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

+ W.P.(C) 4853/2014 and CM No.9677/2014

M/S GANESH TEA CENTRE

..... Petitioner

Through: Mr. Ajay Amitabh Suman, Mr. Santosh
Kumar and Mr. Amit Jha, Advocates

versus

THE REGISTRAR OF COPYRIGHTS & ORS

..... Respondents

Through: Mr. Akshay Makhija, CGSC with Mr.
Rohitendra Deb, Advocate for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **07.05.2015**

1. This writ petition is directed against the search certificate no.TMR-A/CC /40000 issued by respondent no.2 in favour of respondent no.3.

2. The petitioner herein claims that he has a prior registration in respect of an identical mark, qua which respondent no.3 has obtained the impugned search certificate. The petitioner claims to have a registration both under the Trademarks Act as well as the Copyrights Act.

2.1 The petitioner for this purpose has relied upon the Trademark Registration Certificate dated 09.02.2011, issued in his favour which relates back to 16.02.2009.

2.2 This apart, the petitioner has also relied upon the extracts from the Register of Copyrights dated 27.10.2010 as also the search certificate issued in his favour, which is dated, 16.09.2009 by respondent no.2.

3. As indicated above, the petitioner is aggrieved by the search certificate

issued in favour of respondent no.3, which is dated 11.10.2013, and is issued under Section 45(1) of the Copyrights Act, 1957. These documents are found at pages 27 and 28 of the paper book.

4. The learned counsel for the petitioner says that in the teeth of the registration that the petitioner has in his favour and the impugned search certificate dated 11.10.2013, could not have been issued in favour of respondent no.3.

5. Mr. Makhija says that in fact respondent no.2 has initiated the proceedings under Rule 24(4) of the Trademarks Rules, 2002, which have been kept in abeyance in view of the interim order passed by this court.

5.1 The learned counsel submits that the cancellation of search certificate can take place only upon hearing respondent no.3.

5.2 Unfortunately, respondent no.3 is not represented today, even though appearance on its behalf was made by one, Mr. Umesh Mishra, Advocate on 03.12.2014.

6. Therefore, the direction which I intend to issue are as follows :-

(i). Respondent no.2 will continue with the proceedings initiated under Rule 24(4) of the Trademarks Rules, 2002 after giving due opportunity to respondent no.3.

(ii). Written notice shall be sent to respondent no.3, with regard to the proceedings which respondent no.2, intends to hold.

(iii). The proceedings will be concluded as expeditiously as possible though, not later than eight weeks from today.

(iv). Pending disposal of the proceedings by respondent no.2, no certificate

of registration will be issued qua the mark “Shri Kankriwal Label” qua which the impugned search certificate was issued to respondent no.3, on 11.10.2013.

7. It is made clear that in case the finding returned in the proceedings carried out by respondent no.2 are against the interest of the petitioner, no effect will be given to the order for a period of three weeks, to enable the petitioner, to take recourse to an appropriate proceedings in accordance with law.

8. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

9. Dasti.

RAJIV SHAKDHER, J

MAY 07, 2015

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