

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No. 5404 of 2017 (O&M)
Date of Decision: 25.08.2017**

Rakesh Kumar Prop. Bhatia Cloth House

..... Appellant

Versus

Bhatia Cloth House, Sujanpur

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Sham Lal Bhalla, Advocate
for the appellant.

JASWANT SINGH, J.

1. This appeal under Order 43 Rule 1 of Code of Civil Procedure, 1908 (for short 'Code'), is filed assailing Order dated 11.07.2017 passed by Additional District Judge (ADJ), Ludhiana whereby application under Order 39, Rule 1 and 2 of the Code has been allowed and the appellant has been restrained from using Trade Mark 'Bhatia Cloth House' during the pendency of suit.

2. The facts emerging from pleadings and arguments of the appellant are that the appellant is Proprietor of 'Bhatia Cloth House', Daresi Road, Ludhiana. The respondent-plaintiff filed before the Court below suit No. 02 of 21.01.2017 seeking permanent injunction of use of Trade Mark 'Bhatia Cloth House'. The respondent-plaintiff alongwith suit for permanent injunction filed an application under Order 39 Rule 1 and 2 of the Code seeking ad-interim injunction restraining the present appellant from use of Trade Mark 'Bhatia Cloth House'. Learned ADJ, Ludhiana while allowing application under Order 39 has held that plaintiff is owner of Trade Mark

‘Bhatia Cloth House’ and said Trade Mark is duly registered with Trade Mark Authorities and surname of Defendant is not ‘Bhatia’ which prompted him to use Trade Mark ‘Bhatia Cloth House’. The respondent-plaintiff is owner of website www.bhatiaclothehouse.com and plaintiff-firm was established on 17.12.1990 even though partners of the firm time to time retired and new partners joined.

3. The Counsel of the appellant on being asked by this Court accepted that surname of the appellant is not ‘Bhatia’ and Trade Mark with ‘Bhatia Cloth House’ was registered in the name of respondent-plaintiff. The prime argument of the appellant is that a period of 7 years has expired from the date of registration of said Trade Mark in the name of respondent and he has not got it renewed in terms of Section 25 of the Trade Mark Act, 1999. The appellant further contended that same Trade Mark is used by 3-4 other Dealers in the same city i.e. Ludhiana.

I have considered arguments of the appellant and find that appeal is bereft of merits. Learned Additional District Judge, Ludhiana has passed a well reasoned and speaking order. The appellant has failed to show any document or evidence to indicate that he has secured goodwill in the name of ‘Bhatia Cloth House’ or ‘Bhatia’ is surname of the appellant. It is well known fact that Trade Mark plays a vital role in sale and promotion of product and Trade Mark is established after a long and continuing business efforts. People prefer to buy goods on the basis of Trade Mark and use of Trade Mark by an unauthorized person may lead to confusion to public at large and cause loss of goodwill to original owner of Trade Mark as well public at large. The owner of Trade Mark needs to be protected as he has worked hard and spent a lot of time and money to earn goodwill of the

Trade Mark. Keeping in view the fact that ‘Bhatia’ is not surname of appellant and ‘Bhatia Cloth House’ was registered in favour of respondent-plaintiff, even may not be renewed, however, this Court, at this stage does not find it appropriate to go into the question of renewal, therefore, appeal is liable to be dismissed in *limini*.

In view of aforesaid findings, this Court finds that appeal deserves to be dismissed and accordingly dismissed.

August 25, 2017

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**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No