

HIGH COURT OF DELHI
Bench: Justice Dharmesh Sharma

Date of Decision: 07 November 2023

FAO 280/2023, CM APPL. 56965/2023

PATANJALI AYURVED LTD Appellant

versus

META PLATFORMS INC & ORS. Respondents

Legislation:

Order XLIII Rule 1, Order VII Rule 10, 10A, Section 106 Civil Procedure Code, 1908

**Section 2 (c) (xvii) of the Commercial Courts Act, 2015,
Section 2(w), Section 79 of the Information Technology Act, 2000,
Article 19(1)(a) of the Constitution of India**

**Subject: Appeal against the order of the Trial Court which returned the
plaint in a trademark infringement case involving the unauthorized use
of the 'PATANJALI' trademark in an advertisement, and related claims of
defamation and disparagement towards the brand's ambassadors.**

Headnotes:

Trademark Infringement – Unauthorized use of 'PATANJALI' trademark in an advertisement for men's undergarments – Allegations of the video being defamatory and disparaging to the brand ambassadors – Claim of revenue generation by the respondents from the video. [Para 3-5]

Jurisdiction – Dispute characterized as a commercial matter by the Trial Court, invoking the definition of 'Commercial Dispute' under the Commercial Courts Act, 2015 – Trial Court's decision to return the plaint for presentation in the appropriate court challenged. [Para 6-7, 10]

Intermediary Liability – Respondents' claim of intermediary status under the Information Technology Act, 2000 – Exemption from liability discussed with reference to Section 79 of the said Act. [Para 8]

Trial Court Procedure – Non-compliance with Order VII Rule 10A CPC by the Trial Court – Appeal against the Trial Court's decision to return the plaint without following due process. [Para 10-11]

Freedom of Speech – Respondents' defense of parody content under fundamental right to freedom of speech and expression – No financial gain claimed by the respondents from the video. [Para 12]

Decision – Appeal allowed – Trial Court directed to rehear the matter and decide issues after fresh hearing – Parties to appear for hearing on 01.12.2023. [Para 13]

Referred Cases: None.

Representing Advocates:

For the Appellant: Mr. Zoya Junaid, Mr. Pullit Gupta, Mr. Umang Verma, and Mr. A. Dutta, Advs.

For the Respondents: Ms. Mamta R. Jha, Mr. Rohan Ahuja, and Ms. Shruttima Ehera, Advs. For R-2/Google LLC; Mr. Deepak Gogia and Mr. Aadhar Nautiyal, Advs. For R3/X Corp.

J U D G M E N T

DHARMESH SHARMA, J.

1. The present order shall decide an appeal preferred by the appellant/plaintiff under Order XLIII Rule 1 r/w Section 106 of the Civil Procedure Code, 1908¹ as amended upto date, assailing the impugned order dated 28.07.2023 passed by the learned Trial Court whereby the plaint has been returned purportedly in exercise of powers under Order VII Rule 10 CPC.

2. Shorn of unnecessary details, appellant/plaintiff is stated to be a company incorporated under the Company Act, 1956 and it is stated to be engaged in manufacturing and distribution of various healthcare products throughout India as well as abroad using its registered trademark „PATANJALI“.

3. The grievance of the appellant/plaintiff is that a video has been uploaded by respondent no.4/defendant no.4 on the internet platforms management and controlled by respondent nos. 1 to 3 and 5. Suffice to state that the alleged video is an advertisement of mens“ undergarment, wherein appellant“s/plaintiff“s trademark alongwith pictures of its brand ambassadors and directors are shown used unauthorizedly.

4. It is further the grievance of the plaintiff/appellant that although there is no information available about respondent no.4/defendant no.4, who supposedly uploaded the said video, however, the video is being displayed on the internet platform of defendant no.5/Youtube LLC providing access to view the said video to internet users, and thereby is generating revenues for them.

¹ CPC

5. It is the case of the appellant/plaintiff that respondents/ defendants are violating its statutory and common law rights to use its registered trademark „PATANJALI“ exclusive to appellant/plaintiff. It would be apposite to extract the relevant paragraphs from the plaint which are as follows:-

"1.It is further stated that by allowing the Uploading/sharing/dissemination of the impugned videos/URLs/ Weblinks by the defendants is clearly in breach/violation of the statutory and common law rights of the plaintiff in its traden1a1 "PATANJALI" and is causing losses to the sales of the Plaintiff.....

13. c) .. : . . . It is stated that the trademark of the Plaintiff has been falsely associated with the offending product whereas the Plaintiff does not manufacture or offer for sale any kind of undergarments.....

13. i)..... Further, the said impugned videos at various links on the portal of the Defendant No.3 are displaying advertisements thereby showing that the Defendant no.3 is also generating and earning revenue through such advertisements.

*13.k) That moreover, the contents of the impugned videos/URLs/Weblinks are not only crass, vulgar, misleading and per se defamatory, but are aimed to prejudicially affect the reputation of the Plaintiff and further to stir a controversy in order to **gamer** publicity for the impugned videos*

13.1). The creators of the defamatory video has attempted to demean the Plaintiff and have illegally used the trademark and name of the Plaintiff being "PATANJALI" without any intimation or authorization to the Plaintiff.....

13.1) The false and defamatory videos have been created, uploaded and circulated with the sole intention of creating confusion in mind of general public and ridiculing the Plaintiff without any cause "

6. It appears that summons of the suit were issued to the respondents, except for respondent no. 4, who put their appearance and the offending video in question was played in the Trial Court on 19.10.2022. The learned Trial Court on considering the aforesaid averments as also the content of the offending video held as under:-

"6. A perusal of the above extract from the plaint and entirety of the plaint would show that plaintiff's are claiming damages for unauthorized user of their trademarks by defendants. Though the plaint is drafted in such a way that the use of the words trademark or its infringement have not been explicitly used. However this suit is basically filed to restrain the infringers from using the trademark of the plaintiff in this video and further to injunct them from promoting their own product i.e. their own channel where is posted under the trade name of the plaintiff.

7. Since the parody was made not for the sole purpose of criticism or defaming the plaintiff but in order to increase the viewership of the channel/web link where it was posted, hence it amounts to infringement of plaintiffs trademark. Further it is the own claim of plaintiff that it has been used by You Tube and Facebook for the purpose of generating revenue while the video was played and in order to increase their own viewership/TRPs, hence it amounts to infringement.

8. Further perusal of the video would show that the intent to make the video is not to defame the trademark of the plaintiff as such, as plaintiff is not into manufacturing of men's undergarment but advertisement/video has been made in a comic way so that it is viewed by the viewers to be enjoyed. Such videos would increase hits to the URL/ web link where they are posted. Needless to say, You Tube and Facebook also generate revenue as is claimed. Further as per the own case of plaintiff, the publishing and continuous viewership of such videos has adversely affected the reputation of the plaintiff and has caused business losses to them . Hence this advertisement/ video has been used by defendants to promote their own business on various website/ URLs/ web links/ YouTube/ Facebook. It is generating revenue for the defendants and is causing losses to the plaintiff. The hits are being generated as the video has name of Patanjali, in it and hence viewership is sought in the name of plaintiffs' trademark. Hence there is loss of reputation of plaintiff's trademark by the usage of this trademark in the present parody. This parody is commercial transactions by the defendants to promote their own business online.
9. In the garb of the present injunction suit, an injunction is sought thereby injuncting the defendants from playing the said trademark infringement video on their website/ portal/URL.
10. This being a suit for trade mark injunction/ infringement and seeking damages for infringement of their trademark beside other reliefs, it lies within the jurisdiction of Commercial Court. The present suit is not maintainable before this Court, hence it is hereby returned with the liberty to file in the Court of appropriate jurisdiction.
11. Original plaint and documents be returned to the plaintiff after obtaining certified copies on record.”
7. Learned counsel for the appellant has urged that the learned Trial Court has committed grave error in holding that the suit is of commercial nature and invited the attention of the Court to the definition of „Commercial Dispute“ as given in Section 2 (c) (xvii) of the Commercial Courts Act, 2015². It was vehemently urged that the appellant/plaintiff is aggrieved since the offending video is not only infringing their trademark, but also defamatory and disparaging in nature towards its brand ambassadors. Relief of compensation is also claimed for purported defamation.
8. *Per-contra*, learned counsel for the respondents nos. 1,2,3 and 5 urged that no proceedings can be brought against them as they are simply „intermediary“ in terms of the Section 2(w) of the Information and Technology Act, 2000³ and are exempted from any liability in terms Section 79 of the said Act.
9. Having heard learned counsels for the parties, at the outset the impugned order dated 28.07.2023 passed by the learned Trial court cannot be sustained.
10. It will be relevant to reproduce relevant provisions of CPC:-

² CC Act

³ IT Act

Order VII Rule 10 CPC

“10. Return of plaint.—(1) (Subject to the provisions of Rule 10A, the plaint shall) at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

*(Explanation.—*For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.)

(2) Procedure on returning plaint.—On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

Order VII Rule 10A CPC

“10-A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return. — (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court—

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under subrule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.”

11. On a careful perusal of the aforesaid provision in the C.P.C., reverting to the instant matter, it is but evident that the learned Trial Court did not follow the mandate provided under Order VII Rule 10A(1) of the CPC. Incidentally, it was urged by learned counsels for the parties from both sides that the

learned Trial Court never invited any query from them with regard to application, if any, of the CC Act and that the impugned order has been passed *suo motu* without hearing them on the above-mentioned ground. Since the amended Rule 10A to Order VII CPC was not followed, the impugned order cannot be sustained.

12. Learned counsel for the respondents also urged that there is no cause of action in favour of the appellant/plaintiff so as to institute any suit against them, which ought to be rejected under Order VII Rule 11(a) CPC. It was further urged that the offensive video is by all means a case of an innocuous parody which neither disparages the trademark of the appellant/plaintiff nor in any manner results in defamation. It is further urged that they are not making any financial gains as such and rather such video would otherwise be protected in exercise of fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution.

13. In view of the aforesaid discussions, the appeal is allowed and the learned Trial Court is directed to hear the parties afresh and decide the issues involved in the suit afresh after hearing the parties. The parties shall appear before the learned Trial Court for hearing on 01.12.2023. This order is without prejudice to the rights and contentions of the parties. Pending applications, if any, stand disposed of.

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