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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 14th November, 2019
+ **W.P. (C) 7851/2011 & CM APPL. 17758/2011**

M/S BHAGWAN DAS KHANNA JEWELLERS
PVT LTD

..... Petitioner

Through: None.
versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr. Deepak Biswas, Ms. Shilpa
Gamnani and Ms. Tanya Gupta,
Advocate for R-3. (M:8806230299)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the order dated 5th July, 2011, passed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida (*hereinafter*, “Regional Director”), by which the Petitioner - M/s Bhagwan Das Khanna Jewellers Pvt. Ltd., was directed to change its name within three months from the date of the order. The operative portion of the said order reads as under:

“11. NOW THEREFORE in exercise of the powers conferred on me by Clause (b) of sub-section of Section 22 of the Companies Act, 1956 r.w the Govt. of India, Ministry of Industry Deptt. Of Company Affairs, Notification no. GSR 288(E) dated 31.5.1991, I hereby direct that M/s. Bhagwan Das Khanna Jewellers Private Limited, the respondent company to change its name as per the procedure under the Companies Act within three months from the date of this directions.”

2. The petition was initially listed on 4th November, 2011, on which date the impugned order passed by the Regional Director was stayed. The said

order read as under:

“....

Issue notice. Notice is accepted by learned counsel on behalf of the respondents. Reply, if any, be filed within four weeks. Rejoinder thereto, if any, be filed before the next date.

The petitioner claims to be the grandson of Sh. Bhagwan Das Khanna, who had started the business in 1937 as a sole proprietor of M/s Bhagwan Das Khanna Jewellers. The respondent No. 3 was a partnership firm which, according to the petitioner, stood dissolved upon the demise of Sh. Bhagwan Das Khanna and thereafter has not been reconstituted. The petitioner's suit is already pending in this Court and so is the suit filed by respondent No. 3, wherein the respondent No. 3 has sought injunction against the petitioner to restraint the petitioner from using the tradename Bhagwan Das Khanna, and the company name M/s Bhagwan Das Khanna Jewellers Private Limited. No injunction has been granted in those proceedings till date. Before passing the impugned order, the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida granted repeated adjournments to await the outcome of the interim application preferred by the respondent No. 3 in its suit. It is the petitioners case that respondent no.3 cannot claim monopoly over the use of the name of the grandfather of the petitioner.

In the light of the aforesaid, the operation of the impugned order dated 05.07.2011 shall remain stayed till the next date.

List on 16.01.2012.”

3. A perusal of the above order shows that what had weighed with the court was the fact that there was a civil suit for infringement of trademark pending between the Petitioner and the private Respondent, wherein the private Respondent had sought an injunction against the Petitioner and no injunction had been granted in the said suit.

4. However, it is now submitted by the ld. counsel appearing for Respondent No.3 that in the suit filed by Respondent No.3 against the Petitioner, an interim order was granted on 10th December, 2012. The same was also challenged before a ld. Division Bench and the order has been sustained with some limited modifications. He submits that in view of these facts, the present writ petition has itself become infructuous.

5. A perusal of the interim order dated 10th December, 2012 passed in CS(OS) 1061/2008 shows that the Petitioner was restrained from using the trademark “BHAGWAN DAS KHANNA” and “BDK”. The operative portion of the said order reads as under:

“Accordingly, the prayers made in IA No.6779/2008 are allowed and the defendants are restrained from using, depicting, displaying in any manner whatsoever, the trade mark/trade name “BHAGWAN DAS KHANNA ” “BDK” or similar variant thereof on any showroom display boards, packaging, advertising material, labels, stationery articles, business cards, or any other manner as used in course of the defendants’ jewellery business or allied goods activities. However, defendants are allowed to use the name for the purpose of account books as well as for an operation of the bank till 31st March, 2013. I.A. No.6779/2008 is disposed of.”

6. In appeal being FAO(OS) 72/2013 the ld. Division Bench of this Court passed the following order on 20th February, 2013:

“We have heard learned counsel for the parties at length.

Learned senior counsel for the appellant states that he does not press the appeal as it is only a prima facie view of the matter and needless to state would not affect the decision of the case. He however, seeks a clarification qua para 79 of the impugned order, which

is in the operative portion of the order, in terms whereof there is a restraint order against use of the trade mark and the trade name by the appellant of ? BHAGWAN DASS KHANNA? and ?BDK? or similar variant thereof. His plea is that the expression? similar variant? should not imply that the appellant is unable to carry on the business under the name and style by ? B.D. KHANNA JEWELLERS? qua which the firm has been registered on 10.01.2005. Not only that apart from producing the original Form B certificate, he has also produced before us the original certificate issued by the Government of India, Ministry of Commerce being the certificate of Import and Export (IEC) under the same name and style of 2004.

There was initially a reluctance on the part of the learned counsel for the respondent even for this clarification. It is however agreed that subject to whatever decision that may be finally arrived at in the suit, the appellant may carry on business under the name and style of? B.D. KHANNA JEWELLERS?.

The appeal is accordingly disposed of.

At this stage we put to the learned counsels, in view of the fact that the present matter is a family dispute, whether they are willing for an endeavour to settle the disputes. It is not in question that the dispute pertains to the assets of Bhagwan Das Khanna and that he had not left behind any testamentary document. The sons of Bhagwan Das Khanna are reasonably aged and should be able to leave a legacy of assets rather than of litigation.

Learned counsel for the parties state that they are willing to have an endeavour before mediator to see if the matter can be resolved. There is a separate suit pending being Civil Suit No.2315/2007 filed by S.L.Khanna and Anr. which is the substantive suit qua the assets of Bharwan Das Khanna and all the necessary parties have been impleaded therein apart from the appellant in the present case.

We thus call upon all the parties in the two suits to appear before the Delhi High Court Mediation and Conciliation Centre on 04.3.2013 at 2.00 PM. The mediation centre will appoint a seasoned mediator to mediate upon the family dispute.

List for report of the mediator on 16.4.2012.”

7. As per the above order of the Id. Division Bench, the Petitioner was permitted to carry on business under the name and style “B.D. KHANNA JEWELLERS”.

8. None appears for the Petitioner. When enquired about the Petitioner and whether they are represented by any counsel, Id. counsel for the Respondents further informs the Court that an attempt was made to contact Mr. Ashok Chhabra, Id. counsel, who had initially entered appearance for the Petitioner. However, Mr. Chhabra informed the counsels that he has not been instructed to appear in the matter.

9. Considering the fact that the initial stay order was premised on the non-grant of an injunction in the suit, which circumstance has completely changed in view of the order of the Id. Single Judge and the Id. Division Bench, the present petition is disposed of with the direction that the Petitioner shall remain bound by the undertaking given on 20th February, 2013 to the Id. Division Bench. The order of the Regional Director, which had directed change of name, is in effect complied with in light of the order of the Id. Division Bench. Thus, no further orders are called for in this petition.

10. Accordingly, the writ petition is disposed of, leaving the parties to urge their contentions on merits in respect of the name and mark in the pending civil suit or in appropriate proceedings. Id. Counsel for Respondent

No.3 submits that his client may avail further remedies even against the new name now adopted by the Petitioner. This Court does not deem it appropriate to observe anything about such remedies which may be availed. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 14, 2019/dj

