

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 17th July, 2019**

+ CS(COMM) 235/2018 & I.A.8507/2019

SUZUKI MOTOR

... Plaintiff

Through: Mr. C.D. Mulherkar and Ms. Anushka Arora, Advocates.

versus

SUZUKI (INDIA) LIMITED

..... Defendant

Through: Ms. Anjana Ahluwalia, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The plaintiff has instituted this suit for permanent injunction for restraining the defendants from infringing their trade mark *Suzuki*, passing off and rendition of accounts.
2. Vide interim order dated 12th December, 2005, this Court restrained the defendants from using the word *Suzuki* as part of their trade name/corporate name.
3. Defendant No.3 was deleted from the array of the parties on 07th March, 2007. Defendant No.2 ceased to be the Director of defendant No.1 on 03rd May, 1984 and is, therefore, not a necessary party. Defendant No.2 is also deleted from the array of the parties. The sole defendant No.1 is hereinafter referred to as "the defendant" in this judgment.

4. The plaintiff is seeking a decree under Order XII Rule 6 of the Code of Civil Procedure against the defendant 1 on the ground that the defendant has not raised any defence in the written statement except the challenge to the territorial jurisdiction of this Court on the ground that the defendant has no office in Delhi. However, on 03rd December, 2018, the Managing Director of the defendant admitted on oath before this Court that the defendant has its office in Delhi. In that view of the matter, the territorial jurisdiction of this Court is also admitted.

Submissions of the plaintiff

5. The plaintiff started its business in Japan in the year 1909 as *Suzuki Loom Works* and was incorporated as a company in the year 1920 with the name *Suzuki* as the principal feature of its corporate name and trading style. The name of the plaintiff was changed to Suzuki Motor Co. Limited in the year 1954 and its current name, namely, Suzuki Motor Corporation, was adopted in 1990.

6. The plaintiff has business relations in about 190 countries around the world including countries in Asia, North America, South America and Europe. The plaintiff's main production facilities are located in 23 countries and about 150 subsidiaries exist around the world. The plaintiff is a diversified company with a global business, tremendous goodwill, reputation and brand recall.

7. The plaintiff is the registered proprietor of the trade mark *Suzuki* in about 169 countries worldwide (with multiple registrations in most of the countries), including India. In addition, the plaintiff owns about 5000 other Trade Marks worldwide (400 of which contain the word *Suzuki*) and some of the Trade Marks are also registered in India, e.g. Suzuki CCI, Suzuki

Swift, Alto, Suzuki Carry, Vitara, Samurai, Baleno, outlined S-mark, Ignis, etc.

8. The plaintiff has been using the trade mark *Suzuki* as a part of its corporate name since its inception/incorporation. By reason of continuous and extensive advertising, the trade mark *Suzuki* has become distinctive of the plaintiff all over the world, including India.

9. The plaintiff got its trade mark *Suzuki* registered in India in the year 1972. The particulars of the registration of Trade Marks of the plaintiffs are as under:-

Trade Mark	Registration No.	Date	Class	Goods
<i>SUZUKI</i>	<i>279047B</i>	<i>22.03.1972</i>	<i>12</i>	<i>Vehicles: apparatus for locomotion by land, air or water</i>
<i>SUZUKI</i>	<i>409162</i>	<i>11.08.1983</i>	<i>7</i>	<i>Generators and internal combustion engines included in class 7</i>
<i>SUZUKI CCI</i>	<i>285669B</i>	<i>29.01.1973</i>	<i>12</i>	<i>Motor cycles, and parts and fittings therefore included in class 12</i>
<i>SUZUKI SWIFT</i>	<i>436474</i>	<i>15.04.1985</i>	<i>12</i>	<i>Parts and fittings included in class 12 for use in motor land vehicles</i>
<i>SUZUKI CARRY</i>	<i>436473</i>	<i>15.04.1985</i>	<i>12</i>	<i>Parts and fittings included in class 12 for use in motor land vehicles</i>
<i>SUZUKI CARRY</i>	<i>679102</i>	<i>06.09.1995</i>	<i>12</i>	<i>Motor land vehicles, parts and accessories thereof included in class 12</i>

10. In 1982, the plaintiff entered into a joint venture with the Government of India and also licensed its technology to the joint venture company, namely, Maruti Suzuki India Limited (MSIL), formerly known as Maruti Udyog Limited. The plaintiff also permitted MSIL to use the *Suzuki* name /

trade mark on products manufactured by MSIL, subject to quality control and other conditions. Pursuant to the technology licensed by the plaintiff, MSIL launched a small car, Maruti 800 in 1983-84, which revolutionized the Indian automobile industry with its high fuel efficiency, contemporary design and competitive pricing.

11. Extensive publicity was made about the fact of that the plaintiff was entering into collaboration with the Government of India for manufacture of cars in India. Copies of newspapers and other print media advertisements and articles referring to the plaintiff and using the word *Suzuki* have been placed on record.

12. Around the same time i.e. 1982, the defendant with clearly dishonest and *malafide* intention adopted the name *Suzuki India Limited*. The adoption was with a view to encashing upon the widespread goodwill, name and reputation attached to the plaintiff's name and mark *Suzuki* and to pass off and mislead the public that the business of the defendant had some connection with the plaintiff.

13. The defendant is deemed to have notice of plaintiff's statutory and exclusive right to use the trade mark *Suzuki*. There is no justification on part of the defendant to use trade mark *Suzuki* as part of the corporate name inasmuch as *Suzuki* is a Japanese surname and it is not associated with any Indian name, place, object or term.

14. The word *Suzuki* is the family name of the founder of the plaintiff and is not in any way connected with the defendant. Reliance is placed on *Aktiebolaget Volvo v. Volvo Steels Limited*, 1998 PTC (18) (Bom).

15. No valid reason/satisfactory explanation has been provided by the defendant for using the trade mark/name *Suzuki* and the same has no

connection whatsoever to the defendant. Reliance is placed on *Bata India Limited vs. M/s Pyare Lal Co.*, AIR 1985 Allahabad 242.

16. In *Alfred Dunhill Limited v. Kartar Singh Makkar & Ors.*, 1999 II AD (Delhi) 789, this Court observed that the defendant therein adopted the well known trade mark DUNHILL to trade upon and encash on the name, fame, reputation, image and goodwill of the plaintiff. This Court held as under:-

“In the suit of instant nature, the real test is whether defendants have any right to represent their business as the business of plaintiff. It ultimately leads to the question as to why defendants were using the trade name DUNHILL to their products. The defendants have not offered any explanation whatsoever as to why the mark ‘DUNHILL’ was being used by them. The name ‘DUNHILL’ is neither parental name of defendants nor in any way connected with them. As noticed earlier, the mark ‘DUNHILL’ is attributable to the surname of Alfred ‘DUNHILL’. All of the goods marketed by plaintiff company are sold under the trade mark and trade name ‘DUNHILL’. The trade mark and trade name DUNHILL has become distinctive of the plaintiff’s goods as a result of substantially exclusive and continuous use in commerce since 1893. Thus, in my opinion, the user of the trade name ‘DUNHILL’ by defendants is indicative of their intent. It follows that defendants desire to market their goods under the name or mark ‘DUNHILL’ with a view to trade upon and encash on the name, fame, reputation, image and goodwill acquired by the plaintiff company.”

(Emphasis supplied)

17. The explanation of the Managing Director of the defendant that his father knew someone by the name *Suzuki* does not strengthen its case but detracts from the truthfulness of the explanation and is clearly only an afterthought and is not *bonafide*. Reliance is placed on *Aktiebolaget SKF v. Rajesh Engineering Corporation*, 1996 (16) PTC 160 (Del.).

18. Trade Mark law is not intended to protect a person who deliberately sets out to take the benefit of somebody else's reputation with reference to goods, especially so when the reputation extends worldwide. If anyone continues to carry the illegitimate use of a significant worldwide renowned name/mark as is being done in this case, there cannot be any reason for not stopping the use of a world reputed name. No one should be continued to be allowed to use a world famed name to goods which have no connection with the type of goods which have generated the worldwide reputation. Reliance is placed on *Daimler Benz Aktiengesellschaft v. Eagle Flask Industries Ltd.*, 1993 (27) DRJ 615.

19. A trade mark which has acquired a wide reputation transcending international barriers even though in respect of a specified class or category of goods cannot be allowed to be violated by another person in respect of a different category of goods because that other person will be deliberately using the trade mark of the former with an intent to get some undue advantage because of its reputation and goodwill. Reliance is placed on *Sony Kabushiki Kaisha v. Mahaluxmi Textile Mills*, 2009 (41) PTC 184 (Cal) (FB).

20. An injunction is necessary if it *prima facie* appears that the adoption of the trade mark was itself dishonest and even delay in bringing action is not sufficient to defeat grant of injunction. Reliance is placed on *Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia*, (2004) 3 SCC 90.

21. Where the adoption of the mark is *ex-facie* fraudulent and *malafide* from the very inception, injunction should follow. Reliance is placed on the *Timken Company v. Timken Services Pvt. Ltd.*, 2013 (55) PTC 568).

22. Mere concurrent user is not sufficient in law and such user must be honest. Reliance is placed on *Lupin Laboratories v. Jain Products*, 1998 100 (2) Bom LR 604.

23. A fair and honest trader will not give a misleading name to his product to the continuing detriment of the plaintiff who has built up his goodwill in the business after years of hard work. It is this intangible right to property which the law seeks to protect. Reliance is placed on *B.K. Engineering Co. v. Ubhi Enterprises*, ILR (1985) 1 Delhi 525.

24. The foundation of the law of infringement of the trademark, copyright and of passing off is honesty. No one shall be permitted to enrich himself on the goodwill and reputation built up or earned by anyone else. Reliance is placed on *LT Foods Limited v. Sulson Overseas Pvt. Ltd.*, (192) 2012 DLT 373.

25. With the changed concept of passing off action, it is now not material for a passing off action that the plaintiff and the defendant should trade in the same field. Reliance is placed on *Honda Motors Company Ltd. v. Charanjit Singh*, 2003 (26) PTC 1 (Del).

26. An injunction has to be granted where there is possibility of confusion even if the defendant adopted the name innocently. Reliance is placed on *Laxmikant v. Patel Chetanbhai Shah*, (2002) 3 SCC 65.

27. Section 20 of the Companies Act, 1956 treats a name of the company to be undesirable if it is identical with or too nearly resembles the name by which a company in existence has been previously registered. Since the legislature itself considers name of a company which is identical with the name of the other pre-existing company to be undesirable, the legislative intent must be given effect to by giving injunctive relief to a plaintiff against

a defendant who has copied the corporate name of the plaintiff. Reliance is placed on *Montari Overseas Limited v. Montari Industries Limited*, ILR 1997 Delhi 64.

Submissions of the defendant

28. Defendant has not made any admission in the written statement and therefore, the decree is not warranted under Order XII Rule 6 of the Code of Civil Procedure. Reliance is placed on *Raj Kumar Chawla v. Lucas Indian Services*, 2006 (89) DRJ 560 (DB) and *S.M. Asif v. Virender Kumar Bajaj*, (2015) 9 SCC 287.

29. The present suit has been filed without any cause of action against the defendant, which is a company using trademark/name *Suzuki* as a part of its trade name *Suzuki India Limited* since 1982. The defendant has earned substantial goodwill by way of honest concurrent and uninterrupted use of the trademark/name *Suzuki* as a part of his trade name *Suzuki India Limited* since 1982 in relation to its investment business and finance business decades prior to when the plaintiff started using its mark in India.

30. The plaintiff has filed the present suit after an uncondonable delay of over 25 years; and this delay should be strictly construed against the plaintiff, and points at its *malafide* intent behind filing the present suit. The suit has been filed belatedly as the plaintiff has deliberately, and for reasons best known to it, not objected to the defendant's honest, *bonafide* and uninterrupted use of the trade mark/name *Suzuki* as a part of its trade name *Suzuki India Limited* since 1982. The delay of over 25 years in exercising its legal remedy should be construed as acquiescence on part of the plaintiff under the Trade Marks Act, 1999 i.e. sitting on its rights; and as a principle of natural justice the right to object to the defendant's honest concurrent and

bonafide use of the trademark/name *Suzuki* as a part of its trade name *Suzuki India Limited* stands waived. Reliance is placed on *Wockhardt Ltd. v. Torrent Pharmaceuticals Ltd.*, (2018) SCC OnLine SC 1778, *Khoday Distilleries Ltd. v. Scotch Whisky*, (2008) 10 SCC 723 and *Power Control Appliances v. Sumeet Machines Pvt. Ltd.*, (1994) 2 SCC 448.

31. The plaintiff has indulged in '*forum shopping*' by having filed the present suit before this Court, as no part of the cause of action has arisen in the jurisdiction of this Court. Further, the defendant company is incorporated in Kolkata, having its registered office in Kolkata, and carrying on its business from there; and the defendant has no business in the jurisdiction of this Court. Hence, the present suit is barred by way of territorial jurisdiction before this Court; and should be dismissed on this ground alone. The plaintiff has made a cause of action by claiming that it gained knowledge of the defendant company only when it applied to the Registrar of Companies for registering the company name *Suzuki India Pvt. Ltd.* Reliance is placed on *IPRS v. Sanjay Dalia*, (2015) 10 SCC 161 and *Ultra Home Construction Pvt. Ltd. v. Purshottam Chaubey*, (2016) SCC OnLine Del 376. Even if assumed though not admitted that the plaintiff has acquired association and reputation in the trademark/name *Suzuki* but it is however, as per their own plaint, only limited to a specific category of goods i.e. in the automobiles category in the broad classes of goods 4, 7 and 12 for vehicles; apparatus for locomotion by land; generators and internal combustion engines; motorcycles and part fittings; and lubricating oils for internal combustion engines; etc. Further, for the sake of argument, even if assumed though not admitted, the plaintiff can claim reputation in the trademark/name *Suzuki* only for automobiles; and this does not *ipso facto*

spill to or cover other classes of goods; more particularly services offered by the defendant. The plaintiff cannot be allowed to claim monopoly over other classes of goods. Reliance is placed on *Sumeet Research and Holdings Pvt. Ltd. v. Sipra Appliances*, (2018) SCC OnLine Del 11341, *Vishnudas Trading v. Vazir Sultan*, (1997) 4 SCC 201, *P.M. Diesels Pvt. Ltd. v. Thukral Mechanical Works*, (1988) 15 DRJ 47 and *Nandhini Deluxe v. Karnataka Co-operative*, (2018) 9 SCC 183.

32. The statement of Mr. R.K. Bagrodia, recorded on 03rd December, 2018 has already apprised this Court that his father had adopted the words *Suzuki* as part of its corporate name on the name of his friend. Further, the word *Suzuki* is a common surname in Japan; and various companies in India are using the said name as part of their corporate name. The plaintiff cannot claim monopoly to use the name *Suzuki* with respect to all classes of goods under the Trade Mark Rules. The defendant's use of the trade mark/name *Suzuki* would in no manner confuse/deceive an average customer into believing that the defendant's goods/services and business have any association with that of the plaintiff, as the defendant has no relation with the automobile industry.

Relevant Provisions

33. Order XII Rule 6 of the Code of Civil Procedure empowers the Court to pass a decree if the admissions of the defendant are sufficient to pass a decree. Order XII Rule 6 of the Code of Civil Procedure is reproduced hereunder:

“ORDER XII-ADMISSIONS

Rule 6. Judgment on admissions-

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

(Emphasis supplied)

34. The law on the scope of Order XII Rule 6 of the Code of Civil Procedure is well settled. If express/implied admissions are on record, there is no impediment for the Court to pass a decree. Object of Order XII Rule 6 CPC is that litigation should not continue unnecessarily, if there is any admission on behalf of the defendant or an admission which can be inferred from the facts and circumstances of the case.

35. In *Uttam Singh Duggal and Co. Ltd. v. Union Bank of India*, AIR 2000 SC 2740, the Supreme Court held that the object of Order XII Rule 6 of Code of Civil Procedure is to enable a party to obtain speedy judgment on admissions and Order XII Rule 6 of Code of Civil Procedure should not be unduly narrowed down. The Supreme Court held as under:-

“12. As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning

of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

(Emphasis supplied)

36. Order XII Rule 6 of the Code of Civil Procedure confers wide powers on the Court to pass a decree on admissions. However, a judgment on admissions under Order XII Rule 6 of the Code of Civil Procedure is not a matter of right but a matter of discretion of the Court to be exercised judiciously. In *ITDC Ltd. v. M/s. Chander Pal Sood and Son*, 84 (2000) DLT 337 DB, the Division Bench of this Court interpreted Order XII Rule 6 of Code of Civil Procedure as under:-

“17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing....”

37. Order VIII Rules 3, 4 and 5 of the Code of Civil Procedure provide that the defendant must deal specifically with each allegation of fact of which he does not admit the truth and when a defendant denies an allegation of fact in the plaint, he must not do so evasively but answer the point of substance. Order VIII Rule 5 of the Code of Civil Procedure specially provides that if an allegation of fact in the plaint is not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, then it shall be taken to be admitted by the defendant. Order VIII Rules 3, 4 and 5 are reproduced hereunder:-

**“ORDER VIII-WRITTEN STATEMENT, SET-OFF AND
COUNTER-CLAIM**

Rule 3. Denial to be Specific-

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Rule 4. Evasive Denial-

Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Rule 5. Specific Denial-

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.”

(Emphasis supplied)

38. Civil law does not confer a right on a litigant to remain silent and put the onus on the opposite party to prove. On the contrary, the Code of Civil Procedure expressly requires pleadings to be specific and also provides for deemed admission of what is not specifically not denied. An evasive denial of a fact alleged in the plaint would be deemed to be admitted under Order VIII Rule 3 and Rule 5 of the Code of Civil Procedure.

39. In *M/s Gian Chand Brothers v. Rattan Lal*, MANU/SC/0015/2013, the Supreme Court held that it shall not be sufficient for a defendant to deny generally the averments by the plaintiff, but he must be specific with each allegation of fact. It was further held that where there is evasive denial, the defendant cannot be permitted to lead evidence, when nothing is stated in the pleadings. Reference be also made to *Badat & Co. v. East India Trading Co.*, AIR 1964 SC 538, *Sushil Kumar v. Rakesh Kumar*, AIR 2004 SC 230 and *Jaspal Kaur Cheema v. Industrial Trade Links*, AIR 2017 SC 3995.

40. In *Vijaya Myne v. Satya Bhushan Kaura*, 142 (2007) DLT 483, the Division Bench of this Court held that admissions can even be constructive admissions, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further that admissions can even be inferred from the facts and circumstances of the case.

41. In *Allora Electric & Cable Co. v. M/S. Shiv Charan*, 72 (1998) DLT 761, this Court held that a party is expected to expressly deny the fact which is within its knowledge and a general denial is not a specific denial by "*necessary implication*". In other words, the denial should be definite and unambiguous. The relevant portion of the judgement is reproduced hereunder:

“11. The object of this provision is to narrow the issues to be tried in the case and to enable either party to know what the real point is to be discussed and decided. The word "specifically" qualifies not only the word "deny" but also the words "stated to be not admitted" and therefore a refusal to admit must also be specifically stated. A defendant can admit or deny the several allegations made in the plaint and if he decides to deny any such allegations, he must do so clearly and explicitly. A vague or evasive reply by the defendant cannot be

*considered to be a denial of fact alleged by the plaintiff. A party is expected to expressly deny the fact which is within its knowledge and a general denial is not a specific denial by "necessary implication". In other words, the denial should be definite and unambiguous. The scope of this provision has been considered in **Badat & Co. v. East India Trading Co.**, where **His Lordship Subba Rao, J.** AIR 1964 SC 538 after referring to Rules 3, 4 and 5 of Order 8 of the Code has observed :-*

"These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. The first paragraph of R. 5 is a re-production of O. XIX, R. 13 of the English rules made under the Judicature Acts. But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to parties with genuine claims. To do justice between those parties, for which Courts are intended, the rigor of R. 5 has been modified by the introduction of the proviso thereto. Under that proviso the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings, Court, presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice. But on the Original side of the Bombay High Court, we are told, the pleadings are drafted by trained lawyers bestowing serious thought and with precision. In construing such pleadings the proviso can be invoked only in exceptional circumstances to prevent obvious injustice to a party or to relieve him from the results of an accidental slip or omission, but not to help a party who designedly made vague denials and thereafter sought to rely upon them for non-suiting the plaintiff. The discretion under the

proviso must be exercised by a Court having regard to the justice of a cause with particular reference to the nature of the parties, the standard of drafting obtaining in a locality, and the traditions and conventions of a Court wherein such pleadings are filed.”

(Emphasis supplied)

Findings

42. The defendant denied the contents of paras 1, 3 to 18 and 24 of the plaint for want of knowledge. In para 26 of the plaint, the plaintiff specifically pleaded that the defendant adopted the name *Suzuki* as part of its corporate name and trading style which is dishonest, *malafide* and calculated to deceive and confuse traders and consumers alike. Since the trade mark *Suzuki* is a well recognized mark and registered in India since 1972, the trade mark registrations being matters of public record, the defendant is deemed to have constructive notice of the plaintiff’s statutory and exclusive right to use the trade mark *Suzuki*. The defendant has chosen not to specifically deny para 26 of the plaint which is deemed to have been admitted.

43. In para 27, the plaintiff specifically pleaded that the defendant was fully aware of the use and goodwill of the mark *Suzuki* by the plaintiff because of the extensive use and publicity given thereto by the plaintiff. Further, defendant has no justification whatsoever for using *Suzuki* as part of a corporate name context inasmuch as *Suzuki* is Japanese surname and it is not associated with any Indian name, place, object or term. Since the defendant has no connection with the plaintiff, the use of the trade mark *Suzuki* by the defendant causes a misleading impression that the defendant is connected with the plaintiff or that the defendant has been licensed by the plaintiff to use the name *Suzuki*, which is false and untrue. Deception and

confusion is therefore inevitable. The defendant has chosen not to specifically deny para 27 of the plaint which is also deemed to have been admitted.

44. In para 28 of the plaint, the plaintiff specifically pleaded that the defendant's illegal adoption of the *Suzuki* mark without authorization from the plaintiff will also lead to undesirable and highly prejudicial consequences which will whittle down the reputation and goodwill attached to the plaintiff's trademark, which has been painstakingly developed at significant cost over the years by the plaintiff. The use of the *Suzuki* name by the defendant tarnishes the reputation and goodwill of the plaintiff and also dilutes the distinctiveness of plaintiff's mark and the exclusivity attached to it. The action of the defendant has caused and is likely to continue to cause grave and irreparable damage to the plaintiff. Para 28 of the plaint has also not been specifically denied by the defendant which is also deemed to have been admitted.

45. Paras 26, 27 and 28 of the plaint are reproduced hereunder:

“26. The Plaintiff submits that the Defendant No.1's adoption of the name “SUZUKI” as part of its corporate name and trading style is dishonest, malafide and calculated to deceive and confuse traders and consumers alike. Since the trademark “SUZUKI” is a well recognized mark and has been registered in India since 1972, the trademark registrations being matters of public record, Defendants Nos.1 - 3 are deemed to have constructive notice of the Plaintiff's statutory and exclusive right to use the trademark “SUZUKI”.

27. The Defendants are also deemed to be fully aware of the use and goodwill of the mark SUZUKI by the Plaintiff because of the extensive use and publicity given thereto by the Plaintiff. Further, Defendant Nos.1 - 3 have no justification whatsoever for using SUZUKI as part of a corporate name context

inasmuch (sic) as "SUZUKI" is a Japanese surname and it is not associated with any Indian name, place, object or term. Since Defendant No.1 has no connection with the Plaintiff, the use of the trademark SUZUKI by Defendant No.1, causes a misleading impression that Defendant No.1 is connected with the Plaintiff or that the Defendant No.1 has been licensed by the Plaintiff to use the name SUZUKI, which is false and untrue. Deception and confusion is therefore inevitable. The confusion is greater since the Plaintiff also uses SUZUKI as part of its corporate name and trading style. The adoption of the SUZUKI name by Defendant No.1 is therefore clearly dishonest and malafide with a view to encashing upon the widespread and invaluable goodwill, name and reputation attached to the Plaintiff's name and mark SUZUKI and to pass off and mislead the public that its business has some connection with the Plaintiff. This is further substantiated by the fact that Defendant Nos.1-3 have continued to retain defendant No.1 on paper, solely with the object of preventing the Plaintiff from using the same or similar name as part of the corporate name of a company in India and/or with the intention of either entering into business at a later date or with a view to infringing the Plaintiff's trademark and corporate name so as to encash on it at a later date by selling or offering to sell it to the Plaintiff or any other willing purchaser at a premium, thereby generating illegal profits, to the detriment of the Plaintiff.

28. Plaintiff submits that the Defendant Nos.1 - 3's illegal adoption of the SUZUKI mark without authorization from the Plaintiff will also lead to undesirable and highly prejudicial consequences which will whittle away the reputation and goodwill (sic) attached to the Plaintiff's trademark, which has been painstakingly developed at significant cost over the years by the Plaintiff. The SUZUKI mark/name is a symbol of superior quality goods with a high degree of selling power and is no longer confined to any particular classification or segment of goods. Whenever consumers come across the mark SUZUKI and/or an entity with the word SUZUKI as part of its trade name, they automatically take that entity to be associated

with the Plaintiff. Thus, the use of the SUZUKI name by the Defendant tarnishes the reputation and goodwill of the Plaintiff and also dilutes the distinctiveness of plaintiff's mark and the exclusivity attached to it. The actions of Defendant Nos.1 - 3 have caused and are likely to continue to cause grave and irreparable damage and injury to the Plaintiff. The Plaintiff believes that there is a real and tangible risk of Defendant No.1 commencing business and/or trying to sell its corporate to some other willing purchaser for a premium so that it can generate illegal profits."

46. The defendant reply to paras 26 to 28 of the written statement are reproduced hereunder:

"J. That the averments made in para 26 to 29 are flippant, obnoxious and misconceived one and thus vehemently denied. It is further submitted by the answering defendant that the defendant No.1 company does not carry any business which falls within the class 12 of the 4th Schedule of Trade Marks rules, 2002 and therefore causing any damage or detrimental to the business of the plaintiff company."

47. In the absence of specific denial, the averments made in the plaint are deemed to have been admitted as provided under Order VIII Rule 5 of the Code of Civil Procedure.

48. This Court is of the view that the vague/evasive denial of the defendant in his written statement more particularly the reply to paras 26 to 28 of the plaint are sufficient to pass a decree against the defendant.

49. The plaintiff is the proprietor of a well known trade mark *Suzuki* duly registered with the Registrar of Trade Marks and the defendant dishonestly adopted the name *Suzuki* as part of their company with the dishonest intention to encash the goodwill and reputation of the plaintiff.

50. The defence set up by the defendant that the defendant was not even aware about the plaintiff's name, trade mark and registration in 1982, when the defendant adopted the plaintiff's trade mark *Suzuki* is unbelievable and is rejected. Extensive publicity was made about the fact of the Plaintiff entering into collaboration with the Government for manufacture of cars in India. The plaintiff has placed on record copies of following newspapers and other print media advertisements and articles referring to the Plaintiff and using the word *Suzuki*:-

- (i) Article titled '*Crazy Car race with Suzuki in Lead*' published in Economist, Bangalore dated 15th June, 1982;
- (ii) Article titled '*How Suzuki won*' published in Business Standard, dated 6th June, 1982;
- (iii) Article titled '*Subsidiary firm to make Suzuki Car*' published in Business Standard, Calcutta, dated 5th June, 1982;
- (iv) Article published in Autocar, dated 5th June, 1982;
- (v) Article titled '*Maruti weds Suzuki*' published in Probe, India dated June, 1982;
- (vi) Article titled '*Why Suzuki*' published in Automotive Engineering and Trader, dated June, 1982;
- (vii) Article titled '*The people's car from Japan*' published in Financial Times, dated 26th May, 1982;
- (viii) Article titled '*Buoyant domestic sales boost Suzuki Motor*' published in Financial Times, dated 18th May, 1982;
- (ix) Article titled '*Step Aside for Suzuki*' published in India Today, dated 30th April, 1982;

- (x) Article titled '*India puts Japan behind the wheel*' published in The Economist, dated 24th April, 1982;
- (xi) Article titled '*The Maruti-Suzuki Deal*' published in The Hindu, New Delhi;
- (xii) Article titled '*Sanjay's dream car*' published in Financial Express, dated 16th April, 1982;
- (xiii) Article titled '*Japanese firm to help Maruti make small cars*' published in The Statesman, dated 15^h April, 1982;
- (xiv) Article titled '*Maruti pact with Suzuki*' published in Patriot, New Delhi, dated 15th April, 1982.

51. The adoption of the plaintiff's trade mark *Suzuki* by the defendant in 1982 is not honest because the plaintiff's trade mark was well-known in 1982. The plaintiff has placed sufficient material on record to show that the plaintiff was a well-known mark in India as back as in 1982 when the defendant adopted the same.

52. The defendant is deemed to have notice of plaintiff's statutory and exclusive right to use the trade mark *Suzuki*. Since the trade mark *Suzuki* is a well recognized mark and registered in India since 1972, the trade mark registrations being matters of public record, the defendant is deemed to have constructive notice of the plaintiff's statutory and exclusive right to use the trade mark *Suzuki*.

53. The defendant adopted the name *Suzuki* with the dishonest and *malafide* intention of encashing upon the widespread goodwill, name and reputation attached to the plaintiff's name and mark *Suzuki* and to pass off and mislead the public that the business of the defendant had some connection with the plaintiff. The Managing Director of the defendant

admitted on oath on 03rd December, 2018 that “*If a consumer deals with the defendant company, he may wrongly think that he is dealing with the Japanese company*”.

54. There is no justification on part of the defendant to use trade mark *Suzuki* as part of the corporate name inasmuch as *Suzuki* is a Japanese surname and it is not associated with any Indian name, place, object or term.

55. The defendant’s submission that they adopted the name *Suzuki* because they had friend name *Suzuki* is not pleaded in the written statement. That apart, there is no merit in this submission and is rejected. Reference be made to *Rajesh Engineering Corporation (supra)* and *the Timken Company (supra)* in which the Court rejected such pleas.

56. The defendant’s explanation for adopting the word *Suzuki* appears to be farfetched and unacceptable on the face of it. It appears that the defendant has chosen the word *Suzuki* only to trade on the plaintiff’s reputation and goodwill.

57. The defendant’s explanation for adopting the trade mark *Suzuki* appears to be an after-thought. It is natural for the parties who have copied trade mark to try and explain its conduct and to look out for means to explain derivation of words so adopted. If the trade mark having element of prior continuance and use, has been copied, no amount of explanation, even if it is plausible, is capable of defending infringement of trade mark of such prior user.

58. The use of the trade mark *Suzuki* by the defendant is not *bona fide* and is a colourable imitation of the plaintiff’s trade mark. Since the adoption of the mark *Suzuki* was dishonest, the alleged use of the same from 1982 onwards will be of no consequence.

59. The plaintiff has been using the mark *Suzuki* in its companies/business concerns for a long span of time extending over a century. The name has acquired distinctiveness and a secondary meaning in the business or trade circles. Any attempt by another person to use the name in business and trade circles is likely to create an impression of a connection with the plaintiff.

60. Since the defendant has no connection with the plaintiff, the use of the trade mark *Suzuki* by the defendant, would cause a misleading impression that the defendant is connected with the plaintiff or that the defendant has been licensed by the plaintiff to use the name *Suzuki*, which is false and untrue. Deception and confusion is, therefore, inevitable.

61. The defendant's illegal adoption of the mark *Suzuki* without authorization from the plaintiff will also lead to undesirable and highly prejudicial consequences which will whittle down the reputation and goodwill attached to the plaintiff's trademark. The use of the *Suzuki* name by the defendant would tarnish the reputation and goodwill of the plaintiff and would also dilute the distinctiveness of plaintiff's mark and the exclusivity attached to it.

62. A fair and honest trader will not give a misleading name to its product to the continuing detriment of the plaintiff who has built up their goodwill in the business after years of hard work. It is this intangible right to property which the law seeks to protect.

63. The defendant, a fraudulent infringer who has knowingly and deliberately violated the rights of the plaintiff, cannot complain and hide behind the defence of delay, *laches* or acquiescence as the infringement at the very initial stage itself was fraudulent. The delay and *laches* by itself would not bestow fraud with character of legality. Reference be made to *the*

Timken Company (supra), Hindustan Pencils Private Limited v. India Stationery Products Co., AIR 1990 Del 19, *Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Limited*, AIR 1996 Bom. 149; *Revlon Inc. v. Sarita Manufacturing Co.*, 1997 (17) PTC 394; *Aktiebolaget Volvo of Sweden v. Volvo Steels Ltd. of Gujarat (India)*, 1998 (18) PTC 156; *Ansul Tobacco Industries v. Shiva Tobacco Company*, 2007 (34) PTC 392; and *Hamdard National Foundation v. Abdul Jalil*, 2008 (38) PTC 109.

64. Inordinate delay would not defeat an action for the grant of a temporary injunction especially where the use by the defendant of the mark was fraudulent. The defendant must have known that it was adopting a mark which belongs to someone else. Any infringer who uses or adopts someone else's mark must be aware of the consequences which may follow. The defendant ran the risk in using a mark which belonged to someone else. It continued its business uninterruptedly for a number of years before any action was taken by the plaintiff against it. If the defendant continued to do business by using the impugned mark, it did so at its own peril. The continued user cannot be set up as a defence under these circumstances.

65. Once there is a dishonest intention to adopt the mark, a mere delay in bringing action cannot be defeated because in case of continuing tort, fresh period of limitation begins to run every moment of time during which the breach continues.

66. Mere concurrent user is not sufficient in law. It must be honest. Since the adoption of the trade mark was itself dishonest, delay in bringing action is not sufficient to defeat grant of injunction.

67. Once the Court comes to the conclusion that it is a fit case of infringement of trade mark by the defendant then the delay is immaterial on

account of statutory rights granted under Section 28 of the Trade Marks Act in favour of the plaintiff.

68. A trade mark, which has acquired a wide reputation transcending international barriers even though in respect of a specified class or category of goods, cannot be allowed to be violated by another person in respect of a different category of goods because that other person will be deliberately using the trade mark of the former with an intent to get some undue advantage because of its reputation and goodwill. With the changed concept of passing off action, it is now not material for a passing off action that the plaintiff and the defendant should trade in the same field.

69. The defendant has no defence and has no real prospects of defending the claim.

70. The Trade Mark law is not intended to protect a person who deliberately sets out to take the benefit of somebody else's reputation with reference to goods, especially so when the reputation extends worldwide. The plaintiff has placed on record material to show that *Suzuki* has acquired very large reputation and goodwill throughout the world including presence in India.

71. The defendant is a dishonest litigant who has raised frivolous defence with the dishonest intention to blackmail the plaintiff. The order dated 16th May, 2017 records that the defendant demanded Rs.10 crores from the plaintiff to change their name.

72. The defendant raised a false plea of territorial jurisdiction in the written statement on the ground that they have no office in Delhi. This Court examined the Managing Director on an oath on 03rd December, 2018

when he admitted that the defendant has office in Delhi. In that view of the matter, there is no merit in the objection of territorial jurisdiction.

73. Since the admissions of the defendant are sufficient to pass a decree, this Court does not consider it necessary to consider any other objection of the defendant as Order XII Rule 6 of the Code of Civil Procedure specifically empowers this Court to pass a decree if the admissions are sufficient “*without waiting for the determination of any other question between the parties*”.

74. Before closing, this Court would like to record that on 13th May, 2019, the case was passed over thrice on the request of the defendant’s counsel. The case was again lastly taken up at 4:25 P.M. when again a request for pass over was made which was declined as it appeared that the request for pass over was not genuine. This Court, therefore, heard both the parties and reserved the judgment. On 30th May, 2019, the defendant filed I.A. No.8507/2019 in which incorrect averments have been raised by the defendant.

Conclusion

75. The plaintiff’s suit is decreed in respect of prayers (a) and (b) against the defendant.

76. The defendant has raised the false claim before this Court that it has no office in Delhi whereas the Managing Director of the defendant admitted on oath before this Court on 03rd December, 2018 that the defendant has office in Delhi. The defendant has also raised a false claim that the defendant was not aware of the plaintiff’s name, trade mark and registration in 1982, when the defendant adopted the mark *Suzuki*. The defendant has also raised false pleas in I.A. 8507/2019 mentioned in para 74 above.

77. Raising a false claim before the Court is an offence under Section 209 of the Indian Penal Code punishable with punishment of imprisonment upto two years and fine. Section 209 of the Indian Penal Code is reproduced hereunder:

“Section 209 - Dishonestly making false claim in Court —

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.”

78. In *H.S. Bedi v. National Highway Authority of India*, 2016 (155) DRJ 259, this Court discussed the scope of the Section 209 of the Indian Penal Code. Relevant portion of the said judgment is reproduced hereunder:-

“15.1 Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.

15.2 The essential ingredients of an offence under Section 209 are: (i)The accused made a claim; (ii)The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv)That the accused knew that the claim was false; and (v)The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

15.3 A litigant makes a ‘claim’ before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a ‘claim’ for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false claim is filed in Court.

15.4 The word ‘claim’ in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the ‘claim’ to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word “claim” would mean both

not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a “claim” to the non-existence of the averred fact. A false “denial”, except when the person responding is not aware, would constitute making a “claim” in Court under Section 209 IPC.

15.5 The word ‘claim’ for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

15.6 Whether the litigant’s ‘claim’ is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigant’s pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigant’s action has a proper foundation which entitles him to seek judicial relief.

15.7 Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.

15.8 False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.

15.9 Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of

justice is allowed to be poisoned by anyone resorting to filing of false claims.

15.10 The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

15.11 The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.

15.12 Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public.”

(Emphasis supplied)

79. This Court is of the prima facie view that this case warrants prosecution under Section 209 of Indian Penal Code for raising false claims. However, in the interest of justice, three weeks time is granted to the defendant to introspect and file an unconditional apology failing which the defendant shall be liable to pay actual cost incurred by the plaintiff on this litigation. The plaintiff shall file the actual cost incurred on an affidavit and

the Registry shall draw the decree with actual cost incurred by the plaintiff, in event of failure of the defendant to file the unconditional apology.

80. Pending application is disposed of.

J.R. MIDHA, J.

JULY 17, 2019

dk/ak

