

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.02.2015

+ **FAO(OS) 13/2014 & CM 370/2014**

KING POINT ENTERPRISES CO LTD

... Appellant

versus

MR ALI ASGAR & ANR

... Respondents

Advocates who appeared in this case:

For the Appellant : Ms Prathiba M. Singh, Sr Advocate with
Mr Surinder Singh, Ms Suhasini Raina
For the Respondent No.1 : Mr Hrishikesh Baruah with Ms Ankita
Sharma and Mr Ishan Das
For the Respondent No.2 : Mr Rajat Joseph

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment dated 23.10.2013 delivered by a learned Single Judge of this Court in IA Nos. 9431/2011 and 10119/2012 under Order XXXIX Rules 1 and 2 and Order XXXIX Rule 4 CPC, respectively. The suit filed by the plaintiff/ appellant was, *inter alia*, for passing off with respect to trademarks 'PTA' and 'PATTA'.

2. In this appeal, we are not concerned with the trademark 'PATTA' and are

only concerned with the other trademark, namely, 'PTA'. The respondent /defendant has a registration in India for the mark 'PTA' in respect of items falling under Class 6 relating to hardware products such as rivets, self-drilling screws, fasteners and other similar items.

3. The case of the plaintiff/appellant is that it is the prior user of the trademark 'PTA' in India and is using the same mark worldwide. Apart from this, the plaintiff /appellant has registration of this trademark in several countries. Tough not yet in India. An application for registration of the trademark, being application No. 1878042, was filed, which is pending. The respondent has objected to the same.

4. However, we find from paragraph 8 of the impugned judgment that the learned Single Judge has noted that the plaintiff's application No. 1878042 had already been rejected. We have checked from the website of the Trademark Registry in the course of hearing this appeal and we find that the said application is pending. Therefore, the statement recorded in the impugned judgment that the same had been rejected is incorrect. In the application No. 1878042, the user of the trademark had been shown since 26.12.2002. Another application has been referred to in paragraph 8 of the impugned judgment and that is the application No. 1898926, which has been filed by the

plaintiff/appellant, in which the user was shown as 'proposed to be used'. According to the learned counsel for the plaintiff/ appellant this was erroneously shown as 'proposed to be used', when the earlier application clearly showed that the user was since 26.12.2002. We have also checked this application on the website of the Trademark Registry and we find that the expression 'proposed to be used' has been amended to "26.12.2002". We feel that the learned Single Judge had placed strong reliance on the purported rejection of the application No. 1878042 and the use of the words 'proposed to be used' in application No. 1898926 in coming to the conclusion that she did. Consequently, since the application No. 1878042 has not, in fact, been rejected and the user in the application No. 1898926 now reflects the date 26.12.2002, one of the pillars of the decision has been knocked aside. That being the case, we feel that instead of this Court going into the merits and taking a *prima facie* view, it would be appropriate for the learned Single Judge to have a re-look and then pass an order.

5. Furthermore, we may point out that in paragraph 11 of the impugned judgment, it has been noted as under:-

“In none of the advertisement, folders and the websites print out which have been admitted by the plaintiff during admission/ denial of the documents the mark PTA has been found to be embossed on its products.”

However, we find that the plaintiff/ appellant had filed documents, where at page 326 of the suit record, there is a brochure of the products of the plaintiff/ appellant which clearly show that the mark 'PTA' has been embossed on each of the products. This brochure has not been considered by the learned Single Judge. What implication it would have, is for the learned Single Judge to ascertain. We are only concerned with the fact that the learned Single Judge has not examined this brochure.

6. In these circumstances, without expressing our view on the merits of the matter, we feel that the learned Single Judge ought to have a re-look and it would be for the learned Single Judge to ascertain as to who was the prior user of the trademark 'PTA' in their own right in India.

7. Consequently, the impugned judgment is set aside and *status quo ante* as on 23.10.2013 shall obtain till further directions by the learned Single Judge. The matter is remitted to the learned Single Judge for considering the above applications afresh. In the first instance, the matter be listed before the learned Single Judge on 16.03.2015. We hope and expect that the learned Single Judge shall examine the matter and dispose of the applications at the earliest and preferably within four weeks from the

next date of hearing. We make it clear, once again, that we have not expressed any view on the merits of the matter.

The appeal is allowed, as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

FEBRUARY 24, 2015
SR

SANJEEV SACHDEVA, J

