

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1438 of 2016

[Sabir Hussain Warsi vs. M/s. Rani's Herbal Beauty Products]

Dates of hearing : 24.05.2019 and 31.05.2019

Date of Decision : 08.01.2020.

Plaintiff

[Sabir Hussain Warsi] : Through M/s. Monawwer Ghani and Sabir Hussain Warsi, Advocates.

Defendant

[M/s. Rani's Herbal Beauty Products] : Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J:- The present action at law is filed by Plaintiff against Defendant, *inter alia*, for the protection of intellectual property rights in respect of certain products, purportedly manufacture and market by Plaintiff. Plaintiff. Plaintiff contains the following Prayer Clause_

“The Plaintiff prays for Judgment and Decree against the Defendants as under: -

- a) ***perpetual injunction to restrain the Defendants and their men, servants, agents, salesmen, distributors, dealers, stockiest, from infringing the registered trademarks, ‘RANI’, RANI KONE’, RANI STYLIZE’, ‘RANI KONE STYLIZE’, under No.115298 No.230683, No.230678, No.230680, No.230682, No.111523, No.90443, No.90444, No.90445, No.111522 and No.115299 all in class-3 as well as copyright in respect of artistic work by use of confusingly and deceptively similar or using the trade mark Rani’s for their herbal products which closely resembles with the registered trademarks of the Plaintiff or by use of colorable imitation or any close variation thereof and / or passing off***

goods by the Defendants under the infringed trade mark Rani's as goods of the Plaintiff;

- b) render accounts of all profits illegally earned through sale of goods under the infringed trade mark Rani's at the election of the Plaintiff and order payment thereof of all sums of money found due upon taking such accounts or an enquiry as to the damages at the election of the Plaintiff;*
- c) deliver upon oath to Plaintiff or his representatives of all unsold tubes, boxes, cartons and packing materials bearing the trade mark Rani's including the printing material, dyes, advertising and publishing materials for destruction under the supervision of the Nazir or any officer appointed by the Hon'ble Court;*
- d) damages in the sum of Rs.30 millions for causing loss of business, reputation and goodwill;*
- e) costs;*
- f) such relief or reliefs which this Hon'ble Court may deem fit and proper in the circumstances”.*

2. After service of summons and notices when Defendant did not contest the present proceeding then the learned Additional Registrar (O.S.) of this Court passed the order dated 06.03.2018, debarring the Defendant from filing Written Statement and the matter was set-down for final disposal.

3. It is the claim of Plaintiff that he is proprietor of Rani & Company, which since 1981 is engaged in manufacturing, marketing and exporting *“henna body decoration paste, heena body decoration cream, henna nail decoration cream, henna hair color cream, henna hair dye cream, kohl (kajal) eye decoration, face beauty cream, skin whitening cream, hair removing cream, hair dyes, hair lotion, hair removing wax, hair bleach*

cream, skin bleach cream, face-wash, ubtan cream, snow cream, cold cream, vanishing cream, three mehndi in liquid and paste form in tube”.

4. M/s. Monawwar Ghani and Muhammad Qaiser Hassan Khan, Advocates, have argued and so also pleaded in the plaint, that Plaintiff has continuously made substantial investment in the business in order to maintain and improve the quality of the above mentioned products. In order to carry out the business within a legal framework, the Plaintiff has secured Registration of the Trade Marks ‘**KONE**’, ‘**RANI**’ ‘**RANI KONE**’, ‘**RANI STYLIZE**’, ‘**RANI KONE STYLIZE**’.

5. The grievance of Plaintiff against Defendant is that the latter is also selling the above products but of inferior quality by using the name ‘**Rani’s**’, in such a manner that it is deceptive and tends to confuse unwary buyers / customers and users. It is averred that selling products / goods of inferior quality by using the name ‘**Rani’s**’, which is visually and phonetically similar to the Plaintiff’s registered Trade Marks ‘**Rani & Rani Kone**’, Defendant has infringed the registered trademarks and copyrights of the Plaintiff.

With the above background, Plaintiff has sought relief already reproduced in the opening paragraph of this decision, including that of damages in the sum of rupees thirty million.

6. Even though the matter proceeded *ex parte* against the Defendant but it is still the duty of the Court to evaluate the claim of Plaintiff, within the parameters of law and in the light of the evidence led. Following points require consideration_

1. That whether the Defendant has infringed the intellectual property rights of Plaintiff?

2. Whether the Defendant has caused any loss, including financial losses to Plaintiff?

3. What should the decree be?

Point No.1.

7. In support of his claim, the Plaintiff examined sole witness, namely, Muhammad Fahad Zuberi son of Salman Hanif Zuberi. His testimony was recorded on 26.10.2018 and he produced Certificate of Registration of Trade Marks of Plaintiff issued by Government functionaries at different Countries, which have been exhibited as 'PW-1/2' to 'PW-1/37'. Since no one was present on that day to cross-examine the Plaintiff's witness, therefore, the cross-examination was marked as 'Nil' and the Plaintiff closed his side to lead further evidence. On 25.05.2019 though the matter was partly heard but it was felt necessary that original Certificate of Registration, issued by Trade Marks Registry at Karachi, should also be produced, which though was available in record as one of the Annexures of plaint and examination-in-chief, but was not exhibited; therefore, on 31.05.2019, the Plaintiff (*Sabir Hussain Warsi*) himself appeared and produced following documents in original, which after examination returned to Plaintiff and photocopies already produced in the earlier testimony were given exhibit numbers after comparison. Following exhibits are material documents necessary for deciding the present controversy:

- i. Exhibit 'A/2' is the Certificate of Registration bearing Trade Mark No.230683 dated 28.07.2014, issued by Trade Marks Registry, (Karachi)-Government of Pakistan; name of Plaintiff (*Sabir Hussain Warsi*) is mentioned. This Certificate is in respect of the product name "Rani".

- ii. Exhibit 'A/3' bearing Trade Mark No.230678 dated 25.07.2014, issued by the above mentioned Authority for **"RANI KONE"**.
 - iii. Exhibit 'A/4' bearing Trade Mark No.230680 dated 31.10.2014, issued by the above mentioned Authority for **'RANI KONE'**.
 - iv. Exhibit 'A/5' bearing Trade Mark No.230682 dated 20.10.2014, issued by the afore mentioned Authority for **'RANI'**.
 - v. Exhibit 'A/6' bearing Trade Mark No.111523 dated 25.10.2013, issued by the above mentioned Authority for **'Rani KONE'**
 - vi. Exhibit 'A/7' bearing Trade Mark No.90443 dated 29.01.2009, issued by above mentioned Authority for **'RANI'**.
 - vii. Exhibit 'A/8' bearing Trade Mark No.90444 dated 29.01.2009, issued by the above mentioned Authority for **'HINA RANI'**.
 - viii. Exhibit 'A/9' dated 29.01.2009 is the Renewal Certificate, issued by the above mentioned Authority for **'RANI'**.
 - ix. Exhibit 'A/10' is the Renewal Certificate dated 25.10.2013, issued by the above mentioned Authority.
8. Exhibit 'A/2' is the Certificate of Registration bearing Trade Mark No.230683, issued by Trade Marks Registry (Karachi)-Government of Pakistan; name of Plaintiff (*Sabir Hussain Warsi*) is mentioned with the

following remarks *“Trading As Rani & Company (whose legal address is 5-c, 5/17 Nazimabad P.O. Box No.2513, Karachi-74600, Pakistan)”*. This Certificate (dated 28.07.2014) is in respect of the name *“Rani”* and it is mentioned at the bottom that Registration is for 10 years, which may be renewed for another 10 years, *inter alia*, under Section 35 of the Trade Marks Ordinance, 2001. Similarly, Exhibit ‘A/3’ is a Certificate, issued by the above mentioned Authority for *“RANI KONE”*.

9. Since the entire testimony of Plaintiff has gone unchallenged, particularly, that Defendants have indulged in counterfeiting, imitating and infringing the above registered Trade Marks of Plaintiff; thus, the claim of Plaintiff to this extent is accepted. More so, documents produced by Plaintiff’s witness are official documents particularly Exhibits ‘A/2’ to ‘A-10’, to which presumption of genuineness as mentioned under Article 92 of the Qanoon-e-Shahadat Order, 1984, is also attracted. Hence, Point No.1 is answered in Affirmative and in favour of Plaintiff.

POINT NO.2

10. Plaintiff has not led any convincing evidence in respect of his claim to award damages of rupees thirty million. It is a settled rule that a party claiming damages or compensation has to lead positive evidence, which is not done in the present case. Thus, in view of the above, Plaintiff is not entitled for damages as claimed. Hence, Point No.2 is replied in Negative.

POINT NO.3.

11. The upshot of the above discussion is that the present suit is partly decreed with costs to the extent of Prayer Clauses (a), (b), (c) and (e).

JUDGE

Karachi
Dated: 08.01.2020.
M. Javid/PA