

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114 (2 cases)

Date of Decision : 23.03.2018

1) FAO No.1342 of 2018 (O&M)

M/s Mohan Agriculture Farm and another Appellants

Versus

M/s Mandip Farm and another Respondents

2) FAO No.1344 of 2018 (O&M)

M/s Mohan Agriculture Farm and another Appellants

Versus

M/s Mandip Farm and another Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashish Aggarwal, Sr. Advocate
with Mr. Kartik Gupta, Advocate
for the appellants.

Mr. Pankaj Bali, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

These are two appeals. Since the issues involved are same both the appeals are decided by the common order.

The appeal bearing FAO No.1342 of 2018 has been filed by the appellants against the order dated 05.12.2017 passed by the Additional District Judge, Jalandhar allowing an application under Order 39 Rules 1

and 2 CPC filed by the respondents.

The claim of the respondents was that they were doing business under a registered Trade Mark and the same was being infringed by the appellants and they had sought an injunction.

The only argument raised by the learned senior counsel for the appellants is that the trial court has not at all considered Section 34 Trade Marks Act, 1999 (hereinafter referred to as 'the Act, 1999') and has only based the decision on Section 29 of the Act, 1999 while there was a plea under Section 34 of the Act, 1999 also which had been taken by the appellants.

Counsel for the respondents has fairly accepted that the court below has not considered Section 34 of the Act, 1999.

In the circumstances, the impugned order is set aside and the matter is remanded back to the trial court to re-decide the issue after considering Section 34 of the Act, 1999.

The appeal bearing FAO No.1344 of 2018 has also been filed against the order dated 05.12.2017 passed by the Additional District Judge, Jalandhar dismissing an application under Section 124 of the Act, 1999 filed by the appellant No.2 for staying further proceedings.

Learned senior counsel for the appellants has argued that the court below has not even followed the parameters prescribed under Section 124 of the Act, 1999 and has merely been influenced by the fact that the trade mark of the respondents is registered.

Counsel for the respondents has argued that the court below has relied upon whatever documents were produced before it and consequently the impugned order does not call for any interference.

This Court is not commenting on what was relied upon by the

trial court but the fact remains that the parameters of Section 124 of the Act, 1999 have not been addressed in the impugned order.

In the circumstances, this impugned order is also set aside and the matter is remanded back to the trial court to re-decide this issue afresh in the light of the law.

Appeals stand disposed of. Parties through counsel are directed to appear before the court below on 17.04.2018.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 23, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No