

SUPREME COURT OF INDIA

Midas Hygiene Industry

Vs.

Sudhir Bhatia

C.A.No.107 of 2002

(S.N.Variava and H. K. Sema JJ.)

22.01.2004

JUDGMENT

1. This Appeal is against the Judgment of the High Court dated 20th September, 2001.
2. Briefly stated the facts are as follows:
3. The Appellants filed a suit for passing off and for infringement of Copyright. In the suit an application for interim injunction under the provision of Order 39 Rules 1 & 2 of the Code of Civil Procedure was filed. A learned Single Judge of the High Court in Order dated 31st July, 2001 noted the following facts:

"(i) The defendant admittedly worked with the plaintiff prior to launching its business:

(ii) The plaintiff's prior and prominent user of the phrase Laxman Rekha as a part of the description of crazy lines as shown by the documents i.e. Advertisements at least of 1991 produced by the plaintiff showing prominent user of the phrase Laxman Rekha.

(iii) The defendant's non-denial of plaintiff's assertions in the notice dated 28.2.92 to the effect that the plaintiff used the phrase 'Laxman Rekha' on its product;

(iv) The plaintiff's assertion of the ownership of copyright in the packaging containing the words 'Laxman Rekha';

(v) The defendant has not chosen to give an explanation why he adopted 'Magic Laxman Rekha';

(vi) The defendant's averments in suit No.1967 of 1996 that the product Magic Laxman Rekha was used by its since 1992;

(vii) The defendant's statement in the application made to the Trade Mark Registry on 30.5.1996 for registration of trade mark 'Magic Laxman Rekha' claiming continuous user since 1992."

4. In view of these facts, the learned Single Judge granted an interim injunction preventing the Respondents, their servants, agents, distributors, stockists or any other person acting on their behalf from manufacturing, marketing, distributing or selling insecticides, pesticides as well as insect repellent under the name LAXMAN REKHA as well as packing design having similar colour scheme, get up, background and colour combination as that of Appellants Copyright.

5. The Respondents filed an Appeal which has been disposed of by the impugned Judgment. The Division Bench in spite of noting the factors which have been set out by the learned Single Judge, has vacated the injunction merely on the ground that there was delay and laches in filing the suit. It has held that such delay and laches disentitled grant of injunction. The Respondents were merely directed to file regular accounts of their sales in Court.

6. The law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest.

7. In this case it is an admitted position that the Respondents used to work with the Appellants. The advertisements which had been issued by the Appellants in the year 1991 show that at least from that year they were using the Mark LAXMAN REKHA on their products. Not only that but the Appellants have had a Copyright in the Marks KRAZY LINES and LAXMAN REKHA with effect from 19th of November, 1991. The Copyright had been renewed on 23rd of April, 1999. A glance at the cartons used by both the parties shows that in 1992 when the Respondent first started he used the mark LAXMAN REKHA in cartons containing colours red, white and blue. No explanation could be given as to why that carton had to be changed to look almost identical to that of the Appellant at a subsequent stage. This prima facie indicates the dishonest intention to pass off his goods as those of the Appellants.

8. In our view on the facts extracted by the learned Single Judge this was a fit case where an interim injunction should have been granted and should have been continued. In our view the Division Bench was entirely wrong in vacating that injunction merely on the ground of delay and laches. Under the circumstances, the impugned order is set aside and that of the trial court is restored. It is clarified that all observations made by the High Court and by this Court are prima facie and shall not be taken into consideration at the time of the trial of the suit.

9. The Appeal stands disposed of accordingly. No order as to the costs.