

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

% Date of Decision: 08.11.2013

+ WP (C) No.6962 of 2013

M/S. PACHRANGA INTERNATIONAL PVT. LTD..... Petitioner

Through: Mr. Neeraj Grover &
Ms. Megha Chandra, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joginder Sukhija, CGSC with
Mr. Yogesh Yogi, Advs. for R-1.
Mr. S.K. Bansal, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

CAV Nos.984-985/2013

Since learned counsel for the caveator/respondent No.2 has entered appearance, the caveats stand discharged.

CM No.15075/2013 (Exemption)

Allowed subject to just exceptions.

WP (C) No.6962/2013 & CM No.15074/2013 (Stay)

Shri Rajinder Dhingra, a Director of the petitioner-Company and his father late Shri Asa Nand Dhingra entered into a partnership vide partnership deed dated 1.1.1983 and started the business of processing, marketing and manufacturing pickles and allied goods. The said firm

adopted the trademark PIP in relation to its business. In the year 1984, Shri Chander Mohan Dhingra, brother of Shri Rajinder Dhingra and partner/proprietor of respondent No.2, M/s. Pachranga International (Chander Group), joined the said partnership firm. A partnership deed dated 1.4.1992 was executed amongst the above-referred three persons. Clause 10 and clause 12 of the partnership deed dated 1.4.1999 to the extent they are relevant read as under:

“10. THAT if any partner or partners shall at any time during pendency of the Partnership commit or be guilty of a flagrant breach of his duties or infringes or contravenes or violates any of the terms of this partnership, the majority of partners have a right to except such partner or partners by tendering a notice in writing and publish in the name of an as against such person and thereafter such partner or partners shall cease to be a partner or partners and the remaining partners shall be at liberty to form a fresh partnership and to carry on the same business. That on the expulsion, of such expelled partner or other partners shall be entitled for their capital and the profits till date.

....

12. xxxx

THAT in case of the dissolution of the firm, the GOODWILL of the firm will be shared equally by the parties of the second and third part and the party of the first part will not take any share of the goodwill of the firm. If the GOODWILL amount is not settled amicably on dissolution by both the parties, both the parties are at liberty to use the name Pachranga International and use the Registered trademark of (PIP) which will read as:

- I) PACHRANGA INTERNATIONAL (RAJINDER GROUP) AND
- II) PACHRANGA INTERNATIONAL (CHANDER GROUP)

This has been agreed into by all the parties, so that no outsider may make use of the above firm.”

2. The case of the petitioner is that since Shri Chander Mohan Dhingra started running a parallel business under the name of a company Pachranga Syndicate Private Limited, incorporated in the year 1994 and got engaged in the business of the said Company, he was expelled from the partnership vide notice dated 15.2.2001 and thereafter the said partnership continued between Shri Asa Nand Dhingra and Shri Rajinder Dhingra. However, on 18.7.2001, they promoted and incorporated the petitioner-Company, Pachranga International Private Limited.

3. This is also the case of the petitioner that a Power of Attorney was executed by Shri Chander Dhingra and Shri Asa Nand Dhingra in favour of Shri Rajinder Dhingra on 13.7.1985 and in exercise of the power conferred upon him, Shri Rajinder Dhingra by way of an assignment deed dated 26.3.2002 assigned the trademark PIP and the trade name Pachranga International to his wife Shrimati Sharda Dhingra.

4. On 24.2.2005, the petitioner applied for registration of the trademark Pachranga, claiming user since July, 2001 and the said registration was granted after advertising the same in the Trade Marks Journal. On 3.4.2006, the respondent NO.2 filed an application seeking removal/rectification of the aforesaid trademark. Vide impugned order dated 12.7.2013, the Intellectual Property Appellate Board (IPAB) allowed the said application and directed removal of the trademark Pachranga International in Class 29. Being aggrieved the petitioner is before this Court by way of this writ petition.

5. It would be seen from a perusal of Clause 12 of the Partnership Deed dated 1.4.1999 that in the event of dissolution of the firm, the

petitioner could have used the mark Pachranga International (Rajinder Group) whereas the respondent No.2 could have used the mark Pachranga International (Chander Group). Therefore, the trademark Pachranga International could not have been used either by the petitioner or by the respondent No.2. The case of the petitioner, however, is that since respondent No.2 was expelled from the partnership, he forfeited his right in the trademark Pachranga International and in any case Clause 12 of the partnership deed would have applied only in the event of the dissolution of the firm and not in the case of expulsion of a partner of the firm. The learned counsel for respondent No.2, however, submits that the expulsion notice dated 15.2.2001 was never received by respondent No.2 and, therefore, there was no question of expulsion of respondent No.2.

6. A perusal of the impugned order dated 12.7.2013 would show that the IPAB was of the view that due process was not followed in the alleged expulsion of respondent No.2. The IPAB also noted that Pachranga Syndicate Private Limited had been incorporated way back in the year 1994. In a writ petition it is not possible to go into disputed questions of facts and record a finding as to whether the aforesaid notice dated 15.2.2001 was actually served upon respondent No.2 or not. It would, however, be appropriate to note that ordinarily, a partner of the firm who is expelled from the business of the firm in this manner, without giving any share to him in the assets of the partnership firm is not likely to sit silent on receipt of such a notice. In the ordinary course of human conduct a partner receiving such a notice is likely to contest the assertion of the partners in this regard, instead of remaining silent without even taking steps to recover his share in the income and assets

of the firm from the continuing partners of the firm. Though as per the notice, respondent No.2 was asked to settle his account with the firm, this is not the case of the petitioner that the accounts were actually settled and the share of respondent No.2 in the assets of the firm, as on the date of the alleged expulsion, was paid to him. This is yet another indication that the notice dated 15.2.2001 was not received by respondent No.2 and, in fact, this was a case of dissolution of the firm, though no formal dissolution deed was executed. Consequently, the petitioner could have used the trademark Pachranga International (Rajinder Group) but not the trademark Pachranga.

7. As regards the case of the petitioner that in exercise of the powers given to him by way of the General Power of Attorney dated 13.7.1985, Shri Rajinder Dhingra had assigned the trade name and trademark in question to his wife, Shrimati Sharda Dhingra, I find that the petitioner has not placed on record a copy of the aforesaid GPA. Therefore, it cannot be verified whether the aforesaid GPA authorized him to assign the trademark and goodwill of the firm to an outsider or not. In any case, the Tribunal did not accept the case of the petitioner in this regard and was of the opinion that considering the relationship between the assignor and the assignee and a paltry consideration of Rs.50,000/- alleged to have been paid by Shrimati Sharda Dhingra to her husband, the transaction between the husband and wife was a sham transaction. In the facts and circumstances of the case, I see no reason to take a different view.

8. For the reasons stated hereinabove no ground for interfering with the impugned order dated 12.7.2013 is made out.

The writ petition is hereby dismissed. No orders as to costs.

It is, however, made clear that dismissal of the writ petition shall not come in the way of the petitioner establishing its case in a civil suit.

NOVEMBER 08, 2013
b'nesh

V.K.JAIN, J