

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision: 30.04.2014

+ CM(M) 436/2014 & CM Nos.7540-41/2014

RAJDOOT CABLES PVT LIMITED Petitioner

Through: Mr. Mohan Vidhani and Mr. Rahul
Vidhani, Advs.

versus

RAJDOOT APPLIANCES & SWITCHGEAR & ANR...Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. The present petition challenges the order dated 11.2.2014 passed by the learned ADJ, Delhi whereby it allowed an amendment to be made to an issue framed by the Court but rejected the prayer for deletion of another issue framed.

2. The brief facts required for consideration are that: the petitioners herein (plaintiffs) filed an application under section 124 of the Trademarks Act, 1999 and an application for injunction under Order XXXIX rules 1 and 2 CPC against the respondents (defendants). Issues were framed by the Trial Court, an application was moved by the petitioner under Order XIV Rule 5 CPC praying that issue No. 8 required to be amended and that issue No, 6 was to be struck out altogether. The petitioner submitted that the Trial Court did not have the jurisdiction to entertain issue No.6. The issue read as follows:

“ Whether the plaintiff has used the mark “Rajdoot” for the products got registered under clauses 9, 11 and 17 other than wires and cables? OPP”

3. The application urged that issue No.6 ought to be deleted as it dealt with non-user and misuser and jurisdictionally such an issue is to be decided by the IPAB under the Trademarks Act and not by the Civil Court. However, the defendant argued before the Trial Court, that the plaintiff had not used the mark “ Rajdoot” for the product registered under clauses 9, 11 and 17 other than wires and cables. Such being the circumstances, they claimed to be prior users and also continue to have the right to use the mark.

4. The Trial Court while allowing amendment of issue No.8 declined to strike out issue No.6. It held that the Court was not required to see as to whether due to non- user or misuser, the trademark is liable to be cancelled because this falls under the domain of the appropriate statutory forum but the Court must see the effect of the same vis-à-vis the injunction application before it. On the above-mentioned reasoning, the Trial Court rejected the deletion of issue No.6.

5. The learned counsel for the petitioner submits that the Trial Court has no jurisdiction to decide the aforesaid issue since it falls under the jurisdiction of Intellectual Property Appellate Board (IPAB). Counsel also submits that the other appropriate authority having jurisdiction to entertain the matter concerning the issue is the Registrar of Trademarks and framing such an issue, the Trial Court has gone beyond the jurisdiction conferred on the Trial Court. It was submitted that when the Trial Court was aware of the existence of appropriate authorities (IPAB or the Registrar) the Court ought to have deleted the issue instead of passing an order otherwise.

6. The powers of the Court to frame issues are dealt with under Order XIX rule 1 of the Civil Procedure Code which clearly hold that courts shall frame issues in respect of a material proposition of fact or law being affirmed

by party and denied by the other party. Courts have held that issues are to be framed in respect of only those facts which are alleged by one party and denied or not admitted by other party. It is only on pleadings regarding the material facts which are denied by the defendant that issues can be framed. It is vital to note that an allegation of fact must either be denied specifically or by necessary implication or there should be a statement that the fact is not admitted. In ***Dwijendra v. Rajendra A* 1971 A&N 143**, the Court held that issues are framed for a right decision of the case with an object to pinpoint the real and substantial points of difference between the parties specifically and unambiguously emerging out of it. Thus it can be said that the Trial Court has a vital function of settling all necessary issues, whether of fact or law arising out of the pleadings. Furthermore, the Court is required to ascertain upon what material propositions of fact or law, the parties are at variance and shall thereupon proceed to frame and record issues. The object under Order XIV CPC is not to find out what evidence would be necessary. The question of relevance of evidence cannot be determined before issues have been framed. The Trial Judge would determine it at a later stage, if and when evidence is offered.

7. The learned counsel for the petitioner strongly contends the jurisdiction of the Trial Court in framing an issue that may be beyond the Courts' power to adjudicate. The question of Trial Courts' jurisdiction in framing issues is covered under Order XIV which holds that such an issue may be a pure question of law or a mixed question of law and fact and it will depend on the facts of each case whether of one or other category. In the present petition, the issue in question is a mixed question of fact and law which may decide the suit. In the case of ***Lakshmikant Shreekant (HUF) Jhunjhunwala v. M.N.***

Dastur & Company Pvt. Ltd., 71(1998) DLT 564 this Court held:

“Under Order XIV rule 1, CPC the Court is required to frame issues of facts or of law that necessarily and properly arise for determining the real controversy involved on the pleadings of the parties. Such issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. The Court would not frame an issue which does not arise on the pleadings nor need an issue be framed on a point of law which is perfectly clear. The Court is required to apply its mind and understand the facts before framing issues.”

8. The application filed by the petitioner/ plaintiff was a suit for injunction restraining the defendants from using the mark “Rajdoot”, meaning thereby that the question of jurisdiction is in relation to hearing the suit for injunction. If it is found that the Trial Court is not vested with the power to entertain a suit for injunction, then the petitioner is correct in wanting the issue to be struck off. What requires to be noted is that the Trial Court is framing issues for adjudicating the application filed under Order XXXIX Rules 1 and 2 of the Code. Such being the operative canvas of the Trial Court, it would not be going beyond its jurisdiction by framing an issue which the Court deems necessary for adjudicating the precise lis pending before it. The issue of validity of a trademark or the effect of its non-user in a proceeding under the Trademarks Act is for a different purpose and has different connotations. In the present case the petitioner/plaintiff, claiming to be the ownership of the trademark has sought an injunction against its alleged misuser by the respondent. If the issue is necessary for determination of the dispute it is to be framed otherwise the proceedings would be stilted.

9. The Trial Court has framed the issue which requires to be determined in order to ultimately dispose off the application. Insofar as the deletion of issue No.6 is concerned, this Court is of the view that the Trial Court conclusion to not strike off the same is a plausible view in law. It would be logical to hold that the Trial Court cannot decide the application for injunction should issue No.6 be struck out. To this effect, there is no error in decision of the Trial Court. The Supreme Court in ***Fiza Developers and Inter-Trade Pvt. Ltd v. AMCI (INDIA) Private Ltd. &Anr*** (2009) 17 SCC 796 held:

“ 23. Framing of issues is necessary only where different types of material propositions of fact and law are affirmed by one party and are denied by the other and it is therefore necessary for the court to identify the issues and specify the party on whom the burden to prove the same lies. When this exercise has already been done by the statute, there is no need for framing the issues.”

10. The aforementioned judgment dealt with scope of Civil Procedure Code applicable in the Arbitration and Conciliation Act wherein the Supreme Court clarified that the provisions of CPC can operate in adjudicating a dispute which is otherwise governed by another statute, so long as the Court does not adjudicate issues which go to the root of the dispute. When Courts traverse beyond the conferred jurisdiction, it would imply that the Court is taking away powers conferred on the appropriate authority that is vested with jurisdiction. However, this Court is of the view in the present petition such is not the case. The issue would not be determining whether the petitioner can rightly hold or claim to hold the trademark, as that would be an issue of a different proceeding under the Trademark Act, but to determine whether a case for grant of injunction is made out the Issue No.6 would be necessary.

11. The learned counsel for the petitioner relies on the following judgments:

- i. **Lumax Industries Limited v. Arvind Kumar Shah & Anr.**
CS (OS) 2058/ 2010
- ii. **Hardie Trading Ltd. & Anr v. Addisons Paint and Chemicals Ltd.** 2003(27) PTC 241 (SC)
- iii. **Merck KgaA &Anr v. Natco Pharma Limited & Anr.**
2012(52)PTC 292 (Bom)

12. However none of them advance his arguments on the lack of jurisdiction of the Trial Court. The facts of Lumax Industries (supra) are different from the facts of the present petition. It dealt with an application being filed praying for framing additional issues. It was held that framing such an issue would not be fruitful as the Court did not have jurisdiction to grant a relief in that suit. However in the present petition, the Trial Court considers issue No.6 to be vital is deciding the injunction application. As far as the other judgments cited by the learned counsel are concerned, neither of them deal with the jurisdiction of Civil Court in framing an issue of misuser and non-user of a trademark is deciding an injunction application. The judgments only concern with the consequence of cancellation of trademark as a result of non-user or misuse under the Trademarks Act.

13. The issue framed is not to determine the non-user or misuser of the mark but the effect of such non-user and misuser in relation to the injunction suit. The Civil Court can decide this issue and the Trial Court has not exceeded its jurisdiction by framing such an issue. The Supreme Court in ***Makhan Lal Bangal v. Manas Bhunia***(2001)2 SCC 652 observed as under:

*“19..... The evidence shall be confined to issues and the pleadings.
No evidence on controversies not covered by issues and the pleadings,*

shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

14. This Court is of the view that the view taken in the impugned order is plausible view in law and does not warrant the interference of this Court. The petition is without merit and it is accordingly dismissed.

NAJMI WAZIRI, J

APRIL 30, 2014