
(1999) 05 DEL CK 0106

Delhi High Court

Case No: Suit No. 2555 of 1995

Castrol Ltd. and Another

APPELLANT

Vs

Ashwini Verma and Another

RESPONDENT

Date of Decision: May 11, 1999

Citation: (1999) 80 DLT 114

Hon'ble Judges: Dr. M.K. Sharma, J

Bench: Single Bench

Advocate: Manmohan Singh, for the Appellant; None, for the Respondent

Judgement

M.K. Sharma, J.

This is a suit instituted by the plaintiff seeking for a decree for permanent injunction restraining the defendants, their partners, proprietors, servants, agents and all others acting on their behalf from infringing the trade mark and copy right of the plaintiff and also restraining the defendants, their servants and agents from passing off the goods of the defendants as that of the plaintiffs and also for damages.

2. The plaintiff No. 1 is a Company incorporated under the Law of England and plaintiff No. 2 is a Company incorporated under the Indian Companies Act.

3. plaintiff No. 1 and plaintiff No. 2 are carrying on the business of processing and marketing automotive and industrial lubricants and special products. The plaintiff is the registered proprietor in India of several trademarks including the trade mark "CASTROL" which is registered in respect of the industrial oils and greases, hydraulic fluids being oils, lubricants, fuels and illuminant. The plaintiffs have several other trade marks which are specifically stated in paragraph 10 of the plaint.

4. It is stated that the plaintiffs have been using all the aforesaid trade marks in the market for several years and the annual turnover of the goods sold by plaintiff No. 2 for the past 12 years is given in the plaint. It is also stated that the plaintiffs have been extensively advertising their products bearing the aforesaid trade mark "CASTROL GTX" and other trade marks. It is also stated that the defendants started

dealing with similar materials under the same trade mark "CASTROL" and accordingly the police of Vikas Puri, Police Station raided the premises of the defendants on the information that the counterfeiting goods are being filled and sold at the premises of the defendants and seized certain articles there from.

5. It is stated that the defendants have infringed the trade mark and copy right of the plaintiff by using the trade mark "CASTROL" and other trade marks of the plaintiff and using similar tin containers, plastic containers, polythene bags and cardboard boxes. It is also stated that the defendants were trying to pass off their goods as that of the plaintiff and/therefore, the plaintiff has suffered a damage to the tune of Rs. 5 lacs.

6. Defendants were served with summons. However, none appeared on their behalf and, Therefore, it was ordered that the suit would proceed ex parte as against the defendants.

7. At the request of the plaintiff, evidence was allowed to be led by filing an affidavit pursuant to which an affidavit has been filed by way of evidence.

8. Mr. Manoj Hariyantlal Thanawala, who is a Company Secretary and General Manager (Legal) of plaintiff No. 2 has filed the said affidavit by way of evidence. He has proved the statements made in the plaint and has categorically stated about the reputation and goodwill of the plaintiff in the general market. He has also stated that plaintiff No. 1 is the registered proprietor of various trade marks in India, of which the word "CASTROL" or a substantial and dominant part thereof forms a prefix. He has further stated that the trade mark "CASTROL" is also registered in India and that the said trade mark registration is valid and subsisting. He also stated that the defendants have infringed the trade mark and the copy right of the plaintiff and he has further stated that the defendants have been passing off their goods as that of the plaintiff and, Therefore, the plaintiff has sought for a decree for damages also.

9. There is no rebutting evidence to the aforesaid evidence led by the plaintiffs. A decree is, Therefore, granted in favor of the plaintiffs and against the defendants and a permanent injunction is issued restraining the defendants, their agents, servants and all other persons acting on their behalf from infringing the trade mark and copy right of the plaintiffs. The defendants are further restrained from passing off their goods as that of the plaintiffs.

10. On consideration of the facts and circumstances of the case, I am also of the considered opinion, that the plaintiff is entitled to a decree for damages which is assessed at Rs. 5 lacs on the basis of the evidence adduced. The suit accordingly stands decreed to the aforesaid extent with costs.