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**IN THE COURT OF THE XVIII ADDITIONAL CITY CIVIL JUDGE
AT BANGALORE CITY**

PRESENT: SRI PADMA PRASAD

**B.A.(Law) LL.B.,
XVIII Additional City Civil Judge.**

Dated this the 6th day of April 2023

ORIGINAL SUIT NO.5075/2018 (IPR)

PLAINTIFF: M/s Vidyarthi Bhavan,

[By Sri Harikrishna S. Holla, Advocate]

/v e r s u s/

DEFENDANT: M/s VB VIDHATHRI BHAVAN,

[By Sri J.D.K. Advocate]

Date of institution of the suit	:	16/07/2018
Nature of the suit	:	For INJUNCTION.
Date of commencement of recording of the evidence	:	9/2/2023

Date on which the Judgment was pronounced.	:	6/4/2023		
Total duration	:	Year/s	Month/s	Day/s
		4	8	20

(PADMA PRASAD)
XVIII ACCJ: B'LURU.

JUDGMENT

This is a suit for permanent injunction.

2. The plaint case in nutshell is that, plaintiff is a registered partnership firm carrying on business in running Vegetarian Restaurant since the year 1956 under the trading style **“VIDYARTHI BHAVAN”** since the year 1956 under class 42 and 43 of the Trademarks Act, 1999.

The plaintiff is the long and continuous user of the trade mark **“VIDYARTHI BHAVAN”** and has acquired impeccable and tremendous goodwill and reputation in respect of trade mark **“VIDYARTHI BHAVAN”**.

Recently the defendant has started a restaurant by adopting the plaintiff's trade mark **VB**

VIDHATHRI BHAVAN which is fraudulent, illegal, contrary to law and unauthorised, and it amounts to infringement of registered trade mark. The defendant has no authority or right to use the trading style **VB VIDHATHRI BHAVAN** for running restaurant. Since the plaintiff and defendant are engaged in common business of providing food, the adoption of trade name **VB VIDHATHRI BHAVAN** by defendant is causing confusion amongst the customers.

After coming to know about the use of the identical or deceptively similar name by the defendant, the plaintiff filed a complaint with local police station, and despite the complaint to the local police, the defendant called a press conference and has advertised that they are opening **VB VIDHATHRI BHAVAN** with a punch line **Bangalore Food Trend in Shimogga**” and displayed hoarding and banners throughout Shimogga besides publishing the same in local newspapers. Accordingly prayed for the reliefs claimed in the suit.

3. After issuance of suit summons, though the defendant appeared through his counsel, not filed any written statement.

4. On the basis of above pleading point for consideration is that – Whether the plaintiff is entitled for the reliefs claimed in the suit?

5. Plaintiff in order to prove its case, examined its partner as PW.1 and got marked documents as per Ex.P1 to Ex.P45. On the other hand, neither defendant examined any witness nor produced any documents in support of its case as well as not cross-examined PW.1.

6. Heard the arguments and perused entire records of the case. The learned advocate for the plaintiff filed written arguments as well as following citations:

1. NOKIA CORPORATION V. MOVIEEXPRESS, 2017 SCC ONLINE DEL 11359.

2. GEEPEE CEVAL PROTEINS AND INVESTMENT PVT. LTD., Vs. SAROJ OIL INDUSTRY (2003) 27 PTC 190.

3. Parle Products (P) Ltd., Vs. J.P. & Co.
AIR 1972 SC 1359.

7. My findings on the above point is **partly in the affirmative**; for the following:

REASONS

8. The case made out by the plaintiff is that, the plaintiff is a registered partnership firm running vegetarian restaurant since 1956 under the trading style of “**VIDYARTHI BHAVAN**” and also obtained registration of trade mark in class 42 and 43. The plaintiff in support of its claim, produced the documents at Ex.P1 to Ex.P45. Ex.P1 is the deed of reconstitution of partnership dated 1.4.2014; Ex.P2 is the inspection book; Ex.P3 is the certificate of registration; Ex.P4, Ex.P5 and Ex.P7 are the assessment orders; Ex.P6 is the IT returns; Ex.P8 is the legal use certificate; Ex.P9 is the cease and desist notice; Ex.P10 is the invitation; Ex.P11 to Ex.P14 are the newspapers; Ex.P15 is the CA certified turn over; Ex.P16 to Ex.P24 are the online printout of trade mark search report, GST certificate of registration,

trade license, registration certificate, plaintiff's website, Google search reports, defendant's Swiggy page newspaper articles. Ex.P25 is the certificate under Section 65-B of the Evidence Act in respect of Ex.P1 6 to Ex.P24; Ex.P26 to Ex.P28 are three positive photographs; Ex.P29 is the CD in respect of Ex.P26 to Ex.P29; Ex.P30 is the letter of authorisation and Ex.P31 to Ex.P45 are the positive photographs. All these documents sufficiently shows that the plaintiff is running a vegetarian restaurant in the name of **"VIDYARTHI BHAVAN"** and the documents produced by the plaintiff shows that it had acquired good will and reputation as claimed in the plaint. The legal use certificate disclose the registration of plaintiff's trade mark as claimed. Therefore, the material on record sufficiently shows that the plaintiff is the registered trade mark owner of **"VIDYARTHI BHAVAN"** for its restaurant business.

9. The definite case of the plaintiff is that the defendant has adopted the said trade name as **VIDYARTHI BHAVANA DOSE HOUSE,**

subsequently filing of the suit as well as causing of cease and desist notice, the defendant changed their name **VIDYARTHI BHAVANA DOSE HOUSE** to **VB VIDHATHRI BHAVAN**. The plaintiff also produced the documents to show that the defendant has been using the trade name **VIDHATHRI BHAVAN** for his restaurant business. The documents produced by the plaintiff also shows that the defendant is running a restaurant business.

10. Now point to be considered in this case is that, whether the trade name adopted by the defendant i.e., **VB VIDHATHRI BHAVAN** is deceptively similar or not. In the case on hand, after filing of the suit, the defendant changed the name and reported the same to the court as on 7/9/2018 by filing a memo. Subsequently the plaintiff claimed that the change of the name is also deceptively similar. The fact stated in the said memo clearly shows that the defendants have used the trade name **“VIDYARTHI BHAVAN”**. Now the defendant changed the name but which is almost near to the earlier name by changing

some spellings in the name here and there, continued their trade in the name of **VIDHATHRI BHAVAN with the prefix of VB.** **VIDHATHRI** and **VIDYARTHI** almost looks identical and certainly common man cannot find much difference in the said names. Therefore, certainly the name used by the defendant is deceptively similar to the plaintiff's registered trade name. Further, the claim of the plaintiff that the defendant is deceptively using the plaintiff's trade name has not been countered by the defendant. The defendant has also not produced any material on record to show that their name is not deceptively similar to the plaintiff's trade name. There is a unchallenged testimony of plaintiff / PW.1 on record. There is no material on record to disbelieve the plaintiff case regarding the infringement and passing off of the plaintiff's registered trade name.

11. The plaintiff in the case also prayed for the damages of Rs.25,000/- and also rendition of accounts along with other reliefs. It is relevant to note that on 7/9/2018, the defendant filed a memo stating

that they have changed the name of their trading. Under such circumstances, certainly the defendant cannot be directed to pay damages as claimed in the plaint. Further, the defendant is running a business at Shimogga and the plaintiff is not having any restaurant business at Shimogga and even on that count, the plaintiff is not entitled for damages claimed in the suit. Therefore, for the aforesaid reasons, the plaintiff is entitled for the relief of permanent injunction to restrain the defendant from infringing and passing off the plaintiff's registered trade name **"VIDYARTHI BHAVAN"** but not entitled for other reliefs. Accordingly, this point is answered **partly in affirmative**. In the result, I proceed to pass the following:

ORDER

- The suit of the plaintiff is hereby partly decreed with costs in following terms:
- The defendant is hereby permanently restrained from infringing and passing off of the plaintiffs' registered

trade mark “**VIDYARTHI BHAVAN**”
as claimed in the suit.

➤ The defendant is hereby directed to
destroy all infringing materials.

➤ Draw decree accordingly.

* * *

[Dictated to the Judgment Writer directly on computer, ***Script***
corrected, signed and then pronounced by me, in the Open
Court on this the **6th day of April 2023.**]

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BENGALURU.

ANNEXURE

1. List of witnesses examined on behalf of the Plaintiff/s:
PW.1 S. Arun Kumar Adiga
2. List of witnesses examined on behalf of the Defendant/s:

NIL.
3. List of documents marked on behalf of the Plaintiff/s:

Ex.P1	Reconstitution deed of partnership deed.
Ex.P2	Inspection book.
Ex.P3	Certificate of registration.
Ex.P4	Assessment order 1970-71.

Ex.P5	Assessment order 2000-01.
Ex.P6	IT returns for the year 1977-78, 79-80, 80-81, 2002-03, 2003-04, 2004-05.
Ex.P7	Assessment order 2012-13.
Ex.P8	Legal use certificate .
Ex.P9	Cease and desist notice in news paper Shivamogga Times.
Ex.P9(a)	Relevant portion of Ex.P.9.
Ex.P9(b)	Receipt for paper publication .
Ex.P10	Platinum jubilee celebration invitation.
Ex.P10(a)	Cover
Ex.P11 to Ex.P14	News paper
Ex.P11(a) to Ex.P 14(a)	Relevant portion of Ex.P.11 and P.14.
Ex.P15	CA certified turn over.
Ex.P16	Online printout of Trademark search report .
Ex.P17	Online printout of GST registration certificate .

Ex.P18	Online printout of trade license.
Ex.P19	Online printout of registration certificate.
Ex.P20	Online printout of Plaintiff's website.
Ex.P21	Online printout of Google search report .
Ex.P22	Online printout of defendant's google search report .
Ex.P23	Online printout of defendant's Swiggy page .
Ex.P24	Online printout of newspaper articles.
Ex.P25	Certificate under section 65-B of Indian Evidence Act in respect Ex.P16 to Ex.P.24.
Ex.P26 to Ex.P28	3 positive photographs.
Ex.P29	CD in respect of Ex.P.26 to 28.
Ex. P30	Authorization letter.
Ex.P31 to Ex.P45	15 positive photographs (15 sheets)

4. List of the documents marked for the defendants:

NIL.

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[PADMA PRASAD]
XVIII Additional City Civil Judge.
BENGALURU.

In the case on hand, by oversight or otherwise, issues have been framed without there being any written statements. Hence, issues framed in the case are hereby deleted.

...Judgment pronounced in the Open Court....
(Vide separate detailed judgment)

- The suit of the plaintiff is hereby partly decreed with costs in following terms:
- The defendant is hereby permanently restrained from infringing and passing off of the plaintiffs' registered trade mark **"VIDYARTHI BHAVAN"** as claimed in the suit.

- The defendant is hereby directed to destroy all infringing materials.
- Draw decree accordingly.

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BENGALURU.

