007, L-31536/2008, L-31535/2008 & L31537/2008.

10. It is submitted that the plaintiff no.1/Mr. Ashok Kumar Gupta being the registered proprietor of the trademark/label/artistic work '' has assigned the said trademark/device having RTM no.1585964 in class 19 in favour of the plaintiff no.2. The plaintiff no.2 thereafter filed TM-24 before the Trade Marks Registry and accordingly, became the registered proprietor of the trademark/device claiming user since 19th July, 2007.

11. It is averred that the plaintiffs are one of the largest and most acclaimed manufacturer and trader of P.O.P. and other goods included in class 19 in India, with the presence in all over states and territories and currently employs over 5000 (Five thousand) employees nationwide, offering its customers unparalleled service quality and local knowledge to satisfy their supply chain requirements. Furthermore, the plaintiffs have a strong network of 10,000+ dealers countrywide and plaintiffs supply P.O.P. and other goods through its network of about hundred offices in India.


12. The plaintiffs have provided their annual sales figures from the financial years 2013-14 to 2022-23 in paragraph 19 of the plaint. It is noted that the sales amassed by plaintiff no.1 and plaintiff no.2 in the financial year 2022-23 were Rs. 3,29,02,546/- and Rs. 4,75,95,70,576/- respectively.


13. It is submitted that the plaintiffs have also made substantial investment in the publicity and advertisement of its trademark/label/artistic work. To attest to the same, the plaintiffs have provided their annual




advertisement expenses in paragraph 20 of the plaint. It is noted that the plaintiff no.2 spent Rs. 14,84,25,752/- in the financial year 2022-23 on publicity and advertisement.

14. In the first week of February, 2023, it came to the knowledge of the plaintiff that nearly identical products of the defendant falling in Class 19

bearing the mark , ' C SINO1KARNI ' . It is further asserted that the defendant had applied for registration of the aforementioned mark in class 19 on 31st March, 2022 on a proposed to be used basis.

15. The plaintiffs sent a cease and desist notice (hereinafter the 'notice') to the defendant dated 23rd February, 2023. The defendant replied to the notice on 2nd June, 2023 stating that the defendant's marks are dissimilar with the plaintiffs' marks 'SAKARNI'/  .

16. The plaintiffs filed the present suit seeking permanent injunction restraining the defendant from infringement of Trademark, Copyright, Passing Off of Trade Mark/Trade Dress, Dilution, Unfair Competition, Delivery Up, Rendition of Accounts, Damages, etc. in relation to their registered Trade Mark and Copyright of their product under the mark 'SAKARNI'/  .


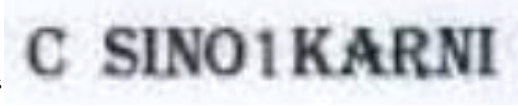
PROCEEDINGS IN THE SUIT

17. Summons in the present suit and notice in the application were issued on 1st September, 2023. The Registry was also directed to telephonically intimate the defendant of the order passed.

18. The plaintiff filed its affidavit of service dated 22nd September, 2023.



19. On 26th September, 2023, this Court granted an ex-parte ad-interim injunction against the defendant restraining the defendant from using the

mark  /  or any other mark which is deceptively similar to the plaintiff's 'SAKARNI/LABEL' trademark in respect of Wall Putty or any other goods which are allied or cognate thereto. The learned Judge in his Order also recorded that the defendant had been informed of the order passed, on 6th September, 2023 at 3:10PM on the mobile no. +91 8047547102.

20. The learned Joint Registrar has recorded in the Order dated 30th April, 2024 that the defendant had been served successfully on 20th September, 2023. Furthermore, the defendant failed to enter appearance or file any written statement, consequently, the right of the defendant to file the written statement was closed.

ANALYSIS AND FINDINGS

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

21. The right to file written statement of the defendant already stands closed vide order dated 30th April, 2024. None has entered appearance on behalf of the defendant till date.

22. Accordingly, the defendant is proceeded against ex-parte.

23. In **Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.**, 2013 (54) PTC 419 (Del) [CS(OS) 1213/2011, decided on 07.02.2013], a Co-ordinate Bench of this Court held as follows:


“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing



to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. 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. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

24. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.



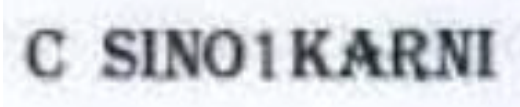
25. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that they are the registered proprietors of the trademarks ‘SAKARNI’/ ‘’.



26. The comparison of the marks used by the plaintiffs and the defendant is illustrated below:




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Plaintiff's mark	Defendant's mark
	 

27. On a perusal of the marks of the defendant, it is evident that the mark , read as 'SIKARNI' in English is phonetically similar to the plaintiffs' 'SAKARNI' / . The defendant herein has merely replaced 'A' with 'I' and added a microscopic "no.1" between 'सि' and 'करणी'. Considering the unique nature of the word 'SAKARNI', the defendant's use of the suffix 'KARNI' for identical products (wall putty and other allied goods in class 19), the competing marks are likely to cause confusion amongst a customer of average intelligence with imperfect recollection.

28. The plaintiffs have also filed several documents in support of their contentions including but not limited to sales invoices in support of prior user claim, CA Certificates establishing goodwill and reputation as well as several trade mark registrations for the plaintiffs' 'SAKARNI' / , in support of prior registrations of the plaintiff.

29. The plaintiffs are irrefutably the prior user and prior registrant of the



mark 'SAKARNI' as the same has been in use since 2007; whereas the defendant has applied for registration of the impugned Mark 'सिकरणी' in Class 19 on 31st March, 2022 on a proposed to be used basis. Thus, the plaintiff has made out a clear case of infringement of trade mark/ trade dress as well as Passing off.

30. Based on the discussion above, a clear case of infringement of trademark is made out. The defendant has taken unfair advantage of the reputation and goodwill of the plaintiffs' trademark/device and has also deceived the unwary consumers of their association with the plaintiffs by dishonestly adopting the plaintiffs' registered marks without any plausible explanation. Therefore, the plaintiffs have established a case of passing off as well.

31. At this stage, it may be relevant to note that the defendants did not appear before the Court, despite service of summons on 5th August, 2023. Further, no communication on behalf of the defendants have been placed on record in respect of the allegations of the plaintiffs in this suit.

32. Since the defendants have failed to take any requisite steps to contest the present suit, despite having suffered an ad interim injunction order, it is evident that they have no defence to put forth on merits.

RELIEF

33. A decree of permanent injunction is passed in favour of the plaintiff and against the defendants in terms of prayer clauses 48(a) and (b) of the plaint.

34. Insofar as the reliefs of damages and costs sought in prayer clauses 48(f) and (g) 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]

35. In light of the foregoing analysis, the Court concludes that the defendant’s conduct 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, taking into account the entire facts and circumstances presented in this case, the Court also awards damages and costs amounting to INR 1,00,000/- in favour of the plaintiff and against the defendants.

36. Let the decree sheet be drawn up.

37. All pending applications stand disposed of.

AMIT BANSAL, J

FEBRUARY 28, 2025

Vivek/-