IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Commercial Appellate Jurisdiction)

Commercial Appeal No.20 of 2022

Praveen Kumar Mewara, aged about 54 years, s/o Late NagarmulMewara, r/o 2502, Shri Ram Gardens, Kanke Road, PO-Gonda, PS-Kanke, Ranchi-834011 as the proprietor of M/s Adhunik Consumer Products having its registered office at West Market Road, Upper Bazar, PO-GPO, PS-Kotwali, Dist.-Ranci-834001 ..... **Plaintiff/Appellant**

Versus

M/s Aditya Industries, a firm and a trading concern and carrying on business from Ratu Road, Piska More, PO & PS-Piska More, Dist-Ranchi-834005 .....**Defendant/Respondent**

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Parth Jalan, Advocate
For the Respondent : None

O R D E R No. 07 Dated: 25th July 2023

Per, Anubha Rawat Choudhary, J.

This Commercial Appeal has been filed for setting aside the order dated 29th September 2022 passed in Misc. Civil Application No.307 of 2019 filed in Commercial Case No.47 of 2019 whereby the learned Presiding Officer, Commercial Court, Ranchi has rejected the prayer for grant of interim injunction filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure r/w Section 151 of the Code of Civil Procedure.

2. The learned Court below has rejected the injunction application primarily on the ground that no prima-facie case has been made out at this stage inasmuch as the prior use of the registered trade mark and copy right would require evidence.

3. The learned counsel for the appellant while challenging the impugned order has submitted that the appellant was the prior user of the trade mark ADHUNIK since 1990 written in distinct manner and style and the artistic style of writing logo “a” is also separately registered under Trade Mark Act, 1999 and under the Copyright Act, 1957. Though the aforesaid has been registered on 20th January 2016 but it was being used from 1st April 1990 therefore the learned Court below ought to have granted injunction in favour of the appellant. It is submitted that the appellant came

to know sometimes in the year 2018 that the defendant/respondent has been selling identical product under the name of AADARSH using an identical artistic style and trade dress as that of the appellant which is identical and/or deceptively similar as that of the structural representation of the mark and logo and thereafter the case was filed before the learned Court below and the petition seeking injunction has been rejected. The learned counsel has referred to the trade mark/logo/trade dress as projected in the Memo of Appeal also. The learned counsel has submitted that the plea of prior user by the appellant has not been properly considered by the learned Court below and therefore the impugned order calls of interference and the petition for injunction be allowed.

4. After hearing the learned counsel for the appellant, it is important to extract the trade mark and logo with respect to the appellant and the defendant/respondent as mentioned in the Memo of Appeal.

5. So far as the appellant is concerned, trade mark/logo/trade dress are extracted below:







6. So far as the defendant/respondent is concerned, its trade mark/logo/trade dress is extracted below:



7. From the records of this case, there appears no dispute that the plaintiff, who is the appellant before this Court, had a registration of trade mark for goods under Class 31 issued on 31st March 2009 for foodgrains etc. including *"Gotta Masala"* and the appellant got its registration for goods under Class 30 from 20th January 2016 which included among other things the spices as well. The appellant got its registered trade mark logo "a" with artistic style writing on 20th January 2016, which the appellant claims to have been using since 1st April 1990. The use of the said style "a" since 1st April 1990 has been seriously disputed by the defendant/respondent. It is further not in dispute by the appellant that the defendant/respondent has been registered for goods under Class 30 on 4th March 2014 with certificate from 4th August 2018 and its claim was that it was using the same since 28th October 2013. The application was made on 2nd August 2014.

8. Thus, the application for registration of trade mark was filed by the defendant/respondent prior to that of the appellant.

9. The bone of contention is as to whether the appellant was the prior user of the style since 1990 or not.

10. It is also important to note from the impugned order itself, that the appellant has filed a rectification application against the registration granted to the defendant/respondent which is pending.

11. The findings of the learned Court below as recorded in the impugned order are as under: -

> "Admittedly, both the sides have registration of trademark and copyright from competent authority. The defendant has copyright of 'aadarsh' with artistic Style of writing which resembles 'a' of plaintiff. Since both sides have certificates from competent authority. prior user may have right. But this requires trial different from prima facie case. At the outset for stay of use of the alleged use of registered trademark and copyright requires a strong prima facie case. Thus, I find that there is not such a strong prima facie case as to entitle the plaintiff for grant of injunction.
> Both are in trade. So balance of convenience is not in favour of plaintiff. As regards irreparable was, being business, it can be compensated to a greater extent by payment of money.
> Accordingly, I do not find merit in case for grant of injunction. Accordingly, the prayer for grant of injunction is rejected.
> Both sides are directed to expedite the main suit and shall endeavour to get it concluded within six months.
> Accordingly, this Misc. Civil Application stands disposed off."

12. The learned Court below considered the arguments of the parties and has recorded that since both the parties have certificates from competent authority, the prior user may have some right but that itself requires trial different from prima-facie case. In our opinion, there can be no doubt that so far as the prior user is concerned the same would essentially require evidence. This Court is of the considered view that the rejection of injunction on the aforesaid reasoning as cited by the learned Court below does not suffer from any perversity or any illegality and therefore the same does not call for any interference.

13. So far as the judgment cited by the appellant in *"Bacardi and Company Limited v. Bahety Overseas Private Limited and Ors." 2021 SCC OnLine Del 4956* is concerned in the said case the defendant had applied for registration before the Registrar, Trade Marks, Delhi on 19th June 2015 but the registration was refused and the said refusal was never challenged before any legal Forum. So far as the judgment in *"ITC Limited v. Golden Tobacco Limited" 2018 SCC OnLine Mad 2437* is concerned the same also stands on different footing inasmuch as in the said case, the defendant was not a holder of registered trade mark.

14. The aforesaid two judgements relied upon by the learned counsel for the appellant, do not apply to the facts and circumstances of this case. In the present case both the appellant and the defendant/respondent are having registered trade mark and the dispute primarily relates to claim of prior user of the trade mark and logo.

15. As a cumulative effect of the aforesaid discussions, the impugned order does not call for any interference.

16. For the aforesaid reasons, finding no substance, Commercial Appeal No.20 of 2022 is dismissed.

(Shree Chandrashekhar, J.)

(Anubha Rawat Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated:25th July 2023
Sudhir/NAFR