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

% Reserved on: 19th February, 2024

Pronounced on: 08th April, 2024

\+ **C.O.(COMM.IPD-CR) 699/2022**

MOHD SHAKIR ..... Petitioner

Through: Mr. Anirudh Bakhru, Mr. Manoj Arora, Ms. Pragya Choudhary, Mr. Vijay Laxmi Rathi and Ms. Umang Rathi, Advocates.

versus

GOPAL TRADERS AND ANR ..... Respondents

Through: Mr. Junaid Alam, Advocate with Ms. Twinkle Rai, Advocates for respondent no.1.
Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday, Mr. Lakshay Gunawat and Mr. Krishnan V, Advocates for respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

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1. This petition has been filed under Section 50 of Copyright Act,1957 (hereinafter referred to as "**the Act**") for cancellation/rectification of the work registered under No. A-120894/2017. The said petition was originally filed before the Intellectual Property Appellate Board (hereinafter referred to as "**IPAB**") and consequent to the abolition of the IPAB in 2021, transferred to this Court. As per the impugned registration, the artistic work titled as '**MYA**', with authorship claimed by Mr. Amit Gupta, M/s Gopal Traders, Devi Road, Manipuri, U.P.- 205001 and year of first publication as 2010, is



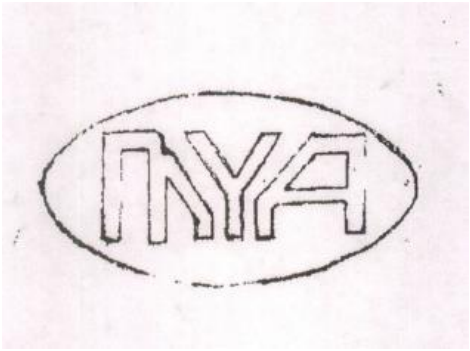
(hereinafter referred to as the "**impugned mark**").

Submissions on behalf of Petitioner

2. Petitioner essentially claimed that the impugned work was not the original work of respondent no.1 and had been copied from a prior registered/published art work in the name of Mr. Youssef Anis Mehio of Al Zarif, Rachid Nakhle Street, Mehio Building, Beirut, Lebanon and Mya International Sal Off Shore of Zarif-Rashid Nakhleh, Str-Mehio Bldg-Beirut (hereinafter referred to as "**the third party**"). Petitioner adverted to prior registrations in favour of the third party since 2005 in various countries including Australia, EU, China, Lebanon & Indonesia. The third party's registrations were for trademarks in device mark '**MYA**'. As an illustration, the registration received by third party in Australia on 9th January, 2006 was with

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a user claim from 13th January, 2005 in the goods and services including tanned leather, cotton and cloth cases, etc. (in Class 18); and goods being raw or worked tobacco, smoking equipment, etc. (in Class 34), in the following trademark:



Similar device marks were registered in various other countries for which certificates are appended.

3. The impugned mark was applied on 06th June, 2017 for copyright registration by respondent no.1 claiming first publication in India in 2010. The registration was obtained on 09th October, 2017.

4. Petitioner also claimed in their petition to be the originator, owner, inventor, proprietor and creator of the label mark/artistic work being 

. Another application for registration

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of the device mark  was filed in Class 34 on 06th September, 2020, which is still pending registration.

5. Respondent no.1 filed a criminal complaint under Sections 63 & 68A of the Act read with Section 420 of Indian Penal Code,1860 (hereinafter referred to as "**IPC**") on 21st January, 2021 against petitioner on the basis of the impugned registered copyright. The FIR was registered subsequently.

6. The comparison between petitioner's art work and respondents' art work is reproduced below:



7. Petitioner claims that on a perusal of the website of trademarks '*www.ipindia.nic.in'*, it is noticed that the mark  was applied for registration in Class 34 by the third party on 09th July, 2013 claiming user in India since 05th June, 2006. The third party had claimed ownership of the registered trademark in Australia and other international registrations as noted above.

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8. Meanwhile, petitioner also drew attention to the various registrations which have been applied for by respondent no.1, which are as under:

S no.	App no	Trade mark	Class	Status
1.	3820435	MR.MAYA	30	Registered
2.	3820436	MR.MAYA	31	Registered
3.	3820437	MR.MAYA	34	Opposed
4.	3820438	MRSHEESHA360	31	Registered
5.	3820439	MRSHEESHA360	34	Opposed
6.	3830153	MIYAN	31	Registered
7.	3830154	MIYAN	34	Registered
8.	3879739	MYAR	3	Rectification Filed
9.	3879740	MYA	29	Opposed

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10.	4067739	ORIGINALMYA	29	Rectification Filed
11.	4067740	ORIGINALMYA	34	Opposed
12.	4287019	OLD&ORIGINALMYACOMMISSIONERWITHDEVICE 	34	Objected
13.	4287021	OLD&ORIGINALMYAKIWIBLASTWITHDEVICE 	34	Opposed
14.	4287022	OLD&ORIGINALMYAJAIPURISUPARIWITHDEVICE 	34	Opposed
15.	4287024	MYA ORANGE PAN with DEVICE 	34	Objected

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16.	4287026	OLD&ORIGINALMYAMIDDLESEXOFTHEBEACHWITHDEVICE 	34	Objected
17.	4287028	MYA SEVEN DEVICE 	34	Objected
18.	4287030	Old & Original MYA Rose Pan with Device 	34	Objected
19.	4287031	OLD&ORIGINALMYAPANRASNAWITHDEVICE 	34	Opposed
20.	4287032	OLD&ORIGINALMYAPANRASILEYWITHDEVICE 	34	Opposed

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21.	4287033	OLD&ORIGINALMYASHISH AFLAVOURWITHDEVICE 	34	Opposed
22.	4287034	OLD & ORIGINAL MYA WATER MELON WITH DEVICE 	34	Opposed
23.	4287037	MYA SPRING WATER WITH DEVICE 	34	Opposed
24.	4287038	OLD&ORIGINALMYAGUAVAWITHDEVICE 	34	Opposed
25.	4287040	OLD & ORIGINAL MYA BUBBLE GUM WITH DEVICE 	34	Opposed

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26.	4287041	OLD&ORIGINALMYABANANAWITHDEVICE 	34	Objected
27.	4287042	OLD&ORIGINALMYADOUBLEAPPLEWITHDEVICE 	34	Opposed
28.	4597573	MYA	34	Objected
29.	2508654	MYA	31	Rectification filed
30.	3383215	MYA	34	Opposed
31.	4287045		34	Objected
32.	4597571	MYAR	6	Objected
33.	2508653	MYAR	34	Rectification Filed
34.	1862261		34	Registered

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35.	3261678	MYA WITH LABLE 	35	Opposed
36.	3261679	MYA WITH LABLE 	39	Rectification Filed
37.	3261680	MYAR WITH LABLE 	31	Rectification Filed
38.	3261681	MYAR WITH LABLE 	35	Opposed
39.	3261682	MYAR WITH LABLE 	39	Rectification Filed

9. Against the said applications, objections and rectifications were filed by the third party which are still pending adjudication. Petitioner essentially claims that respondent no.1 is an infringer and blatantly copied the artistic work  from the prior adopted, prior used and registered mark/artwork '**MYA**' in the name of the third party. It was also pointed out by petitioner, that the copyright registration is protected worldwide through member countries of the Berne Convention for the Protection of Literary and Artistic Works, 1886 (hereinafter referred to as "**Berne Convention**") and will be valid throughout all the territories.

10. In the examination reports for the trademark applications of respondent no.1, the mark '**MYA**' registered by the third party had been cited and in the counter statement, respondent no.1 had merely stated that it was not deceptively

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similar and was not being marketed in India. As per petitioner, there was no claim by respondent no.1 that it was the originator, owner, creator or proprietor of the said art work. It was further contended that no notice of respondent no.1's copyright application was served to the third party under Rule 16(3) of the Copyright Rules, 1958, who had valid interest in the work. Nevertheless, petitioner was an *"aggrieved person"* since respondent no.1 had filed a criminal complaint against the petitioner.

11. It was pointed out that respondent no.1 had received registrations in the said device mark being 

, by certificate No.1521433 dated 17th May, 2016 in Class 31 (*scented supari, sweet supari, mouth freshners, pan masala and pan chutney*) with user detail from 01st April, 2010. Yet another registration was achieved by respondent no.1 in Class 35 (*services relating to distribution, trading and marketing of paan, sweet supari, smoking articles etc*.) and in Class 39 (*transportation, packaging and storage of smoking articles, hukka, pre-rolled smoking cones, cigar, cigarettes, tobacco products, etc*.) in the said device mark.

12. Counsel for petitioner draws a distinction between a trademark registration and a copyright registration. He contends that while trademark protects the user and not the creator and is territorial in nature, copyright registrations transcend boundaries.

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13. Counsel for petitioner places reliance on the decision of ***Ganga Vishnu Raheja v. Swami Satyanand Dharmarth Trust***, 2005 SCC OnLine Del 651, which relied in turn on ***Hardie Trading Ltd. v. Addisons Paint & Chemicals Ltd.***, 2003 SCC OnLine SC 1006. Therefore, petitioner claims that since an FIR was registered against him on the complaint of respondent no.1 for copyright infringement, he was a "*person aggrieved"*. Moreover, he relies upon Section 50(b) of the Act, which provides for an application of any person aggrieved for rectification of register before the High Court which can expunge any entry wrongly made in or remaining on the register.

14. He further points out to Section 13(1)(a) of the Act, which states that the copyright would subsist in an artistic work and as per Section 17(a) of the Act, the said artistic work would be copyrighted in favour of the author of the work. He states since there is no originality in the said work, as is evident from the third-party registrations which were available due to the oppositions filed by them for trademark registration applications of respondent no.1, the respondent no.1 cannot claim originality in the said works.

Submissions on behalf of Respondents

15. Counsel for respondent no.1 refuted these submissions and stated that the petition was not maintainable because petitioner did not have any *locus* and was not *"an aggrieved person"*. He contended that once they had applied for the copyright registration, in pursuance of Section 45 *proviso* of the Act, the Registrar conducted a search under Rule 24 (3) of the Trademark Rules, 2002, to ascertain whether any identical or deceptively similar mark was subsisting

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on the register of trademarks. Upon being satisfied that no such work existed or had been applied for registration, the trademark registry was pleased to issue the search certificate and the artistic work was subsequently registered in the name of respondent no.1.

16. It was further contended by counsel for respondent no.1, that petitioner had filed oppositions to the registration applications of the third party claiming the said mark to be distinctive. In the notice of opposition by petitioner, it has been stated that in the year 2019, an inherently and highly distinctive trademark '**THE MYA**'/  was adopted by petitioner and has been used openly, extensively and continuously. It was also stated that, *"The opponent is also originator, owner, inventor, proprietor and creator of artistic work of copyright titled: 'THE MYA' under Copyright Act"*. The petitioner (*the opponent in the notice of opposition*) was therefore, estopped from claiming that the third party was the author of the artistic work, considering that they were themselves claiming ownership and that these contrasting and conflicting statements would not entitle the petitioner to relief.

17. It was claimed by petitioner in the reply to the examination report on 22nd September, 2020, that respondent no.1's mark was different from their own mark. It was, therefore, contended that respondent no.1 had been using the word and device mark '**MYA**' and other formative marks since 2010 and was the original adopter of the artistic work. No identical or deceptively similar

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artistic work was discovered by the Trademark Registry through the search report and a search certificate dated 03rd April, 2017 was issued by the Trademark Registry in favour of respondent no.1. Petitioner adopted the word '**MYA**' in the year 2019 and clearly admits to respondent no.1 as being the earlier adopter. The third party is not a party before this Court and respondents' counsel contended that petitioner was agitating the issue on their behalf, as was evident from the submissions. Petitioner was estopped from objecting to the impugned mark in favour of respondent no.1, since they themselves had adopted the mark '**MYA**' in a similar manner and also opposed various applications of the third party. Further, petitioner cannot be allowed to approbate and reprobate considering they had claimed ownership of the said artistic work and now state that the artistic work is of the third party. Reliance was placed by counsel for respondent no.1 on ***Raman Kwatra & Anr. v. KEI Industries Ltd.***, 2023 SCC OnLine Del 38 and ***Peps Industries Pvt. Ltd. v.Kurlon Ltd.,*** 2022 SCC OnLine Del 3275.

Submissions in Rejoinder

18. In rejoinder, it was stated by counsel for petitioner that as per respondent no.1's pleadings, the adoption was in 2010 which is a dishonest adoption since the 2006 registration was already in favour of the third party. In the response to the examination report of the trademark registration application by the third party for '**MYA**', respondent no.1 had stated that they were using the mark since 2019 (and not 2010 as had been stated otherwise). Further, they had stated that the third party's mark was not being marketed in India. Counsel for

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respondent no.1 relied on the decision of ***Jasbhai Motibhai Desai v. Roshan Kumar***, ***Haji Bashir Ahmed & Ors.***, (1976) 1 SCC 671, in regard to *locus standi*.

19. Counsel for petitioner relied on ***Ganga Vishnu Raheja*** (*supra*), to contend that the objection and intention of the Copyright Act and the Trademarks Act is not the same and that it was in the interest of public to have a wrongful entry removed, as also that the mark remaining on the register would curtail or limit the legal right of the aggrieved person.

20. Counsel for petitioner also placed reliance on the decision of ***Mohd. Naseer v. Iqbal Hussain***, 2008 SCC OnLine CB 24, dated 15th January, 2008 of the Copyright Board at Bangalore, wherein, it was held that since petitioner and respondent were in the same trade and respondent had launched criminal proceedings against petitioner alleging violation of his mark, the same was enough for petitioner to assail the existence of the registration of their artistic work.

Analysis

21. After hearing counsels for parties and perusal of the documents on record, the following points are relevant for assessment:

(i) The petition has been filed under Section 50 of the Act, which for ease of reference, is extracted as under:

> *"50. Rectification of Register by High Court—The High Court, on application of the Registrar of Copyrights or of any person aggrieved, shall*

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> *order the rectification of the Register of Copyrights by—*
> *(a) the making of any entry wrongly omitted to the register, or*
> *(b) the expunging of any entry wrongly made in, or remaining on, the register, or*
> *(c) the correction of any error or defect in the register."*

(ii) It is *ex facie* clear and incontrovertible from a perusal of the provision above, that the application under Section 50 of the Act, can be only moved by *'a person aggrieved'* and that the rectification would follow only in three situations i.e. (a) *entry wrongly omitted*; (b) *entry wrongly made or remaining on the register*; and (c) *correction of an error or defect in the register*. The assertion by petitioner in this case is of expunging the entry wrongly made and/or remaining on the register under Section 50(b) of the Act. The assessment, therefore, has to be made strictly within the scope and purview of this provision.

(iii) For crossing this threshold, petitioner has to first prove that he is *'a person aggrieved'* and that the entry in the copyright register was *'wrongly made'*. As regards *'person aggrieved'*, there is no definition provided under the Act. Reliance is, therefore, placed on the decision of ***Ganga Vishnu Raheja*** (*supra*), a decision by the Division Bench of this Court delivered on 26th May, 2005, which was in relation to petitions filed under Section 50 of the Copyright Act, 1957. The relevant paragraph of the said decision is extracted as under:

> *"21. The issue, therefore, which falls for our consideration, is whether the appellant could be*

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> *said to be a 'person aggrieved' who can seek for cancellation of the registration of copyright in respect of all 11 books authored by Swami Ji and registered in favour of the respondent trust. The aforesaid issue was the bone of contention between the parties before the Copyright Board, which held that the appellant is not a 'person aggrieved'. The same question, therefore, arises before us for our consideration as to whether or not the appellant could be said to be a "person aggrieved". The said expression is not defined either under the Copyright Act or under the Trade Marks Act. The object and the intention of the Copyright Act and the Trade Marks Act is not the same. The purpose for which the aforesaid two Acts were enacted and as stated in the statement of objects and reasons are distinctly different. Still it does not preclude us from looking into a similar expression and the interpretation and meaning given to the same expressions under different legislations. In the decision in National Bell Co. (supra), a meaning and interpretation is given to the expression "aggrieved person" with reference to Trade Marks Act. According to the said decision, the said expression includes a person against whom infringement action is taken or threatened."*
>
> *(emphasis supplied)*

(iv) Petitioner's assertion is that it is '*a person aggrieved'* since an FIR has been registered at behest of respondent no.1 under Sections 63 & 68A of the Act read with Section 420 of IPC on 21st January, 2021, alleging violation of his copyright. This, petitioner claims, provides him *locus* to

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seek rectification of the register. For this, reliance was placed on the decision of ***Mohd. Naseer*** (*supra*) and ***Hardie Trading*** (*supra*), where in it was held that the *locus standi* would have to be ascertained liberally.

(v) Considering these facts and circumstances, it would have to be held in favour of petitioner, that they would be *'a person aggrieved'* on account of the infringement action taken by respondent no.1 in this regard. However, having crossed that threshold, the second threshold awaits the petitioner, which is of proving that the entry is '*wrongly made*'.

(vi) For this, petitioner relies upon the trademark registrations by the third party. This, at the first blush itself is unsustainable, considering that the third party is not a party before the Court and petitioner never made an attempt to make them a party. In the absence of the third party, on whose registrations petitioner seeks to rely upon for asserting that the copyright in favour of respondent no.1 does not exist, there can be no incontrovertible evidence which petitioner can rely upon to prove that the artistic work in which the copyright is registered, was originally authored by the third party or was otherwise rightfully claimed by the third party. Merely relying upon trademark registrations in favour of the third party received in Australia and other countries cannot be undisputed evidence of the fact that the original author or legitimate owner of the copyright in the said artistic work is the third party and no one else. Accepting petitioner's submissions in this regard would amount to rectifying the copyright register on the basis of extraneous and unverified evidence.

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(vii) Reliance placed by petitioner on Berne Convention will also not assist their contention. The Berne Convention simply attempts to bind all contracting parties to allow seamless protection of copyright and guarantee rights in protected works. The Berne Convention provides the author of a work to protect their rights irrespective of territorial boundaries. If as per petitioner, the original author in the said artistic work was the third party, it would be upto the third party to assert its rights in this regard which would then have to be assessed on the basis of the evidence produced by the third party.

(viii) Further, petitioner is also standing in multiple boats at the same time. Not only has petitioner filed oppositions to the trademark applications filed by the third party in India, but to those filed by respondent no.1 also. In turn, the third party has filed oppositions or rectifications towards applications for registration by petitioner and respondent no.1 as well. This *inter se* slugfest between petitioner, respondent no.1 and third party with respect to the mark '**MYA'** through oppositions and rectifications cannot serve to distill out an inviolable conclusion that the original authorship in the artistic work was that of the third party and, therefore, the impugned registrations ought to be rectified and expunged from the copyright register.

(ix) Moreover, the prescribed process was followed by the Registrar of Copyrights where the Registrar conducted a search under Rule 24 (3) of the Trademark Rules, 2002 in terms of Section 45 *proviso* of the Act. The said provision is extracted as under:

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> ***"45. Entries in register of Copyrights—***
> *(1)The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights:*
> *Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods or services, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 3 of the Trade Marks Act, 1999 (47 of 1999), to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant…."*

This process of a search report was complied with, and a search certificate dated 03rd April, 2017 was issued by the Trade Mark Registry, stating that no trademark identical or deceptively similar to the artistic work had been registered or applied for registration under the Trade Marks Act,1999 as per the record of the office. Basis this NOC, the Registrar of Copyrights moved to registration of the said copyright.

(x) Reliance of respondent no.1 on the decision of the Division Bench of this Court in ***Raman Kwatra*** *(supra)* is appropriate, for the purposes of drawing attention to approbation and reprobation by petitioner, in light of their own trademark registrations with the similar artistic work. Note

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was made, in particular, of petitioner's assertions in the opposition to the third-party's application for registration, as follows:

> *"The opponent is also originator, owner, inventor, proprietor and creator of artistic work of copyright titled: 'THE MYA' under Copyright Act".*

(xi) It may also be noted that as per Section 48 of the Act, the register of copyrights is only *prima facie* evidence of particulars entered therein and does not prevent any other party from asserting that they are the original authors of the artistic work. It would be, therefore, for the third party or any other party which claims authorship to assert their rights and not for petitioner to take the crutches of a third-party's position, that too presumed and in their absence.

22. Accordingly, the rectification petition is dismissed. Pending applications, if any, are rendered infructuous.

23. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 8, 2024/MK/NA

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