

GAHC010123352022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/41/2022

LALMIYA HOQUE
S/O LATE NURUL HOQUE
VILLAGE KHATANIAPARA, PO AND PS DHULA, DIST DARRANG, ASSAM
784146

VERSUS

M/S REJIBUL HOQUE AND ANR.
MADHUSOULMARI PART II
REPRESENTED BY ITS PROPRIETOR REZIBUL HOQUE, S/O ABDUL AJIJ
RESIDENT OF MADHUSOULMARI PART II (MOLATIKHAMAR) PO AND PS
GAURIPUR, DIST DHUBRI, ASSAM 783331

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : MR. M HOSSAIN

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

27. 01. 2023

Heard Mr. M Ahmed, learned counsel for the appellant. Also heard Mr.
M Hussain, learned counsel for the respondent.

2. The present respondent/ plaintiff preferred a petition being No. 112/2021 under Section 125 of Trade Mark Act read with Order 39 Rule 1 & 2 of the CPC, inter-alia, seeking an injunction restraining the present petitioner, his servants/ agents, stockists, partners, agents from manufacturing, selling, offering for sale by using the trade mark of 'Milon Biri' and its logo, as according to the respondent, the same is deceptively similar to the registered trade mark of the respondent.
3. The respondent herein, namely, M/s Rejibul Hoque filed a suit with a prayer for a decree of injunction restraining the present petitioner from manufacturing and selling Biri by using the registered trademark logo with its symbol. The case of the said plaintiff/ respondent is that the defendant/ appellant, namely, Lalmiya Hoque is manufacturing and selling Biri in the name of 'No.1 Milon Biri', which is deceptively similar to 'Milon Biri', trademark of which is registered with the plaintiff.
4. On the other hand, the case of the present appellant/ defendant is that they are manufacturing one Biri, namely, 'Milijuli Biri' and same is also having registered trade mark and the competent authority has issued such trade mark. Accordingly, the petitioner claims that the learned trial court ought not to have restrained the present petitioner in selling the Biri (namely, Milijuli Biri), which is having registered trade mark. Further contention of the appellant is that the learned trial court could not have come to a conclusion that both the trademarks granted to the present appellant is deceptively similar to the trademark of the respondent inasmuch as it is not the jurisdiction of the learned trial court to come into such conclusion when the competent authority has granted trademark to both the appellant and respondent and, logo and names of both are

different.

5. At this stage, the learned counsel for the respondent submit that though the respondent No. 1 is having registered trademark, however, taking advantage of similarity of both the trademarks, the present appellant are still using the trademark of the respondent No. 1. Accordingly, he submits that he will have no objection, if the appellant sells their products exactly in term of the trademark granted and not violating the trademark of the present respondent No. 1. The learned counsel further submits that the authority under Trade Mark Act, has committed illegality by subsequently granting trademark to the appellant, which is similar in name and symbol.
6. In that view of the matter and in view of consensus arrived at, this court is inclined to interfere with the finding of the learned trial court below that 'Milon Biri' and 'Milijuli Biri' are similar, which can easily deceive the rustic people because the purchaser do not examine the logo so minutely to examine whether there is one flower or two flowers in the logo.
7. Coming to the argument of the learned counsel for the respondent that the authority under the Trade Mark Act has committed illegality in granting trademark to the appellant at later point of time, which is similar to the trademark of the respondent, this court is of the view that such dispute cannot be determined in the present appeal. However, the present order shall not preclude the respondent to raise such an issue before any competent authority permitted under Law.
8. Accordingly, subject to final outcome of the present suit, it is provided that the appellant/ defendant shall be at liberty to manufacture and sell Biri exactly under the certificate issued by the competent authority under the

Trade Mark Act, 1999 including the colour that has been shown under the trademark being Trade Mark No. 4469065 dated 11.03.2020 and they are restrained to manufacture and sell Biri other than as provided under the trade mark number 4469065 dated 11.03.2020.

9. While parting with the record, it is clarified that the determination made in the present appeal is only for the purpose of present appeal, and therefore, the trial court shall not be influenced by any observation made in the present order in determining the suit.
10. With the above observation, this appeal stands disposed of.

JUDGE

Comparing Assistant