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Case Commentary: Arudra Engineers Private Limited V. Pathanjali Ayurved Limited

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Abstract

Arudra Engineers Private Limited v. Pathanjali Ayurved Limited is one of the recent cases on trademark infringement, the case came at a time of the global pandemic situation when many products affiliated to the pharmaceutical sector had come up. This is when Pathanjali had launched 'Coronil' and it faced a trademark infringement suit filed by Arudra Engineers, a company engaged in a completely different sector with respect to their industrial product also named 'Coronil'. Now the question that arises is that whether an intellectual property infringement occur when the goods belong to completely different sectors and are used for different purposes. This is exactly what the Madras High Court dealt with in the instant case. This paper provides a brief note on this interesting piece of jurisprudence. It provides the background of the case along with the brief facts and issues that were raised. It also provides the arguments that were advanced in the instant case from both sides of the appellant as well as the respondent. Then it gives the judgment and then the own critical analysis of the author with respect to this particular area of law and then followed by the conclusion.

Keywords: Trademark infringement, pharmaceutical sector, covid pandemic, public interest, due cause, elements of infringement, injunction, Section 15, 17, 29 of Trade Marks Act, 1999

INTRODUCTION

Background of the Case

The case of Arudra Engineers Private Limited v. Pathanjali Ayurved Limited is one of the many intellectual property infringement cases that were filed by pharmaceutical companies during the covid pandemic as many new medicinal drugs and vaccines were being produced all over the country and there was a need to protect the intellectual property rights so that there was no unfair advantage to any of the manufacturers and this was also important in order to avoid public confusion [1]. The plaintiff in this case, Arudra Chemicals had filed an application for interim relief for injunction against the defendant Pathanjali Ayurved Limited in the High Court of Madras for the infringement of the plaintiff's trademark 'Coronil-92B and Coronil-213 SPL' which was registered in 1993 and then was renewed and had protection until 2027. The single bench of the High Court of Madras passed an injunction order against the defendant and the defendant was restrained from using the registered trademark "Coronil" or any other deceptive variation for its pharmaceutical product till 30th July, 2020. This order was passed on 17th July, 2020 [2] which was challenged by the defendant in the instant case and the Division bench of the Madras High Court set aside the order of the Single judge bench and passed the judgment in favour of Pathanjali Ayurved and so the injunction order was set aside. The case delved into the law under Section 29 of the Trade Marks Act and specifically clause (4) of the said section which deals with infringement in case of dissimilar goods or services. Whether the protection can be granted when the goods or services belong to different classes of business [3].

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The law relating to infringement of trademark was looked into in detail and the trademark seeking protection needs to have a reputation in India. The case also delved into the question of protecting separate parts of a registered trademark as to whether protection can be claimed over different parts of the composite whole of the registered trademark. With respect to this, Section 15 and 17 of the Trade Marks Act, 1999 were looked into by the court. This case came at a time of the pandemic when the country was in a state of socio-economic crisis and so the need of the drug for the Indian population was also discussed by the court. The court stated that the defendant has a due cause i.e., to make the drug available to the people and this cause is not detrimental to the interests of the plaintiff [4].

Facts of the Case

The appellant in this case is the defendant who has challenged the Madras High Court order, and the plaintiff, Arudra Chemicals is the respondent in this case. M/s Arudra Engineers Private Limited is a private limited company registered under the Companies Act, 1956 and is engaged in the business of chemical cleaning and is also involved in the manufacturing of other chemical products for different industrial factories in India and is also involved in export to other countries such as Sri Lanka, Singapore, etc. The company has a registered trademark 'Coronil-213 SPL' and 'Coronil-92B' which was registered in the year 1993 and then further renewed and gained validity until 2027. This product of the company is used for preventing corrosion and is hence named CORONIL. The company has been in business for the past 20 years and deals with many big companies operating in India such as BHEL, Indian Oil Corporation, Reliance Industries, etc. The defendant, M/s Patanjali Ayurved Limited and Divya Yog Mandir Trust, manufactured a medicine named Coronil claiming to cure the corona virus. The government asked the company to market their product as an immunity booster and not a cure for the virus [5]. The plaintiff sued the defendant for infringement of their registered trademark coronil and an interim injunction order was granted by the Madras High Court on 17th July, 2020 which restrained the defendant from using the registered trademark of the plaintiff. This order was made absolute by a single judge bench of Justice C.V. Karthikeyan and costs were also imposed which were to be jointly paid by the defendants and this judgment of the single judge bench has been challenged by the defendants in the instant case [6].

ISSUE

The main issue discussed in the case was whether the defendant has infringed the registered trademark of the plaintiff. The main area of law that was looked into by the court was regarding the trademark infringement of dissimilar goods, goods that pertain to different industries and the parties are engaged in different businesses. The scope for infribgement in such cases was discussed by the court in the instant case. The main issues raised were:

- Is the plaintiff's trademark protected under Section 29(4) of the Trade Marks Act, 1999?
- Whether the defendant has infringed the plaintiff's trademark "Coronil" registered under the Trade Marks Act, 1999?

Arguments Advanced

The arguments advanced from both sides were as follows:

Appellant/ Defendant

- The defendants claimed that the products that both the companies deal in are completely different from each other. Even the nature of business and the manner of operation is different and hence the goods are dis-similar.
- The defendant asserted that the pharmaceutical tablets coronil produced by the defendant can in no way be compared to the plaintiff's industrial product coronil that is used by the chemical factories to prevent corrosion of the industrial machinery and sanitise their industrial materials.
- The classes of products are different. The industrial product of the plaintiff falls under Class I and the defendant's pharmaceutical product falls under Class V.

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- The defendant also claimed that under Section 29, it is required that the product should have a reputation in India. The defendant said that the plaintiff's product is not well recognized and there is no evidence from the side of the plaintiff to support their claim of recognition.
- Then the attention was drawn towards the naming of drugs in the pharmaceutical industry. The defendant claimed that it is common to name a pharmaceutical drug after the treatment it provides or what it is used for. The defendant's product coronil is used for preventing the corona virus and hence the name coronil [7].
- There was no intention to cause harm to the plaintiff's product as there are two different categories of products involved and there is no intersection of business as such.
- Also, the plaintiff has only registered the composite mark under Section 17 and hence cannot claim trademark over the word 'coronil.' There is no separate registration of the word coronil as required by the section
- Hence, it was prayed by the defendant to set aside the order of the Madras High Court which had issued an interim injunction against the defendant from using the trademark 'Coronil' for its product.

Respondent/ Plaintiff

- The plaintiff claimed that their trademark is protected under Section 29 (4) of the Trade Marks Act, 1999 and the company has a reputation in India. The reputation in India is a condition that is imposed by Section 29(4) and the plaintiff company claimed that it fulfils this condition as it has been operating in India for the past 20 years and is also exporting to various countries abroad.
- The use of the trademark by the defendant harms the reputation of the plaintiff company and is detrimental to its reputation. Also, it has been used without any due cause.
- Hence, the defendant has infringed the trademark under Section 29(4)(b) of the act which deals with infringement pertaining to dissimilar goods.
- The use by the defendant also does not fall within the purview of Section 30 of the Act which puts limits on infringement as the use is not in accordance with honest business practices. The plaintiff claimed that the defendant company has been taking unfair business advantage of the covid situation in the country and marketing their product as a cure when in reality it is just an immunity booster. The defendant is just taking advantage of the economic and mental hardships that are being faced by the people in the country owing to the pandemic.
- Also, the plaintiff claimed that by using the registered trademark and infringing it, the defendant has caused harm to the plaintiff's worth, reputation and goodwill in the market which it has established over the years.
- Also, the plaintiff argued that all the three requirements for the grant of temporary injunction are fulfilled in the instant case. There is a prima facie case of infringement, the balance of convenience is in their favour and if the injunction is not granted, then irreparable injury will be caused to the plaintiff and hence the judgment of the single judge bench should by upheld by the court.

Judgment

The judgment in the instant case was delivered by a division bench of the Madras High Court comprising of Justice R. Subbiah and Justice C. Saravanan. The judgment came in the favour of the defendant and it was held that the use of the word 'coronil' by the defendant for its pharmaceutical drug does not amount to infringement under Section 29 of the Trade Marks Act, 1999. The previous judgment of the Single judge bench was set aside by this Division bench [8]. It was held by the court that even though the trademark is registered by the plaintiff, it cannot claim trademark over the composite elements separately as per Section 17 of the act. If this is to be done, then a separate application needs to be filed for every separate element per se. In the instant case, the composite trademark of the plaintiff is protected, i.e., Coronil-92B and Coronil-213 SPL' and not the separate element i.e., 'Coronil'. Section 15 specifically states that in case a trademark is required for all elements separately, then separate applications need to be filed for each of those elements and parts [9]. In this case, no such application was filed and the trademark was not protected in accordance with Section 15, it was protected as a whole in accordance with Section 17 of the act and hence was protected as a whole, not in parts. Hence, the infringement cannot be claimed over the parts that were not protected separately.

The court relied on the judgment of Rhizome Distillers Pvt. Ltd. v. UOI [10] wherein the Madras High Court held that separate parts cannot be protected for the matter of infringement. The word ‘imperial’ was said to be a word used in common parlance and hence no exclusive right can be claimed over the word separately and that compositions are to be compared by looking at them as a whole and should not be split in parts or dissected.

Also, the plaintiff and defendant are engaged in different businesses and hence there is no matter of infringement as such. The rights are not violated and the economic interests are also protected. The manner and process of conducting business operations is also different and hence no injury is caused to the plaintiff [11]. There is a due cause with the defendant to use the trademark as the country is suffering from a global pandemic and the drug is beneficial for boosting the immunity of the people in order to prevent the virus from spreading and this cause is also not detrimental to the plaintiff’s interests as the businesses that they engage in are different and hence, the consumer base is also different. So, the due cause argument of the plaintiff under Section 29(4)(c) cannot be accepted.

The court held that the plaintiff has failed to establish a prima facie case of infringement and hence injunction cannot be granted in this case. There is no balance of convenience in its favour and hence the question of irreparable injury does not arise. Hence, no infringement has occurred under Section 29 (4) and no injunction can be grated to the plaintiff. The judgment of the Single bench is liable to be set aside.

Analysis

In the instant case, the court set aside the judgment of the Single judge bench. The bench had failed to look into the intricacies of the case in hand. The injunction was granted to the defendant on the basis that both the words used are similar and identical and hence the trademark has been infringed. Also, the plaintiff has a reputation in India as it carries out significant business operations in India and abroad [12]. The court held that there is a prima facie case of infringement since a significant portion of the mark has been used by the defendant and this would be detrimental to the plaintiff’s interests and hence, the interim injunction was granted and the defendant was restrained from using ‘coronil’ or any derivative term for its medicinal drug.

The division bench in the instant case held the complete opposite and it stated that the plaintiff cannot claim trademark over a separate term ‘coronil’, the trademark has to be looked as a whole and not in parts. This was a good observation by the court as if the trademark protects words used in day-to-day life, then it would be very difficult to name the goods/services as injunction would be claimed on such usage. The registered trademark holders would claim protection over every part of their registered mark which would lead to unfair practices. Thus, in order to avoid this unfair practice and confusion, the court said the trademark if registered as a whole has to be looked as a whole while deciding a case of infringement, its parts cannot be separated to claim protection. In case such is the need, then a separate application for registration has to be filed for each part as per section 15 of the act.

The court also analyzed the position with respect to establishing a reputation in India under Section 29(4)(c). It is very clear from the section that it is not just that the registered trademark has to establish a reputation in India, it is also important that the use of such trademark is without due cause in order to gain unfair advantage and is detrimental to the reputation of the registered trademark. The conditions of unfair advantage and detrimental to the interest are also required to be proved and not just that there is an established reputation. The injunction was granted only on the basis that the plaintiff has a reputation in India. The other conditions were not considered by the court. The division bench observed

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that the plaintiff is also required to prove that the use is for unfair advantage and it harms the interests of the owner which was not done in the instant case by the plaintiff and hence the injunction was not granted.

It cannot be said that the use is for unfair advantage as the country is going through the pandemic situation and the medicine is used for boosting the immunity of the people to prevent the corona virus. Hence, there is a due cause and the requirement under Section 29(4)(c) is not fulfilled and hence, this would not amount to infringement and this is exactly what was held by the court in this case. Another condition under this section is that the use should be detrimental to the reputation of the registered trademark. The use in the instant case by the plaintiff is not detrimental to the reputation of the registered trademark as both the plaintiff and the defendant operate in different areas of business altogether. There is no point of commonality as discussed by the court; the classes of products and services are different and hence, the plaintiff's interests are not harmed in any way. The use by plaintiff of the word 'coronil' would not harm the plaintiff's interests since the industries relating to both the products are different. Also, the main legislative intent behind this section would have been to avoid any likelihood of confusion and in this case, there would be no confusion as the classes of products are different, the industries are different. Hence, the plaintiff's argument that the worth, reputation and goodwill of the company is harmed was not accepted by the court. This is an additional requirement provided by the section itself and therefore, it becomes important that it is complied with, the Single bench had failed to look into this while the Division bench made it very clear that these are mandatory conditions and have to be fulfilled in cases where infringement is to be proved.

Also, the requirements for the grant of interim injunction were not fulfilled since the balance of convenience was not in the plaintiff's favour and hence the irreparable injury was not looked into and injunction was not granted. These requirements were also not considered by the Single bench clearly, it just observed the first requirement i.e., prima facie case and granted the injunction on that basis only. The other two requirements were not considered however, the Division bench considered them while passing the judgement.

Hence, the Division bench was right in holding that the registered trademark of the plaintiff has not been infringed by the defendant and that monopoly cannot be claimed over a single word. In order to extend protection, it is required that the registration is filed for every such component forming a part of the whole of the trademark that is registered.

CONCLUSION

The Division bench looked into the issue at hand in much detail and passed their judgement on that basis. The interests of all the stakeholders were considered by the court in the instant case. The court acknowledged the fact that if every element of the registered trademark is protected separately, then this would lead to monopoly being claimed on every such element. Thus, the court observed that this cannot be the case and the trademark will be looked as a whole according to Section 17 of the Trade Marks Act, 1999. If in case the registration is required, then according to Section 15 of the act, it needs to be filed with respect to every such element separately and need to obtain trademark of every part separately. This will help in preventing monopoly over words forming parts of trademarks as a whole. Also, the requirement under Section 29 regarding the trademark establishing its reputation in India was discussed in detail by the court in this case and it was observed that the additional requirements as provided under Section 29(4)(c) need to be fulfilled in order to prove infringement. The injunction cannot be granted on just the basis that the registered trademark has an established position in India, it also needs to be proved that the act of infringing it is without due cause and detrimental to the reputation of the trademark so registered. This was required in the interest of public health and public policy as if the injunction was granted then it would have been difficult for the defendant company to sell its medicinal product in the market which was important for boosting the immunity of the people in order to fight the corona virus. Thus, the judgment of the Single bench was set aside and injunction was not granted.

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