

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 368 OF 2002

IN

NOTICE OF MOTION NO. 3550 OF 1999

IN

SUIT NO. 5898 OF 1999

1. Four Seasons Hotels (Barbados) Ltd.)
Suite 201/202, Chancery House, High Street,)
Bridgetown, Barbados, West Indies.)

2. Four Seasons Hotels Limited,)
1165 Leslie Street, Ontario,)
Canada M3C 2K8)..Appellants

versus

Sukh Hotels and Motels Pvt. Ltd.)
trading as Hotel Four Seasons, 5, Juhu Tara Road,)
Juhu, Opp. Juhu Church, Mumbai-400 049)..Respondents

Dr. Virendra V. Tulzapurkar with Mr. Virag V. Tulzapurkar, Senior Advocates,
with Mr. Ramesh Gajria and Ms. Kanchan Shivkar, instructed by M/s. Gajria &
Company, for the appellants.

Mr. R.M. Kadam with Mr. D.D. Madon, Senior Advocates, with Mr. Rahul
Chitnis, Mr.Vivek Walawalkar and Mr. H.J. Engineer, instructed by M/s.
Gordhandas & Fozdar, for the respondent.

CORAM: P.B. MAJMUDAR &
R.C. CHAVAN, JJ.

DATE: NOVEMBER 12, 2009.

ORAL JUDGMENT (Per P.B. Majmudar, J.)

This appeal is directed against the order passed by a learned single Judge dated 29th October, 2001, in Notice of Motion No. 3550 of 1999. The said Notice of Motion was taken out by the original plaintiffs-appellants on the ground that the plaintiffs are the companies registered abroad in Barbados and Canada respectively. The plaintiffs are achieving goodwill in the market regarding hotel business and Four Seasons Hotels and Resorts. According to the plaintiffs, the plaintiffs are extensively known and are having clients all over the world. It is the case of the plaintiffs that the defendants have adopted the name “Four Seasons Hotels” in the year 1995 by changing its earlier name “Hotel SeaKing”. The plaintiffs accordingly approached the Court on the ground that the defendants are trying to pass off its business activity. In view of the adoption of the same name, the plaintiffs are likely to suffer considerable damage. In the aforesaid suit, a Notice of Motion was taken out by the plaintiffs to restrain the defendants from carrying out the business in the name of “Four Seasons Hotels”. The learned single Judge came to the prima facie conclusion that in view of the facilities provided by the plaintiffs to its customers and considering the status of the plaintiffs, the customers of the plaintiffs are not likely to be confused as they belong to the wealthy class of the society. The learned single Judge also found that even though the plaintiffs are aware about the use of the name in the year 1995, the suit is filed in the year 1999.

2. Considering the fact that the order of the learned single Judge is passed as back as in 2001, instead of considering the rival points at this stage, it would be just and proper to request the learned single Judge to dispose of the suit immediately, as even otherwise such types of suits are required to be disposed of without delay. In this connection, reference is required to be made to a recent decision of the Supreme Court in the case of *Bajaj Auto Limited vs. TVS Motor Company Limited*, decided on 16th September, 2009, wherein the Supreme Court has observed thus:

“Recently, we have held in Special Leave Petition (C) No. 21594 of 2009 decided on 07th September, 2009 in the case of M/s. Shree Vardhman Rice & Gen. Mills vs. M/s. Amir Singh Chawalwala as follows:-

“..Without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be finally decided very expeditiously by the Trial Court instead of merely granting or refusing to grant injunction. Experience shows that in the matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not proper.

Proviso (a) to Order XVII Rule 1 (2) C.P.C. states that when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for exceptional reasons to be recorded by it the adjournment of the hearing beyond the following

day is necessary. The Court should also observe clauses (b) to (e) of the said proviso.

In our opinion, in matters relating to trademarks, copyright and patents the proviso to Order XVII Rule 1 (2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit.”

9. As has been observed by us in the aforesaid case, experience has shown that in our country, suits relating to the matters of patents, trademarks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very unsatisfactory state of affairs, and hence we had passed the above quoted order in the above mentioned case to serve the ends of justice. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully.”

3. In view of the judgment of the Supreme Court as above, the suit is required to be decided at the earliest, without any further delay. It is pointed out by both the learned counsel that their clients will co-operate in disposing of the aforesaid suit within the stipulated period.

4. Considering the aforesaid aspect as well as considering the fact that the appeal is pending before this Court since last seven years without any interim order, it would be just and proper if the suit itself is decided at the earliest. We request the learned single Judge to give top priority for hearing the suit so that it can be disposed of within six months from today. The parties

may get their evidence recorded through the Commissioner so that the matter may not be delayed on this aspect. In case the hearing of the suit is delayed and is not disposed of within the stipulated time, it will be open to the appellants to move appropriate Motion for reviving this appeal.

5. Subject to what is stated above, this appeal is disposed of. It is needless to observe that the suit is to be decided on its own merit and as per the evidence on record, without taking into account the observations made by the learned single Judge at the time of deciding the Notice of Motion.

P. B. MAJMUDAR, J.

R.C. CHAVAN, J.