

**(2014) 10 DEL CK 0099**

**Delhi High Court**

**Case No:** CS (OS) No. 1753/2010

P. P. Jewellers Pvt. Ltd.

APPELLANT

Vs

Ashok Kumar Gupta

RESPONDENT

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**Date of Decision:** Oct. 1, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

**Citation:** (2015) 61 PTC 141

**Hon'ble Judges:** Manmohan Singh, J

**Bench:** Single Bench

**Advocate:** Manish K. Mishra, Advocate for the Appellant

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### **Judgement**

Manmohan Singh, J.

The plaintiff has filed a suit for permanent injunction restraining infringement of registered trade marks, for rendition of accounts of profits/damages, delivery up, dilution, acts of unfair competition etc. against the defendants. Case of the plaintiff

2. The plaintiff is a well-recognized manufacturer and merchant in India and across the world, inter alia of jewellery and precious metals and their alloys and goods, precious stones etc. under the trade mark "PP JEWELLERS". The plaintiff has been carrying on this well established international business for almost three decades since 1980 and has earned distinction of being the largest Jewellers Export House in India, winning consecutive 18th export awards and having annual turnover of Rs.805 crores per annum in the financial year 2010 and annual promotional expenses of Rs. 148 lacs for the financial year 2010.

3. The plaintiff is the registered proprietor of the trade marks PP and/or PP JEWELLERS and its logo in various classes under the provisions of the Trade Mark Act, 1999, the details of the registered trade marks are given in para 13 of the plaint.

4. The plaintiff has stated that the mark "PP" is a coined mark and was taken from the initials of two promoters and was named PP JEWELLERS which has been used as trade mark/trade name by the plaintiff since 1980. Since the year 1980, the plaintiff through its associate group companies has diversified its business in other fields of commercial activities such as real estate business in 1998 under the name of PP TOWERS and garment business in 2002 under the name and style of PP DESIGN ESTATE and thus, has acquired enviable goodwill and impeccable reputation amongst the public at large and also within trade and export circles.

5. The plaintiff has also registered its domain name as [www.pp.jewellers.org](http://www.pp.jewellers.org), [www.pp.af](http://www.pp.af) and [www.pptowers.com](http://www.pptowers.com) and for email enquiries the query can be sent to [pp@ppjewellers.org](mailto:pp@ppjewellers.org). Thus, the trade mark "PP" is the constant distinctive component of all manner of use of trade marks, trade names, domain names etc as "PP Jewellers", "PP Design Estate", "PP Towers", [www.pp.jewellers.org](http://www.pp.jewellers.org), [www.pp.af](http://www.pp.af), [www.pptowers.com](http://www.pptowers.com), [pp@ppjewellers.org](mailto:pp@ppjewellers.org).

6. The plaintiff has been protecting trade marks PP and/or PP JEWELLERS and its logo by filing various suits in different courts, the details of which are given in the para 16 of the plaint.

7. It is averred that by virtue of the high quality and standards of the jewellery/ornaments of the plaintiff, the trade mark "PP JEWELLERS" has acquired valuable recognition in India and internationally and purchasers identify and associate PP JEWELLERS with the plaintiff. Case against the defendants as alleged by the plaintiff.

8. The defendants are engaged in the business of manufacturing, trading and selling jewellery/ornaments under the impugned trade mark/trade name M/s PP JEWELLERS.

9. It is stated that in the 1st week of August, 2010 the plaintiff became aware of the existence of the defendants through their sales representatives and vide invoice dated 5th August, 2010 the plaintiff were alarmed to know that the defendants have adopted the trade mark "PP JEWELLERS" in relation to its goods i.e. jewellery/ornaments, which is identical to the trade mark and trade name "PP JEWELLERS" of the plaintiff. It is averred that the defendants were responsible for sale of jewellery/ornaments under the impugned trade mark/ trade name PP JEWELLERS to consumers at large in Kolkata and other parts of the country visiting the defendants' shop at Kolkata.

10. It is averred that the defendants have adopted the trade mark "PP JEWELLERS" so as to trade upon the reputation and goodwill accruing to the plaintiff and to earn undue profits. It has been contended that since the purchasing public and trade associates the trade name and trade mark "PP JEWELLERS" exclusively with the plaintiff, the defendants' use of an identical trade mark will invariably deceive the trade and public into a belief that the goods of the defendant are those of the

plaintiff and the defendant is associated with the plaintiff in some manner.

11. Aggrieved of the infringement and passing off by the defendants of the plaintiff's trade mark "PP JEWELLERS", the plaintiff filed the present suit.

12. The suit as well as the application under Order 39 Rules 1 and 2 CPC were listed before Court on 16th September, 2010 when an ex- parte order was passed restraining the defendants, its proprietor, partner or assignees in business, franchisees, licensee, distributors and agents from manufacturing, packaging, selling, offering for sale directly or indirectly the jewellery/ornaments or any other product under the trade mark "PP JEWELLERS".

13. Despite service of summons, neither of the defendants have appeared nor have they filed written statement and consequently the defendants were proceeded ex-parte vide order dated 19th November 2012.

14. In ex-parte evidence, the plaintiff filed affidavit dated 5th April, 2013 of Mrs. Harpreet Kaur, Company Secretary of the plaintiff company as Ex. PW1/X reiterating the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex. PW 1/11 in support of its case. The documents exhibited are as follows:

❖ A copy of the Board Resolution, Ex. PW1/1.

❖ A copy of Memorandum and Articles of Association of the plaintiff, Ex.PW1/2 (colly).

❖ A copy of Power of Attorney dated 23rd March, 2007, Ex.PW1/3 which has been de-exhibited and marked as "Mark E".

❖ Copies of various awards received by the plaintiff, Ex.PW1/4 (colly).

❖ Copies of promotional invoices pertaining to the trade marks PP JEWELLERS/PP/PP logo collectively marked as "Mark A" (colly).

❖ Copies of various promotional materials pertaining to the trade marks PP and/or PP JEWELLERS and PP logo collectively marked as "Mark B" (colly).

❖ Copies of the print media advertisements pertaining to the trade marks PP/PP JEWELLERS/PP logo marked as "Mark C" (colly).

❖ Point of sale materials of the plaintiff company pertaining to the trade mark PP JEWELLERS marked as "Mark D"(colly).

❖ Copies of the sales invoices/ retail invoices/ purchase voucher pertaining to the plaintiff collectively exhibited as Ex.PW1/5 (colly).

❖ Copy of the trade mark registration certificate no. 507596 along with its renewal/certificate for use in legal proceedings, Ex. PW1/6 (colly).

- ❖ Copy of the trade mark registration certificate no. 617996 along with its renewal certificate, Ex.PW1/7.
- ❖ Copy of the trade mark registration certificate no. 1197456 along with certificate for use in legal proceedings, Ex.PW1/8 (colly).
- ❖ Copies of the web pages of the plaintiff's website, Ex.PW1/9 (colly).
- ❖ Original invoice dated 5th August, 2010 of the defendants along with the packaging showing the details of the defendants, Ex.PW1/10 (colly).
- ❖ Affidavit of Mr. Pawan Gupta along with documents marked as Ex.PW1/11 (colly).

15. The ex-parte evidence was closed vide order dated 14th March, 2014. The evidence filed by the plaintiff has gone unrebutted as no cross-examination of the plaintiff's witness was carried out, therefore, the statements made by the plaintiff are accepted as correct deposition.

16. In view of abovementioned facts and circumstances, the plaintiff is entitled for a decree of permanent injunction and delivery up in terms of prayer clause 30 (a) and (b) of the plaint.

17. There are various judgments pertaining to the aspect of damages where this Court has granted previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature in various industries ranging from software to automotives, chocolates to pharmaceuticals, stationary to luxury brands, etc. Some of such decisions are as under:

(i) In [Time Incorporated Vs. Lokesh Srivastava and Another](#), while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that "time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. "

(ii) In [Microsoft Corporation Vs. Rajendra Pawar and Another](#), , this Court held that "Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the

court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective."

18. Keeping in view the infringement committed by the defendants, I am of the opinion that a sum of Rs.1,00,000/- can be reasonably awarded as punitive/exemplary damages as well as damages on account of loss of reputation and goodwill of the plaintiff. This prayer made in prayer clause (c) is granted to the above extent. The plaintiff is also awarded Rs.30,000/- as costs of the suit.

19. The decree be drawn accordingly. The suit is disposed of accordingly.