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

Date of decision:-16th October, 2023.

+ **CS(COMM) 580/2020, I.A. 13900/2023 & I.A. 20500/2023**

DELHI PUBLIC SCHOOL SOCIETY

..... Plaintiff

Through: Mr. Puneet Mittal, Sr Advocate with
Mr. Rupendra Pratap Singh and Ms.
Sakshi Mendiratta, Advocates (M.
9717889462)

versus

**AVIRAL EDUCATION WELFARE AND
CULTURAL SOCIETY AND ANR**

..... Defendants

Through: Mr. Kamal Gupta, Mr. Sparsh
Aggarwal and Mr. Manish Vashist,
Adv for Aviral Education Welfare
And Cultural Society (M.
9810988094)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Delhi Public School Society seeking permanent injunction restraining misuse of the Plaintiff's name - *DELHI PUBLIC SCHOOL*, mark - *DPS* as also the accompanying logos which are extracted below:



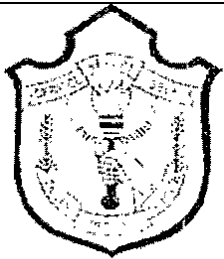
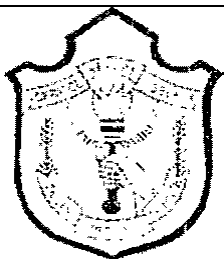
Together, these marks are referred to collectively as '*DPS marks*'.



3. The suit has been filed against Defendant No.1- M/s Aviral Education Welfare and Cultural Society ('AEWCS') which is running the Defendant No.2 School - Delhi Public School in Sahibabad- Loni Road, Indraprastha Yojna, Teela Shahbazpur, Bhopura-Loni Road, Sahibabad, Ghaziabad-201102, Uttar Pradesh.

4. The case of the Plaintiff is that the first school was established in 1949 under the name Delhi Public School. The Plaintiff's Delhi Public School, R.K. Puram was established in 1972 and the Plaintiff has more than 200 affiliated schools across the country. There are 10 schools which have been established outside India by the Plaintiff.

5. Considering these facts, the Plaintiff claims enormous goodwill and reputation in the mark and the name. The Plaintiff also claims rights in all the DPS marks. Both the said marks and the logos are also registered trademarks - the details of which are set out as under:

S. No	Trade Mark	Application No.	Class	User	Date of Application	Status
1.		1608946	16	01.12 .1948	08.10.2007	Registered
2.		1608947	35	01.12 .1948	08.10.2007	Registered



3.		1608948	36	01.12 .1948	08.10.2007	Registered
4.		1608949	41	01.12 .1948	08.10.2007	Registered
5.		1608950	42	01.12 .1948	08.10.2007	Registered
6.	DPS	1608951	16	01.12 .1948	08.10.2007	Registered
7.	DPS	1608952	35	01.12 .1948	08.10.2007	Registered
8.	DPS	1608954	42	01.12 .1948	08.10.2007	Registered
9.	DPS	1608955	36	01.12 .1948	08.10.2007	Registered
10.	DPS	1608953	41	01.12 .1948	08.10.2007	Pending
11.	DELHI PUBLIC	2111505	16	01.12	08.03.2011	Pending



	SCHOOL			.1948		ng
12.	DELHI PUBLIC SCHOOL	2111506	36	01.12 .1948	08.03.2011	Pendi ng
13.	DELHI PUBLIC SCHOOL	2111507	35	01.12 .1948	08.03.2011	Pendi ng
14.	DELHI PUBLIC SCHOOL	2111508	41	01.12 .1948	08.03.2011	Pendi ng
15.	DELHI PUBLIC SCHOOL	2111509	42	01.12 .1948	08.03.2011	Regist ered

6. The following marks have also been declared as well-known marks by the office of the Registrar of Trademarks. The said entry as published on the list of well-known marks is set out below:

S.No.	Trademark	Proprietor	Determining Authority	Report	Observation
116.	<p>DELHI PUBLIC SCHOOL/ DPS SERVICE BEFORE SELF DELHI PUBLIC SCHOOL LOGO (with reference Education & Allied Services.)</p>	The Delhi Public School Society, F Block, East of Kailash, New Delhi - 110065	Registrar of Trade Marks	N/A	The Registrar observed that the Mark is well-known with reference Education & Allied Services.

7. The case of the Plaintiff is that Defendant No. 1 had approached the



Plaintiff for a joint venture agreement to run a school under the name and style Delhi Public School Sahibabad in Ghaziabad- 201102, Uttar Pradesh. The agreement was entered into on 10th October, 2016 as per which, the Defendants were permitted to use the trademarks of the Plaintiff. At the time of entering into the agreement a sum of Rs.25,00,000/- was paid as Signing Fee, by the Defendant No. 1 to the Plaintiff. For various reasons, the said agreement was terminated on 24th September, 2018. Despite the said termination, the Defendants continued to run and operate the school which then led to the filing of the present suit.

8. Initially, in view of the arbitration clause which was there in the contract, a petition under Section 9 of the Arbitration and Conciliation Act, 1996 was also filed by the Defendant No. 1. However, no relief was granted in favour of the Defendant No. 1. Subsequently, the Defendant No. 1 filed a **WP(C) 8219/2020** titled ***Aviral Education Welfare and Cultural Society & ors. v. Delhi Public School Society*** for declaring certain clauses of the agreement as void. Upon the service of the notice in the said writ petition, the present suit came to be filed by the Plaintiff.

9. Vide order dated 24th December, 2020, the Court had refrained from passing off any interim order in view of the writ petition filed by the Defendant No.1. Thereafter, the interim order was finally passed on 10th March, 2023 after hearing the parties. Vide the said order, the Court came to the conclusion that after the termination of the joint venture agreement, neither the Society nor the School, can run under the name of Delhi Public School or DPS. The Court had, accordingly, restrained the Defendants from using the DPS marks. The relevant portion of the said order reads as under:

“10. The above clearly proves infringement, passing off



and amounts to false advertisement. Defendants intend to ride upon the goodwill and cachet enjoyed by DPSS. Mr. Mittal has also pointed out that for last three years, Defendants have admitted students representing themselves to be affiliated to DPSS, without disclosing that the underlying contract with DPSS (N A), which gives them the right to use IP rights of DPSS, no longer exists. In view of the fore-going, the Court is convinced that DPS has made out a strong prima facie case in its favour Balance of convenience also lies in its favour and in case an order of injunction is not granted, irreparable loss would be caused not only to DPSS, but also to public at large. Accordingly, during the pendency of the suit:

(i) Defendants and their directors, employees, trustees, office bearers, agents, representatives, and all other person(s) acting for and on their behalf are restrained from offering for service sale, advertising, adopting, using, or dealing in any manner with the well-known IP rights of DPS ('Delhi Public School ', 'DPS' and'



or any other trademark(s)/copyrights(s) that are identical or deceptively similar to that IP rights of DPSS; and

(ii) DPS-S is directed to remove the impugned trademarks and copyrights and also name and photographs of office bearers of DPSS from their website (www.dpssahibabad.com) forthwith."

10. Despite the passing of the said order, the Defendants continue to run the School under the mark/name DELHI PUBLIC SCHOOL/ DPS. Initially, an appeal being **FAO(OS) (COMM) 62/2023** titled **Aviral Education Welfare & Cultural Society & Anr. v. The Delhi Public School Society** was filed by the Defendants which was withdrawn. Thereafter, **FAO(OS)**



(COMM) 69/2023 titled *Aviral Education Welfare and Cultural Society & Anr. v. The Delhi Public School Society* came to be filed. Since *WP(C) 8219/2020* was also dismissed vide order dated 10th March, 2023 an appeal being *LPA* being *213/2022* titled *Aviral Education Welfare and Cultural Society & Ors. v. The Delhi Public School Society* was also filed. Certain parents of the Defendant School also challenged the order passed in the writ petition being *LPA 214/2022* titled *Surbhi Dubey & Ors. v. Delhi Public School Society & Ors.* All the three proceedings came to be decided by the Id. Division Bench vide order dated 21st September, 2023 by which the judgment of the Id. Single Judge of 10th March 2023, both in the interim injunction application and in the writ petition came to be upheld.

11. In the meantime, owing to the continuous use of the Plaintiff's mark and name, the Plaintiff has filed an application under Order XXXIX Rule 2A of CPC. After the judgement of the Ld. Division Bench dated 21st September 2023, the Defendants have now filed an application being *I.A. 20500/2023* seeking extension of time to comply with the injunction order.

12. Today, the said two applications have been considered by the Court.

13. Mr. Puneet Mittal, Id. Sr. Counsel for the Plaintiff submits that for a period of six years, the Defendants have not paid any maintenance charges which are to the tune of Rs. 12,00,000/- per year. He further submits that despite the injunction order, they continue to use the Plaintiff's DPS marks and have admitted students for the last six academic years. The students continue to wear the uniform bearing the Plaintiff's mark and name. Thus, the Defendants are brazenly committing contempt of the orders of this Court. It is further submitted that even after termination of the agreement dated 10th October, 2016 the Defendants continued to reflect the Plaintiff's



office bearers on its website which is only recently being taken down. Mr. Mittal, Id. Counsel, submits that the amount of Rs.25,00,000/- is merely a signing fee and nothing more as is reflected in the receipt which has been given to the Defendants.

14. Mr. Gupta, Id. Counsel for the Defendants, on the other hand, submits that the joint venture agreement was for an undefined period. The Defendants made substantial investment of more than Rs. 30 crores, in setting up the school. However, within a period of six months after the school was open, the joint venture agreement was terminated. Thus, the benefit of the Plaintiff's DPS marks could not be taken by the Defendants at all. Id. Counsel further submits that the termination itself is illegal and contrary to the agreement and Defendants reserve their rights to challenge the illegal termination and also seek damages. He further submits that an amount of Rs.25,00,000/-, which was paid, is still lying with the Plaintiff. Mr. Gupta, Id. Counsel further submits that no services under the agreement have been rendered by the Plaintiff to the Defendants.

15. On the other hand, Mr. Mittal, Id. Counsel submits that the Defendants have taken the advantage of the Plaintiff's goodwill and have inducted more than 500 students in the school which was only because of the goodwill of the Plaintiff.

16. Heard, Id. Counsels for the parties.

17. On merits, the Defendants have already been restrained from using the DPS marks and the said orders have also been upheld in appeal. Thus, there can be no justification for continuing the use of the DPS name and the mark as also the logos. The case being one relating to education, the career of hundreds of children would be in jeopardy if allegations made by the



Plaintiff are to be gone into and contempt action is initiated. The Court has put to both the Id. Counsel for the parties as to whether the entire dispute can be resolved.

18. At this stage, it appears that the Defendants need time to change the name of the school and in any case the students belonging to Class 10 and 12 have already submitted their candidature to the CBSE. If the certificates and the marksheets for the students of Class 10th and 12th are not issued in the name currently in which applications have been submitted to CBSE, the future of these students could be jeopardised. On the other hand, there is also no doubt that *prima facie* the Defendants are in contempt of the injunction order dated 10th March, 2023.

19. Under these circumstances, due to the fact that the Defendants are running a school where more than 500 students are currently studying, the Court is taking a compassionate view of the matter in order to ensure that the careers of the children are not put to any harm. Thus, contempt action is not being initiated subject to the ensuing conditions. In the overall facts and circumstances of this case, this Court is of the opinion that the suit itself can be brought to quietus by putting in place an arrangement which is in the overall interest of the students of the school, at the same time suitably compensating the Plaintiff.

20. Under these circumstances, the following directions are issued:

- i) The Defendant School can use the DPS marks/names including 'DELHI PUBLIC SCHOOL', 'DPS' as also the logos only in respect of the students who are already admitted for the academic year 2023-2024, for the academic year ending on 31st March 2024.



- ii) Any fresh admissions in the Defendant School for the academic year 2024-2025 shall be under a new name.
- iii) The Defendant School shall not use the mark 'DPS', logo and name or any of the trademarks of the Plaintiff after the current academic year which is ending on 31st March, 2024.
- iv) The certificates for the current students who are currently undergoing Class 10 and Class 12 as also other children, for the academic year 2023-2024, shall be issued under the existing name of the Defendants.
- v) Since, no amount has been paid by the Defendants after the initial amount, a further sum of Rs.20,00,000/- plus GST shall be paid by the Defendants by 31st December, 2023 to the Plaintiff.
- vi) Subject to this payment alone, current students shall be issued marksheets and certificates under the name 'DPS'.

21. It is made clear w.e.f next academic year – 2024-25, the use of the name 'DELHI PUBLIC SCHOOL', mark 'DPS' and the logos shall be ceased, failing which the trustees of the Defendants shall be personally responsible. No fresh admissions shall be carried out in the Plaintiff's DPS marks, henceforth.

22. Mr. Gupta, Id. Counsel for the Defendants under instructions from Mr. Adarsh Gupta, Secretary, undertakes that after 31st March, 2024, there shall be no use of the Plaintiff's name, mark and logos by the Defendants.

23. In order to enable the smooth transition, since the Defendants have already applied to the Joint Director of Education, Meerut for change of new name, the said application may be processed urgently on an expeditious



basis and, in any case by 30th November, 2023, subject to the Defendants furnishing all the necessary documents. The CBSE shall also expeditiously process the change of the name of the School in order to give effect to the above order.

24. The above arrangements shall not prejudice the Defendants from availing of its remedies in accordance with law in respect of any grievance regarding the termination of the agreement against the Plaintiff.

25. The suit is decreed in the above terms. Decree sheet be drawn accordingly.

26. All pending applications are disposed of.

27. This order is passed with the consent of the parties.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 16, 2023

Mr/kt