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

\+ C.A.(COMM.IPD-TM) 154/2021

SANJIV MITTAL ..... Appellant

Through: Mr. Manoj Arora and Ms. Sapan Deep, Advs.

versus

THE REGISTRAR OF TRADE MARKS AND ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Advs. for R-1

Mr. Zeeshan Hashmi, Adv. with Mr. Ankit Parashar, Adv. for R-2 and 3

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R (O R A L)

% 05.07.2023

1. This appeal is directed against a notesheet noting by the Trade Marks Registry which reads thus:

> "In view of the balance fee, death certificate of F C Mittal, partnership deed dt 4.6.99, retirement deed dt 12.1.2007, partnership deed dt 1.4.2013 and retirement deed dt 9.10.2013, affidavit of Shrimati Parwati Devi dt 19.6.2015, Rejit Mittal dt 10.6.2015, request is allowed."

2. Given the limited issue involved, no detailed allusion to the facts is necessary.

3. On 16 May 1997, an application was filed under Section 18(1)

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of the Trade and Merchandise Marks Act 1958, which was in force at that time, read with Rule 25 of the Trade and Merchandise Rules 1959, for registration of the Device Mark , in class 31, in respect of cattle feed, chicken feed and other animal feed.

4. The application was made in the name of "(i) F.C. Mittal, (ii) Sanjeev Mittal and (iii) Rajiv Mittal, all Indian nationals, manufacturers and merchants, trading as Bhuvan Industries, whose address was D-154, Focal Point, Phase-II, Jalandhar 144 004, Punjab". Registration was granted, to the said mark, on 28 March 2005.

5. On 30 October 2014, Rajiv Mittal and Gunjan Mittal, Respondents 2 and 3 herein, applied under Section 45 of the Trade Marks Act 1999 read with Rule 68 of the Trade Mark Rules 2002, for entry of their names in the register of Trade Marks as subsequent registered proprietors of the aforesaid mark, which, as noted, stood registered in the name of (i) F.C. Mittal, (ii) Sanjeev Mittal and (iii) Rajiv Mittal, as trading in the name of Bhuvan Industries.

6. The application stated that Respondents 2 and 3 were entitled to have their names entered as subsequent registered proprietors of the mark in view of (i) the death of F.C. Mittal, (ii) admission and retirement of Sanjeev Mittal in individual and HUF capacity and (iii) admission of Gunjan Mittal.

7. The aforesaid request came to be allowed by the impugned

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notesheet noting.

8. The grievance of Mr. Mittal, learned Counsel for the petitioner, is that no opportunity was granted to the petitioner before the aforesaid noting was entered. He submits that, on merits, his client has legitimate grounds on which it could contest the request of Respondents 2 and 3.

9. Mr. Zeeshan Hashmi, learned Counsel for Respondents 2 and 3, submits, *per contra*, that the trade mark application having been filed in the name of the firm Bhuvan Industries, and the impugned noting having merely substituted the new partners in place of the original partners of the firm, no legitimate grievance could be raised by the petitioner.

10. I do not intend to enter into the merits either of the request made by Respondents 2 and 3 before the Registry of Trade Marks or of the impugned noting. Suffice it to state that, as the registration of the mark in question had been granted to F.C. Mittal, Sanjiv Mittal and Rajiv Mittal, any change therein could have been effected only after hearing the original registrants of the mark.

11. Inasmuch as the impugned noting was entered without hearing the petitioner, Mr. Hashmi is agreeable to the impugned noting being set aside and the matter being remitted to the competent officer in the Trade Mark registry to take a decision on the request of Respondents 2 and 3 after affording an opportunity of hearing to both sides.

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12. In view of the aforesaid, the impugned noting dated 2 July 2015 is set aside.

13. The learned Registrar is requested to nominate a competent officer to consider the request made by Respondents 2 and 3 and decide the request afresh, after hearing both sides.

14. For the said purpose, both sides shall present themselves before the officer nominated by the Registrar on 13 July 2023. The decision on the request made by Respondents 2 and 3 would be taken on or before 20 July 2023 and communicated to both sides.

15. It is made clear that the decision on the request should be reasoned and should deal with contentions of both sides, in case the request is resisted by the petitioner.

16. The petition stands allowed in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J.

JULY 5, 2023
dsn

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