

Delhi High Court

P.M. Diesels Ltd. vs Patel Field Marshal Industries on 29 September, 1995

Equivalent citations: 1996 (36) DRJ 662

Author: N Nandi

Bench: N Nandi

JUDGMENT N.G. Nandi, J.

(1) In the suit for perpetual injunction, seeking to restrain the defendant from using the trading style to read as Patel Field Marshal Agencies as well as Patel Field Marshal Industries containing the whole trade mark Field Marshal of the plaintiff for marketing their goods of the same kind and description as those of the plaintiffs and for rendition of accounts of profit earned by the defendants, the plaintiff by this Ia seeks to restrain the defendant from using logo Pfma and Pfmi which may be identical and/or deceptively similar to the registered trade mark of the plaintiff and from using and/or trading under the name and style to read as "PATEL Field Marshal AGENCIES" and "PATEL Field Marshal INDUSTRIES" pending hearing and disposal of the suit.

(2) By order dated 30.6.1989, the defendants have been restrained from adopting the plaintiff's registered trade mark "FIELD MARSHAL" as the trading mark for their proposed company. The defendant filed reply to the Ia and resisted the claim of the plaintiff for the grant of ad interim injunction.

(3) I would like to deal with two submissions advanced by the defendant, the acceptance, if any, of any one, pale the merits of the case, into insignificance.

(4) One of the arguments advanced on behalf of the defendant is that the value of the suit for the purpose of court fee and jurisdiction in respect of relief (i), (ii), (iii), (iv) and (v) is fixed at RS.200.00 each and court fee of RS.20.00 on each relief, is paid thereon; that the value of the suit for the purposes of court fee in respect of relief (vi) is fixed at RS.200.00 and court fee of RS.200.00 paid. Value for the purpose of jurisdiction under this relief is fixed at RS.5,01,000.00. It is further contended by Mr. Makhija, counsel for the defendant, that the valuation can be RS.1000.00 only not more or less and that this High Court will not have jurisdiction on its original side to try and entertain this suit but the jurisdiction would be with the District Court. In this regard, reliance has been placed in the decision rendered in S.No. 1294/94 and S.No. 730/94 by the learned Single Judge of this court, to which, I will come a little later. The submission in this regard by Mr. Aggarwal, counsel for the plaintiff, is, that in view of the order dated 23.9.93 in IAs 1145-46/92, the suit valuation in the plaint will not come in the way of the plaintiff in this Ia and that the question of valuation is conclusively decided.

(5) In the suit, the plaintiff has been alleging the infringement by the defendant of the plaintiff's registered trade mark "FIELD MARSHAL" used for the business of manufacturing, marketing and exporting of diesel oil engine and parts thereof, centrifugal pumps and electric motors and parts thereof, etc. In relief (i), the plaintiff has been seeking perpetual injunction restraining the defendant from using the plaintiff's logo Pfma and Pfmi and Marshal or using any other trademark, identical and/or deceptively similar to the plaintiff's registered trade mark Field MARSHAL. In relief

(ii), the plaintiff seeks perpetual injunction restraining the defendant from using the trading style to read as Patel Field Marshal Agencies as well as Patel Field Marshal Industries containing the whole trade mark Field Marshal of the plaintiff for marketing their goods of the same kind and description as those of the plaintiffs. Relief (iii) is for perpetual injunction restraining the defendants from passing off their goods of the same kind and description, as those of the plaintiffs, under the trade mark and logo Pfma and Pfmi and Marshal and Field Marshal and/or under any other trade mark which may be identical and/or deceptively similar to the plaintiffs trade mark Field MARSHAL. Relief (iv) and (v) which are for perpetual injunction and for delivery of the dies, blocks, lables, cartons, stickers, etc. and other material and relief (vi) is for rendition of accounts of profits earned by the defendants from the sale of the said goods under the infringing trade mark Marshal and logo Pfma and PFMI. The aforesaid reliefs have been valued as pointed out above.

(6) In the decision rendered, by the Single Judge, in Suit No. 1294/94 and 730/94 the learned Single Judge of this court considered the question of court fees and valuation (for the purpose of court fee and jurisdiction). Suit No.730/94 was a suit seeking relief of perpetual injunction, and rendition of accounts, complaining of infringement of plaintiffs copy right. Suit No. 1294/94 was a suit complaining of infringement of registered trade marks infringement of copy right and passing off. Considering the provisions contained in Sections 8 and 9 of the Suit Valuation Act, Section 7(iv)(f) of the Court Fee Act and Rules 3 and 4 of the High Court of Lahore (applicable to this High Court) it was held that the relief for account of profits sought for by the plaintiffs in the two suits, has to be valued at RS.200.00 and RS.1000.00 respectively for the purpose of court fee and jurisdiction in accordance with Rule 3 of the Rules under Section 9 of the Suits Valuation Act and the plaintiffs of both the suits were accordingly directed to move appropriate application seeking amendment in the valuation, court fees and jurisdiction clauses of the plaint.

(7) It has been the contention on behalf of the plaintiff that the order dated 23.9.93 conclusively decides the question of valuation for the purpose of court fee and jurisdiction. The said order reads : "ON the question of valuation for the purpose of court fee and jurisdiction, find that the reliefs NO.1 to 6 have been valued at RS.200.00 each and court fee of RS.20.00 on each ground has been paid. Therefore, I do not find any deficiency in the court fee on the face of the plaint. The only infirmity pointed out by counsel for the defendants is that the suit should have been valued at RS.5,01,200.00 instead of RS.2,00,000.00 . This is only an arithmetical error, which may be allowed by the court to be corrected at any stage. I, accordingly, allow counsel for the plaintiff to correct this on the plaint today itself under his signatures. Let the application for injunction be set down for hearing on 26TH October, 1993."

IT will be seen that the above order does not deal with the .question of valuation for for the purpose of court fee and jurisdiction exceeding RS.1000.00 . By the above order all that has been said is that there is no deficiency in the court fee on the face of the plaint and the court fee paid for relief (i) to (vi), valued at Rs. 200.00 each and the payment of court fee of RS.20.00 on each ground. The question posed here, relying on the judgment (supra) is whether there could be valuation more or less than RS.200.00 and RS.1000.00 for the reliefs claimed in the suit respectively? In my opinion, the order dated 23.9.1993 can not assist the plaintiff in contending that the question of suit valuation for the purpose of court fee and jurisdiction can not be agitated by the defendant.

IT may be seen that if the suit is required to be valued at RS.200.00 and RS.1000.00 respectively for the reliefs claimed in the suit, as held by the Single Judge in the judgment (supra), then the jurisdiction to try and entertain the suit would be with the District Judge, Delhi and this aspect of the matter does not seem to have been considered while passing the order dated 29.9.1993.

(8) It is observed by the Single Judge that "Section 106 of Trade & Merchandise Act provides relief amongst others of either damages or account of profit being allowed to the plaintiff at its behalf in a suit for infringement or for passing off and Section 55 of the Copy Right Act provides for relief amongst others of damages or accounts same as is conferred by law for the infringement of a right being allowed by the Act all such suits would be governed by Rule 3 and the plaintiff has no other option but to value the suit for the relief of accounts at RS.200.00 for the purposes of court fee and at RS.1000.00 for the purposes of jurisdiction. Valuation Can be neither less nor more either for the court fee or for jurisdiction".

(9) In my opinion, the present suit being for perpetual injunction, alleging infringement of plaintiffs registered trade mark and for the perpetual injunction, as pointed out above, and for the rendition of accounts, for the purpose of court fees, the suit has to be valued at RS.200.00 and for the purpose of jurisdiction at RS.1000.00 . Following the principle laid down by the learned Single Judge of this Court in the judgment (supra) the present case, in my opinion, is covered by the principle laid down.

(10) The next submission on behalf of the defendant is that this court has no territorial jurisdiction to try and entertain this suit as the plaintiff as well as the defendant have been residing at Rajkot and have been ordinarily working for gain at Rajkot and that there is no sale by the defendant within the territorial jurisdiction of this court and on this account also, the relief of injunction be refused. It has been submitted on behalf of the plaintiff that in view of the order passed in Ia 11146/93 dated 9.7.93, the question of .territorial jurisdiction can not be agitated over again and this court has jurisdiction to try and entertain the suit. It is further submitted that the plaintiff can file suit wherever sale is effected by the defendant; that considering Section 62(2) of the Copyright Act, this court has jurisdiction; that the defendant has sold the goods in Delhi infringing the plaintiffs copyright and trade mark; as the plaintiff applied for registration for the entire India, he can file suit where-ever the plaintiffs trade mark is infringed.

(11) It need hardly be said that while deciding the application under Order of the Rules 1 & 2 Civil Procedure Code the court has also to consider prima-facie whether the court has jurisdiction to try and entertain the suit. I am unable to agree with the submission as vance on behalf of the plaintiff that in view of the order dated 9.7.93, the question of jurisdiction cannot be agitated even for the purpose of deciding application under Order 39 Rule 1 & 2 CPC. In the order dated 9.7.93 in Ia 11145-46/92, this court has observed that "the question of jurisdiction has already been raised in the written statement and will have to be decided on merits. No action on these IAs is called for and the same are dismissed". By Ia 11145/92 the defendants prayed for a direction to the plaintiff to file/produce all the original documents, as per the list of documents filed by the plaintiff and the consequential order. Ia 11146/92 is under Order 7 Rule 10 Cpc whereby the defendants prayed fore the return of the plaint, contending that this court does not have any jurisdiction to try and entertain the present suit. In my opinion, looking to the prayer claimed in the above said IAs, the order dated

9.7.93 can not come in the way of the defendants contending want of territorial jurisdiction in this court for the purpose of deciding application under Order 39 Rules 1-2 CPC. Even if the defendants had prayed for hearing issue of territorial jurisdiction as preliminary issue and the same refused to be heard as preliminary issue by the court, the same can not come in the way of the court prima-facie deciding whether the court has territorial jurisdiction or not for the purpose of Order 39 Rules 1 and 2 Cpc (12) It need hardly be said that the jurisdiction of the court has to be gathered prima facie from the averments made in the plaint. In the instant case, plaintiff and the defendants, both have been residing and working for gain and ordinarily doing business at Rajkot in Gujarat.

(13) SUB-SECTION (2) of Section 62 of the Copyright Act which deals with the jurisdiction of court for the purposes of filing action under the said Act is an exception to the provision to be found in Section 20 Civil Procedure Code which deals with the jurisdiction to institute the suit and the provisions contained in subsection (1) of Section 62 of the said Act has the over-riding effect over the provisions contained in Section 20 Civil Procedure Code to the limited extent that the suit has to be instituted only in a District Court. Under SUBSEC.(2) of SEC.62 of the Act, it is the District Court within whose jurisdiction, the plaintiff voluntarily resides or carries on business or personally works for gain will have the jurisdiction. In the plaint, it is not averred that the plaintiff voluntarily resides or carries on business or personally works for gain within the territorial jurisdiction of this court. In my opinion, Section 62 of the Act can render no assistance to the plaintiff in this regard.

PARA29 of the plaint deals with the cause of action for the present suit. According to the averments in para 29, the cause of action first arose in the year 1982 WHEN defendant NO.1 applied for registration of trade mark Marshal and the plaintiffs served a notice on defendant NO.1 dated 23.7.82; that the cause of action again arose when the plaintiffs came to know from the Trade Marks Journal No. 823 dated 16.8.93 that defendant NO.2 had applied for registration of the trade mark (logo) Pfma in respect of the goods of the same type and the plaintiff Filed notice of opposition against the same; that cause of action then arose on 30.4.88 when the applications of defendant NO.2 WERE refused for registration by the Registrar of Trade Marks Bombay and the cause of action lastly arose in the month of June, 1989 when the plaintiff came to know from the Trade Mark Journal that the partners of defendant were going to form a company under the Companies Act with the proposed name of the company containing the word Field Marshal in their trading style. In para 30, it is averred that the goods of the parties bearing the impugned trade mark are also sold in U.T. of Delhi.

THE defendants in their written statement have disputed the jurisdiction of this court to try and entertain the suit also denying the sale of goods bearing the impugned trade mark within the jurisdiction of this court, It is pertinent to note that in the plaint, no further facts or particulars are given to confer this court with the territorial jurisdiction over the suit. Only a bald assertion has been made in Para 30 regarding the sale of goods bearing the impugned trade mark by the defendant in the city of Delhi. Order 7 Rule 1 Civil Procedure Code requires the plaintiff to state in the plaint particulars as to the facts showing that the court has jurisdiction. Order 6 Rule 2 and 4 Civil Procedure Code require all material facts and particulars with dates and items, if necessary, to be stated in the pleadings. It has been held by the Full Bench of Patna High Court in the decision reported in Air 1989 Patna page 294 in the case of Kula Devi Versus Mangtu Maharaj And

OTHERS.that "unless a plaintiff pleads in his plaint the facts, which would make the suit prima-facie entertainable by the courts, it can not be said that the plaintiff has discharged the duty" put upon him by Order 7 Rule 1(F) of the Code.

IT is not averred in the plaint that the plaintiff is having any agent or office or branch office or shop of its own in Delhi, nor in the plaint any sale instance has been averred by the plaintiff suggesting the infringement of the plaintiffs mark within the territorial jurisdiction of this court nor it is averred that defendant has any shop or branch or office in Delhi.

AFTER the hearing of this Ia was concluded and the order reserved, the plaintiff along with Ia 7482/95 produced certain bills suggesting the sale of the plaintiffs diesel oil engine in Delhi. Out of these bills, two bills are dated 19.12.70, one each dated 21.1.71, 20.9.72, 24.10.72, 10.10.73, 20.11.74, 16.12.74, 2 bills dated 7.4.75, one each dated 12.7.80, 5.10.80, 24.2.81. All these bills are issued by J. Chandrakant & Co. of Rajkot purporting to be the sole selling agent of "FIELD Marshal Diesel Oil ENGINE" and all these bills are issued suggesting purchase of field marshal diesel oil engines by Popular Machinery Stores, 2447, behind G.B. Road, Delhi. By these bills, it is sought to be convened that the plaintiff has sale in Delhi. The sole sales agent J. Chandrakant & Co. is of Rajkot and the sale has been effected to a purchaser in Delhi. Even taking these bills at the best, it can not be said even prima-facie that the defendant committed the infringement of the plaintiffs trade mark by effecting sale of diesel oil engine within the territorial jurisdiction of this court. The infringement, if any, of the trade mark and the trading style of the plaintiff could be only if the sale is by the defendant within the territorial jurisdiction of this court. It appears that purchaser Popular Machinery Stores, Delhi is purchasing the Field Marshal Diesel Oil Engine from J. Chandrakant & Co. the sole sales agent of plaintiff at, Rajkot. In my opinion, these bills can not suggest the sale of diesel oil engines by the defendant infringing the plaintiffs mark and trading style within the territorial jurisdiction of this court, and therefore, this Court will have the territorial jurisdiction, prima facie.

(14) Since the plaintiff has not been able to prima facie show the territorial jurisdiction of this court and also the pecuniary jurisdiction of this court for the reasons aforesated, the plaintiff, irrespective of the merits or otherwise of his claim, would not be entitled to the relief of injunction. Since it is prima facie found that this court has no jurisdiction, pecuniary as well as territorial, for the reasons aforesated, I do not propose to refer to the merits or otherwise of the plaintiffs claim for the grant of injunction since the same would pale into insignificance.

(15) In the result, Ia No. 4465/89 fails and the order dated 30.6.89 vacated. Ordered accordingly.

(16) I wish it to be clear that the observations with regard to the want of pecuniary and territorial jurisdiction of this court are restricted only for the purpose of deciding this Ia under Order 39 Rules 1 & 2 Civil Procedure Code only and for no other purpose.

(17) Ia stands disposed of accordingly.