IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE DIVISION

ORIGINAL SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD

APOT 44 of 2024
Arising out of
IA GA 4 of 2022
CS No. 211 of 2012
Amir Biri Factory & Ors.
Vs.
Mohd. Aslam

Appearance:

For the Appellants : **Mr. Debnath Ghosh, Adv.**
Mr. Sarosij Dasgupta, Adv.
Mr. Avijit Dey, Adv.
Mr. Biswaroop Mukherjee, Adv.

For the Respondent : **Mr. Manish Biala, Adv.**
Ms. Amrita Panja Moulick, Adv.
Mr. Sourojit Dasgupta, Adv.

Judgment On : **16.04.2024**

Harish Tandon, J.:

The order of temporary injunction passed *ex parte* was sought to be vacated at the behest of the defendant/respondent on an application under Order 39 Rule 4 of the Code of Civil Procedure alleging not only that the

application for temporary injunction contained misleading statements but also on the ground of suppression of material facts. The plaintiffs/appellants filed the instant suit seeking a decree for permanent injunction restraining the defendant/respondent from in any manner infringing the plaintiffs/appellants' registered label mark "MAJDUR BIRI" by using the mark which is identical and deceptively similar thereto and also decree for perpetual injunction restraining the defendants from manufacturing, selling, stocking, offering for sale Bidis under the mark "MAZDOOR" or any other trademark which is identical or deceptively similar to the appellant's mark "MAJDUR".

It is averred in the plaint as well as the application for temporary injunction that the appellant no. 1 is a leading manufacturer, trader and merchant of the Biris under the trade name and style of "MAJDUR BIRI No. 444" wherein the numerical No. "444" denotes the high quality of Biris containing the high quality of Tobacco Flakes. Initially, the appellant no.1 started manufacturing biris under the name and style of '961 No. Tara Biri" from the year 1997 and subsequently started manufacturing and selling the Biris under the name and style of "MAJDUR BIRI" at the contemporaneous time. The appellant no. 1 adopted the brand and the label "MAJDUR BIRI" with the unique get up and colour combination and acquired an immense reputation and goodwill in the market inculcating a sense of high quality product in the consumers. The statutory recognition of the said label were received by the appellant no. 1 in the year 1999 and subsequently a

registration certificate was issued in the year 2008 which confers an exclusive right upon the said appellant no.1 to use the aforesaid trademark. Gradually with the increase of the reputations of the said brand, the appellant no.1 applied afresh for registration of the brand and label "MAJDUR BIRI" without any restrictions which was advertised before acceptance in the Trademark Journal No. 1538. Over the span of time the brand and the label i.e., "MAJDUR BIRI" acquired an immense reputation and goodwill which would be evident from the turnover as a distinctive label and the registration of the trademark associated with the appellant no. 1. The defendant/respondent has adopted and copied the label and the trademark which is identical and deceptively similar name and the package in which the said goods are sold is entirely identical to the appellant's well-known and distinctive name and the label. Such attempt of the defendant/respondent in not only adopting the trade name but also selling in an identical get up in a package dishonestly and selling the said products within the State of West Bengal and the other part of the country. It is further averred in the plaint that the user of the offending label is likely to make a confusion and/or a deception amongst members of the public and of the trade as to an association, nexus and trade connection between the plaintiffs/appellants and the defendant/respondent as if it is a same product as that of the plaintiffs/appellants.

On the backdrop of the aforesaid facts pleaded in the plaint as well as the application for temporary injunction an *ad interim* order of injunction

was passed on 26th June, 2012 which was operative till 4th July, 2012; the said *ex parte* order of injunction was extended from time to time until 23rd July, 2012. The application was made returnable on 17th July, 2012 and on the said date the affidavit of service was filed by the plaintiffs/appellants and after being satisfied the Court confirmed the *ad interim* order to operate till the disposal of the suit.

It is apposite to mention that the application under Order 39 Rule 4 of the Code of Civil Procedure being GA 4 of 2022 was filed seeking to vacate and/or set aside the said *ex parte* order of temporary injunction obtained on the grounds as disclosed hereinabove. In order to complete the set of facts, it would be necessary to record the events happened in the said suit before the said application for vacating the temporary injunction was filed. In the year 2019 the defendant/respondent took out an application seeking dismissal of the suit as the plaintiffs/appellants did not take any steps for issuance of writ of summons in the said suit. Correspondingly, the plaintiffs/appellants also took out an application seeking extension of time and/or permission to lodge the writ of summons. Both the applications came up before the Trial Court and the application of the plaintiffs/appellants was allowed subject to payment of cost of Rs. 50 thousand to be deposited with the West Bengal Legal Aid Services, Kolkata which in fact, has been done. Being unsuccessful in getting the suit dismissed on such grounds the application for vacating the temporary injunction was taken out in the year 2022 by the defendant/respondent. By

the impugned order the Single Bench vacated the order of temporary injunction on the score that the said order was obtained by suppressing the material facts to the effect that there is a restriction on the exclusive right over the descriptive matter appearing on the label and the trademark was granted for the purpose of selling the products within the State of West Bengal. The Single Bench has further observed the defendant/respondent being the prior user and selling the product in the State of UP and Uttarakhand; and there is no material produced before the Court that the defendant/respondent are selling the goods directly and indirectly in the State of West Bengal.

The counsel for the appellant submits that there was no suppression of fact as held by the Single Bench relating to an application for registration of mark "MAZDOOR BIDI (DEVICE)" claiming the date of user as 1st January, 1972. It is further submitted that a notice to desist from selling the products was issued upon the defendant/respondent which was also disclosed in the plaint as well as the injunction application and therefore, the finding of the learned Single Judge that there has been a gross suppression cannot be justified. It is further submitted that the defendant/respondent attempted by filing an application for rectification of trademark granted in favour of the plaintiffs/appellants which was rejected by the competent authority and the aforesaid facts were also disclosed in the pleading. It is arduously submitted that the application filed by the defendant/respondent for registration of a trademark filed by the

predecessor on 12th December, 1980 was abandoned meaning thereby the said mark was not registered and the learned judge has failed to take note of the aforesaid facts. It is submitted that the application for vacation of the order of temporary injunction is taken out after a gap of 12 years and therefore, the Court should not vacate the order of temporary injunction which was operative for such a long period of time. It is arduously submitted that a person must approach the court with the clean hands and if they are found guilty of suppression of the material facts in an application under Order 39 Rule 4 of the Code of Civil Procedure, they are not entitled to get the order vacated on an equitable principle and place reliance on judgment Supreme Court in case of ***Gujarat Bottling Co. Ltd. & Ors. vs. Coca Cola Co. & Ors., reported in (1995) 5 SCC 545.***

It is arduously submitted that the moment the trademark registry disbelieved the case of the defendant/respondent and rejected the application for registration it implies that the said tribunal of limited jurisdiction has disbelieved the claim of prior user and placed reliance upon the judgment of Apex Court in case of ***Sulachona Amma vs. Narayanan Nair, reported in (1994) 2 SCC 14***:

> ***"6. The words "competent to try such subsequent suit" have been interpreted that it must refer to the pecuniary jurisdiction of the earlier court to try the subsequent suit at the time when the first suit was brought. Mere competency to try the issue raised in the subsequent suit is not enough. A decree in a previous suit will not operate as res judicata, unless the Judge by whom it***

was made, had jurisdiction to try and decide, not that particular suit, but also the subsequent suit itself in which the issue is subsequently raised. This interpretation had consistently been adopted before the introduction of Explanation VIII. So the earlier decree of the court of a limited pecuniary jurisdiction would not operate as res judicata when the same issue is directly and substantially in issue in a later suit filed in a court of unlimited jurisdiction, vide P.M. Kavade V. A.B. Bokil. It had, therefore, become necessary to bring in the statute Explanation VIII. To cull out its scope and ambit, it must be read along with Section 11, to find the purpose it seeks to serve. The Law Commission in its report recommended to remove the anomaly and bring within its fold the conclusiveness of an issue in a former suit decided by any court, be it either of limited pecuniary jurisdiction or of special jurisdiction, like insolvency court, probate court, land acquisition court, Rent Controller, Revenue Tribunal, etc. No doubt main body of Section 11 was not amended, yet the expression "the court of limited jurisdiction" in Explanation VIII is wide enough to include a court whose jurisdiction is subject to pecuniary limitation and other cognate expressions analogous thereto. Therefore, section 11 is to be read in combination and harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will operate as res judicata in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the same parties or their privies. This question is no longer res integra. In Rai Bajrang Bahadur Singh v. Rai Beni Madho Rakesh Singh the facts were that under U.P. Land Revenue Act 3 of 1901, the

consolidation and partition of the lands were effected and became final. Thereafter, one of the landowners claimed title in a civil suit for a declaration that he was the superior landholder. In view of Section 233(k) of the Land Revenue Act, on a divergence of opinion among Oudh Chief Court and Allahabad High Court, the judicial committee held at p. 214 that if a question of title affecting the partition, which might have been raised in the partition proceedings, was not raised and the partition was completed, Section 233(k) debars parties to the partition from raising the question of title subsequently in a civil court. The revenue court is a court of special jurisdiction. In Daryao v. State of U.P. this Court held that the doctrine of res judicata is in the interest of public at large and a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. In Gulam Abbas v. State of U.P. this Court held that the principle of res judicata though technical in nature, is founded on considerations of public policy. The technical aspect, for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject-matter or to grant reliefs sought in the subsequent litigation, should be immaterial when the general doctrine of res judicata is to be invoked. Explanation VIII, inserted by the Amending Act of 1976, was intended to serve this purpose and to clarify this position. It, therefore, has to be held that the decree of the District Munsif, though of limited pecuniary jurisdiction, would operate as res judicata in the subsequent suit between the same parties.

7. The Calcutta High Court took a very narrow view limiting the scope of Explanation VII to the decisions of the courts of special jurisdiction like probate, insolvency, land acquisition courts, Rent Controller, Land Revenue

Tribunal etc. The Kerala, Orissa and Madras High Courts have taken a broader view, which view now stands approved by this Court in the aforestated decision. Take an instance, if the scope of Explanation VIII is confined to the order and decree of an insolvency court, the scope of enlarging Explanation VIII would be defeated and the decree of civil courts of limited pecuniary jurisdiction shall stand excluded, while that of the former would be attracted. Such an anomalous situation must be avoided. The tribunal whose decisions were not operating as res judicata, would be brought within the ambit of Section 11, while the decree of the civil court of limited pecuniary jurisdiction which is accustomed to the doctrine of res judicata, shall stand excluded from its operation. Take for instance, now the decree of a Rent Controller shall operate as res judicata, but a decree of a District Munsif (Civil Judge) Junior Division, according to the stand of the appellant, will not operate as res judicata, though the same officer might have decided both the cases. To keep the litigation unending, successive suits could be filed in the first instance in the court of limited pecuniary jurisdiction and later in a court of higher jurisdiction, and the same issue shall be subject of trial again, leading to conflict of decisions. It is obvious from the objects underlying Explanation VIII that by operation of the non-obstante clause finality is attached to a decree of civil court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tried by a competent court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of Section 11. The parties are precluded from raising once over the same issue for trial."

It is further submitted that an application for review of the order for dismissal by the Trademark Registry was taken out by the

defendant/respondent which was again rejected on merit. The counsel for the appellant vociferously submits that the claim of being the user by the defendant/respondent, since 1972 cannot be believed as he was 10 years of age and in absence of any disclosure that the predecessor was using the said trademark, a court must take into account the aforesaid fact. It is thus submitted that in order to prove that the mark of the defendant/respondent has acquired a considerable reputation and goodwill; the material documents relating to the sales figure, invoices advertisement expenses are required to be produced which in fact, has not been produced and therefore, the finding of the Trial Court cannot be sustained. On the applicability of the provisions contained under Section 34 of the Trademark Act, 1999, the counsel for the appellant submits that such protection is not available to the defendant/respondent after the refusal of an application seeking registration of the mark and in this regard the provision contained under Section 11(1) of the said Act is applicable. On the plea that all other marks which were granted to the appellant as associated trademarks are only to avoid the deception and confusion and therefore, any limitations with respect to one mark will not spill over to any of the other associated marks.

Per contra, the counsel for the defendant/respondent submits that even if the mark is registered that cannot *ipso facto,* invite an injunction to be passed against a person who is using such mark much prior in time than the first user by the person in whose favour the trademark was granted. It is further submitted the rejection of an application for rectification or an

application for registration of a trademark filed by the defendant/respondent cannot stand in the way of getting an advantage under Section 34 of the Act but in fact, the said mark is used by the defendant/respondent since 1972. It is further submitted that all other applications for registration of the mark and the label "MAJDUR BIRI" with the small variation were granted by the competent authority, to the plaintiff as an associated trademark which leads to an inescapable conclusion that any restrictions imposed while granting first mark would also be applicable to a subsequent registration of the associated marks. It is thus, submitted that while registering the trademark in favour of the plaintiffs/appellants the restriction was imposed that the sale would only be effected within the State of West Bengal and therefore, the plaintiff cannot take advantage of infringement of the trademark in relation to a product sold outside the State of West Bengal. It is submitted that the defendant/respondent is selling its product mainly in the State of UP and Uttarakhand and has not sold any product within the State of West Bengal and therefore, the injunction in a blanket form cannot be granted. It is further submitted that there is no document produced before the Court or disclosed in the pleading that the defendant/respondent sold its product within the State of West Bengal and in absence thereof, the order of injunction that the defendant/respondent cannot sell its product in such mark and label anywhere in any part of the country cannot be granted. It is submitted that in a subsequent suit instituted against a third party for the identical relief the plaintiffs/appellants have disclosed the user of the marks

since 1979 whereas all such applications filed in connection with the instant case, the plaintiffs/appellants has asserted the user of the said mark since 1997 and therefore, the injunction granted in the said proceeding cannot have any bearing in the instant case. It is thus, submitted that the plaintiffs/appellants is prevaricating its stands at the different stages of proceedings or in other proceedings and, therefore, cannot be said to be a trustworthy. Lastly, it is submitted that there is no error in the order impugned in the instant appeal on the ground that the plaintiffs/appellants has grossly suppressed the material fact and/or made a misleading statement in relation to a material particulars and therefore, no interference is called for.

The scope of the provision contained under Order 39 Rule 4 of the Code of Civil Procedure is required to be recapitulated before we delve on the findings returned in the impugned order.

Order 39 Rule 4 is quoted as under:

"Order for injunction may be discharged, varied or set aside. - Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall

vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."

It is manifest from the aforesaid provisions that even after passing an order of temporary injunction the court can vary, discharge or set aside the said order on an application filed by a party dissatisfied with the said order. The second proviso appended to the said provision does not apply in the present case as the order of temporary injunction was not granted in presence of the parties. The first proviso indicates that while travelling on the peripheral of the enabling provision and exercise of powers conferred therein, the person dissatisfied with the order of temporary injunction must disclose that the said order was obtained by making a false statement or a misleading statement in relation to a material particular and also a guilty of suppression of the material facts. The language used in the first proviso also conveys a laudable intention that even on such ground the court may not vary, vacate or set aside the order of injunction but in this regard the reasons have to be recorded. Therefore, it cannot be presumed that the Court is bound to vacate and/or set aside the order of injunction on the ground of suppression or making a misleading statement of the material

particulars as the Court exercises the equitable jurisdiction and conduct of the parties is one of the relevant factors in this regard.

The Apex Court in ***Gujarat Bottling Co. Ltd. & Ors. (supra)*** reiterated the aforesaid principles with the rider that the equity cannot be said to be a one way traffic; the party approaching for vacating and/or setting aside the injunction or temporary injunction must show his conduct free from blame in the following:

> ***"47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings."***

The application for vacating the temporary injunction revealed that the registration of the trademark in favour of the plaintiffs/appellants not only contained the conditions that such registration shall not give an exclusive use of the numerical number but further restrictions was imposed that the sale can only be effected within the State of West Bengal. All associated marks registration whereof was subsequently granted was in association to a parent mark containing such conditions and restrictions and, therefore such conditions and restrictions are impliedly and/or by necessary implication imposed therein and therefore, there has been a misleading statement of the material facts in the application for temporary injunction. We do not find any justification in the stand of the plaintiffs/appellants that the defendant/respondent have suppressed the material facts or did not disclose the material facts and therefore, the ratio of the judgment rendered in ***Gujarat Bottling Co. Ltd. (supra)*** can be gainfully applied.

Section 34 of the Act is in effect an exception to an exclusive right of user of the registered trademark which can get impetus from the negative words used therein. It gives an immunity to a person using the trademark prior in time of the user by a person in whose favour the registration of the trademark is granted, despite the said trademark being identical with or nearly resembling in relation to a goods or services.

The provision contained in Section 34 of the said Act is in the nature of a defence to protect the prior user of an unregistered mark provided it is continuously used. The continuous use postulates the reasonable commercial use from the date anterior to the date of registration or commencement of the use by the registered proprietor of the said trademark. In order to ascertain the completeness of the said expression "continuous use", the intention not to abandon the use of the said mark must be evident from the pleadings. We are not unmindful that the person in whose favour the trademark is registered acquires a valuable right to use the said trademark in relation to goods in respect of which it is registered and therefore any invasion of such right by any other person which is either similar or identical or deceptively similar to the trademark, the protection can be given by an action of infringement of a trademark.

However, such right of the proprietor over the trademark is subject to the other provisions contained in the Act and therefore cannot be said to be an absolute and/or inchoate right against the prior user. Any other interpretation on conjoint reading of the different provisions of the Act would frustrate the legislative intent.

A plea is taken in this regard that the moment the registration is refused by the registrar by rejecting the application filed by the defendant/respondent, he is debarred from taking a shelter under Section 34 of the said Act, which does not appear to be correct. Section 11 contains

an exhaustive provisions relating to a situation for registering the trademark and/or refusing to register the trademark without any overriding provisions in relation to the other sections of the said Act. Section 34 starts with the negative expression and intention is laudable that an exception is carved out. The expression "nothing in this Act" has to be understood in such perspective and therefore, it debars the person who was unsuccessful in getting the trademark registered cannot be accepted. The contention of the appellant in this regard is unacceptable.

We also do not find any substance in the contention that the registrar of trademark cannot impose any conditions, limitations and/or restrictions while granting the registration which by necessary implication includes the restriction in relation to a territorial use of the said trademark. Though the case of *res judicata* is sought to be raised in connection with the above facts that the trademark registry is exercising the jurisdiction as a tribunal and therefore, the decision operates as *res judicata,* but we do not find that the conjoint reading of the various provisions would attract such principles. There is no quarrel to the proposition of law laid down in ***Sulochana Amma (supra)*** that even the order of the Tribunal may attract the principle of *res judicata* but while applying the aforesaid doctrine the Court must take into account the safeguards and/or the other provisions contained in the Act. It is no doubt true that the application for registration of a trademark filed by the defendant/respondent was rejected by the trademark registry yet, Section 34 of the Act gives a protection as a prior user thereof. It may

operate as *res judicata* if an identical and similar application containing the selfsame facts are filed before the tribunal for registration which has been dismissed on merit but certainly cannot override the statutory protection provided under Section 34 of the Act in relation to its user as an unregistered proprietor of the said trademark.

The observation of the Apex Court in ***Neon Laboratories Ltd. vs. Medical Technologies Ltd. & Ors., reported in (2016) 2 SCC 672*** can be gainfully applied in this regard wherein it is held:

> ***"This section palpably holds that a proprietor of a trade mark does not have the right to prevent the use by another party of an identical or similar mark where that user commenced prior to the user or date of registration of the proprietor. This "first user" rule is a seminal part of the Act. While the case of the respondent-plaintiffs is furthered by the fact that their user commenced prior to that of the appellant-defendant, the entirety of the section needs to be taken into consideration, in that it gives rights to a subsequent user when its user is prior to the user of the proprietor and prior to the date of registration of the proprietor, whichever is earlier. In the facts of the case at hand, the appellant-defendant filed for registration in 1992, six years prior to the commencement of user by the respondent-plaintiffs. The appellant-defendant was, thus, not prevented from restraining the respondent-plaintiffs' use of the similar mark PROFOL, but the intention of the section, which is to protect the prior user from the proprietor who is not exercising the user of its mark prima facie appears to be in favour of the respondent-plaintiffs."***

A plea has been taken that all further marks which were registered in favour of the plaintiff/appellant were in the association with the first mark which contains the conditions and/or the restrictions and therefore, subsequent registration as associated trademark shall be deemed to contain such conditions and/or restrictions. The associated trademark is defined in Section 2(1)(C) to mean a trademark deemed to be or required to be registered as associated trademarks under the Act. Section 16 contained an exhaustive provision relating to the registration of a trademark as associated trademark. The meaningful reading of the provisions contained in Section 16 of the Act postulates that where the proprietor of a trademark which is already registered applies for a registration of identical or similar trademark in respect of same or similar goods, such trademark may be registered as associated trademarks. The legislative intent behind the incorporation of the said fact is to protect the public from being confused or misled in to the thinking that the goods so traded with the identical or similar trademarks originate from a different source. Presumably for such reason, Section 44 creates a restriction in assignment and/or transmission of the associated trademark in disjunction with the parent trademark. The aforesaid section provides that associated trademark can only be assigned or transmit as a whole and not separately. However, the safeguard is also provided under Section 16(5) for disassociating the associated trademark with the other trademarks on a satisfaction that there is no likelihood of deception or confusion being caused in relation to the goods and such services into the

mind of a common man having imperfect recollection. We do not find any justification in the stand of the appellant that the associated trademark which is so associated with the other trademark wherein the conditions and restrictions are imposed, shall stand alone until the same is dissolved from the association under Section 16(5) so as not to contain the same conditions and restrictions. We do not find any other object in associating a trademark which is identical or deceptively similar to the other trademarks as a series of trademark. Therefore, the contention of the appellant that the other marks subsequently registered acquired distinctiveness without any conditions or restrictions, is not applicable.

On the discussions as made above, we are of the opinion that the trademark granted in favour of the plaintiffs/appellants contained the restriction that it is for the use within the State of West Bengal and therefore, cannot have an extra territorial operation. Any infringement within the State of West Bengal may give a right to the proprietor of the said trademark to allege infringement thereof but the same cannot be availed beyond the territory for which the registration of the trademark was granted.

In view of the above, we have no hesitation that the injunction was granted on a misleading statement made in the plaint that the registration of trademark which is associated to the parent trademark cannot contain such restrictions. Furthermore, it is a specific case of the defendant/respondent that they never carried on trade or sold the product

in the State of West Bengal nor we find any document in support thereof in the pleading. In such view of the matter, we do not find any infirmity and/or illegality in the impugned order.

The appeal is thus dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)