

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 8th December, 2009

Date of Order: January 11, 2010

+ IA No. 10426/2007 in CS(OS) No. 1687/2007

%

11.01.2010

Century 21 Real Estate L.L.C.

...Plaintiff

Through: Mr. Jayant Bhushan, Sr. Advocate
with Mr. Mukul Baweja, Advocate

Versus

Century 21 Main Realty Pvt. Ltd. & Ors.

...Defendants

Through: Mr. Neeraj Grover, Advocate

JUSTICE SHIV NARAYAN DHINGRA

- | | | |
|----|---|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. Plaintiff is a company incorporated under the laws of State of Delaware, USA having its office in Parsippany, New Jersey. The plaintiff has filed this suit on the ground that defendant company's name was similar to its name. The plaintiff's company name is "Century 21 Real Estate L.L.C" the defendant company's name is "Century 21 Main Realty Private Limited" and is registered in India and not in USA.

2. The contention of the plaintiff is that plaintiff was engaged in business of real estate sales and was one of the largest players and market leader in this field in the world. It had immense popularity in trade circle

throughout the world. Plaintiff was involved in real estate brokerage service since 1971 using "Century 21" as its brand/logo and plaintiff obtained registration of its trademark "Century 21" in various countries all over the world. The plaintiff got "Century 21" mark registered in India for clause 16 items/services on 13th March, 1989. The plaintiff contention is that the defendants were using "Century 21" as an integral part of their corporate name and were using "Century 21", logo of the plaintiff throughout, violating plaintiff's intellectual property right intentionally and mala fide with the intention to pass off their business as that of plaintiff and to gain from the goodwill of the plaintiff's brand. The defendant in the visiting card and in the advertisement was describing itself as "Century 21 Private Limited" and had not been using its full corporate name i.e. "Century 21 Main Reality Private Limited".

3. The defendant's contention is that plaintiff has no presence in India. It is admitted by plaintiff that it has no office in India, it has done no business in India, it has done no promotional activities in India. The material placed by plaintiff on record is in respect of USA and other countries. Even the website of plaintiff does not show India as the country where its services are available. It was not a case of trans-border reputation or goodwill of the company in India by any means since plaintiff was not dealing with consumer goods. It is further submitted that the defendant was providing real estate brokerage service and it was such service where the customer dealing first ensures about the quality of service being provided from his own sources. The defendant was active only in the city of Gurgaon and there was no question of defendant taking advantage of plaintiff's name or reputation since plaintiff had no name or reputation even within India. It is also submitted that "Century 21" word was not a monopoly of plaintiff.

Defendant started its business after 2000 and since it was dawn of 21st century, he used "Century 21" as part of his corporate name. He applied for this name with Registrar of Companies and this name was allotted to him after thorough search. There is no other company in the name of "Century 21 Reality Private Limited" in India. The plaintiff had no right to injunct defendant from doing business in its corporate name. It is also submitted that no case of infringement of registered trademark was made out as the defendant was not using trademark "Century 21" in relation to any goods or services. "Century 21" was part of defendant's corporate name and defendant was doing business in its corporate name. It is also submitted that defendant had offered to change its logo or style agreeable and to restrict its use only to the corporate name.

4. While considering grant of an interim injunction the Court has to take into consideration three factors, one there must be a prima facie case in favour of the plaintiff, second in case of refusal of interim injunction plaintiff would suffer an irreparable loss and injury and third that the balance of convenience lies in favour of the plaintiff.

5. It is not in dispute that defendant is a registered private limited company in India and the registration of the name was obtained from The Registrar of Companies after thorough search. It is not the case of the plaintiff that plaintiff has any presence in India or was registered as a corporation in India. Neither it is the case of the plaintiff that plaintiff has monopolized "Century 21" and no one else can use "Century 21" as a corporate name. "Century 21" started with the end of year 2000 and "Century 21" is not a coined word which is distinctly associated with plaintiff. Plaintiff may be using "Century 21" with eye on future but is not the claim of the plaintiff that it is a word coined by it. It is also not

the case of plaintiff that plaintiff has any business or presence in India. The plaintiff's name therefore would not be known to the customers in India who had an intention to deal in real estate. The plaintiff has not placed on record any document to show that its reputation has travelled to India in any manner. Merely because a company is having presence in many countries in the business of realty does not mean that the company's reputation has travelled to every single country on earth. Reputation and goodwill of a company are intangible assets and these intangible assets are to be shown to exist. Intangible assets in India are to be proved by way of evidence. There can be no presumption in favour of a corporation of intangible assets in India merely because the company has a reputation and goodwill somewhere else. I, therefore do not consider that the plaintiff has a prima facie case of having good will in India or reputation in India.

6. It is also not a case where the plaintiff was going to suffer any irreparable loss or injury. It is a case where the plaintiff has no business in India and it has no office in India. Except making an application for registration of trademark and keeping trademark registered so as to block the trademark, the plaintiff had done no work in India. Blocking of trademark and blocking of trade name is not looked upon kindly by the Courts. It has become a practice to block important domain names, important trade names so that others cannot use it despite the fact that the person himself may not it just to sell it in future. I, therefore consider that mere blocking of name "Century 21" in India would give no advantage to plaintiff when the plaintiff has not used this trademark in India and had no business in India. It is also not a case of suffering damages by the plaintiff because of the defendant, whose work is confined to only one city Gurgaon. Thus, it is not a case of suffering irreparable loss by the plaintiff.

7. The balance of convenience also does not lie in favour of the plaintiff. In case, the defendant is restrained from using its corporate name or a part of its corporate name for the business, only defendant would suffer inconvenience and the plaintiff would suffer no convenience as the plaintiff has no business in India. The balance of convenience therefore lies in favour of defendant and not in favour of the plaintiff.

8. In view of my above discussion, I find no force in the application the application is hereby dismissed.

CS(OS) No. 1687/2007

List on 10th February, 2010.

January 11, 2010
vn

SHIV NARAYAN DHINGRA J.