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

+ **C.O. (COMM.IPD-TM) 67/2021**

NNOVA AND COMPANY. Petitioner

Through: Ms. Elisha Sinha, Advocate.

versus

RAMESH KUMAR RAHEJA AND ANR. Respondents

Through: Mr. Harish Vaidyanathan
Shankar, CGSC with Mr. Srish Kumar
Mishra, Mr. Sagar Mehlawat, Mr.
Alexander Mathai Paikaday, Mr. M.
Sriram, Mr. Krishnan V., Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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26.09.2023

1. There is no appearance on behalf of Respondent 1, despite Respondent 1 having been served on 9 March 2023. He has chosen not to enter appearance either on 24 April 2023 or today. Respondent 1 is accordingly proceeded *ex-parte*.

2. As the issue is short and appears to be covered by decision of High Court of Bombay, I have heard Ms. Elisha Sinha, learned counsel for the petitioner and Mr. Haish Vaidyanathan, learned Central Government Standing Counsel for Respondent 2 and perused the records.



3. This petition, under Section 57 of the Trade Marks Act, 1999, seeks rectification of the register of trademarks by removal, therefrom,

of the device mark **NOBA**, which stands registered in favour of Respondent 1 *vide* Certificate No. 937137 dated 14 February 2011 with effect from 10 February 2009.

4. Ms. Sinha points out that the proprietor of plaintiff-Dr. Ashok M. Bhat, had instituted the suit being Suit No. 2279/2010 before High Court of Bombay, alleging that impugned device mark, “NOBA”, infringed the plaintiff’s registered “NOVA” trademark and, therefore, seeking a permanent injunction against Respondent 1 using the impugned mark. Respondent 1 sought to bring suit No. 2279/2010 to an end by consenting to a decree in the following terms:

“CONSENT TERMS

1. The Plaintiff has filed the instant suit against the abovenamed Defendant seeking therein reliefs, inter alia, on infringement of its registered trade mark NOVA and registered copyright of the artistic label & carton on passing off the goods by use of a impugned counterfeit label mark NOBA in relation to brillantine cream and other like cosmetic goods by the Defendant as more particularly enumerated in the plaint.

2. In the meantime the Defendant has approached the Plaintiff to settle the above dispute amicably on the following terms as mutually agreed to between the parties.

3. The Defendant acknowledges and admits that exclusive proprietary rights of the Plaintiff in its well known trade mark and in the original artistic work of NOVA when used in relation to brillantine cream and all other like cosmetic goods as more particularly enumerated in the plaint. The Defendant agrees and undertakes not to use the impugned label mark and artwork of NOBA or any trade mark or artwork which is deceptively similar and/or is substantially similar thereto for the same amounts to



infringement and passing off on the statutory and common law rights of the Plaintiff.

4. Accordingly the Defendant submits to a Decree in terms of prayer (a), (b) and (c) of the plaint in favour of the Plaintiff which reads as follows:

a. that the Defendant by himself, his proprietor, his heirs, servants, assignees, transferees and all those connected with him in his business be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to his cosmetic goods including brillantine hair and face cream and other like goods the impugned counterfeit label mark NOBA, or any trade mark deceptively similar to the Plaintiff's mark, for the same is deceptively similar to the Plaintiff's trade mark NOVA and such use amounts to infringement of the Plaintiff's said trade mark NOVA registered under Nos. 126501, 126502, 1070856 and 1070857 all in class 03;

b. that the Defendant by himself, his proprietor, his heirs, servants, assignees, transferees and all those connected with him in his business be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to his cosmetic goods including brillantine hair and face cream and other like goods including on the bottles, cartons, labels and caps the impugned counterfeit label mark and trade dress NOBA, or any trade mark deceptively similar to the Plaintiff's trade mark, for the same is identical with and/or deceptively similar to the Plaintiff's distinctive and reputed trade mark NOVA and such use amounts to passing off his goods and business as and for those of the Plaintiff or in some way connected therewith;

c. that the Defendant by himself, his proprietor, his heirs, servants, assignees, transferees and all those connected with him in his business be restrained by a perpetual order and injunction of his Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to his cosmetic goods including brillantine hair and face cream and other like goods the impugned carton and label of NOBA bearing a colour scheme, font of writing, lay-out, get-up, artwork, style and representation



which is identical with and/or is substantially similar to the colour scheme, font of writing lay-out, get-up, artwork, style and representation of the Plaintiff's original artistic carton and label of NOVA as such use amounts to infringement of the Plaintiff's copyright registered under Nos. A-13658/75 and A-13659/75 dated 30.07.1975;

5. The decree in terms of clause 4 above shall become operative with effect from 1st December 2010 so as to enable the Defendant to dispose of the existing stock of goods viz. 40 cartons worth Rs. 40,000/- only bearing the impugned mark and the artwork and in the event there are any unsold goods bearing the impugned label mark and artwork after the said date, he shall not sell the same but destroy them.

6. The Defendant undertakes that it shall cease production of all cosmetic goods and other like goods bearing the impugned label mark and artwork of NOBA or any trade mark or artwork deceptively similar to the Plaintiff's trade mark NOVA, with immediate effect.

7. The Defendant undertakes to:-

(i) Withdraw any application made for registration of the trade mark or artwork of NOBA or any mark and artwork deceptively similar to the Plaintiff's trade mark and artwork of NOVA.

(ii) not to apply for registration of any mark or artistic work, under the relevant statutes or of marks or of artistic works which are identical with and/or are deceptively similar to the Plaintiff's mark or copyrighted work mentioned in plaint.

8. Refund of 2/3rd Court fees as per rules.

9. No order as to costs."

5. On 30 September 2010, the High Court of Bombay decreed the Suit No. 2279/2010 in accordance with the aforesaid consenting terms.



6. Para 7 of the consenting terms clearly required Respondent 1 to withdraw any application made by it for registration of device mark, “NOBA”. Ms. Sinha submits that, despite the said undertaking, the Application No. 1783379, which culminated in the grant of impugned registration to Respondent 1 on 14 February 2011, was allowed to proceed to registration.

7. Probably because Respondent 1 is clearly not interested in using the impugned mark and has already undertaken before the High Court of Bombay to withdraw all pending applications on that date for registration of impugned mark, he has not chosen to enter appearance in the present matter.

8. In view of the undertaking given by Respondent 1 to the High Court of Bombay, it is clear that the Application 1783379 could not have proceeded to registration.

9. In view thereof, the impugned Registration No. 937137 dated 14 February 2011 is, therefore, liable to be cancelled and the registration of the trademark rectified accordingly in terms of Section 57 (2) of the Trade Marks Act.

10. Accordingly, certificate of Registration 937137 dated 14 February 2011, granted to Respondent 1 in respect of device mark, “NOBA” is quashed. The Registrar of Trademarks is directed to rectify the register by removal, therefrom, of the registration granted to Respondent 1 of the device mark, “NOBA” *vide* certificate of



Registration No. 937137 dated 14 February 2011.

11. The present petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 26, 2023/vp