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

Judgment Reserved on: 26th July, 2019

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Judgment Pronounced on: 10 January, 2020

+ **RFA 175/2009**

VISAKHA CHEMICALS

....Appellant

Through Mr. Shailen Bhatia, Mr. Amit Jain and
Ms. Monika Gupta, Advocates

versus

RAJ KUMAR SARAF PROPRIETER BINDAL FOOD INDUSTRIES

..... Respondents

Through Ms. Swetashree Majumdar, Amicus
Curiae
Ms. Arti Rathore, Advocate for
Respondents

+ **RFA 176/2009**

VISAKHA CHEMICALS

....Appellant

Through Mr. Shailen Bhatia, Mr. Amit Jain and
Ms. Monika Gupta, Advocates

versus

RAJ KUMAR SARAF SOLE PROP. BINDAL FOOD INDUSTRIES

..... Respondents

Through Ms. Swetashree Majumdar, Amicus
Curiae
Ms. Arti Rathore, Advocate for
Respondents

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

G.S.SISTANI, J.

1. The present appeals are directed against the order dated 21.01.2009, passed by the Copyright Board under Section 50 of the Copyright Act,

1957 (hereinafter referred to as 'the Act'), by which the Copyright Board ordered for the expunction of five entries bearing registration numbers A-58545/2001, A-61480/2002 for artistic work AMPACHAN and A-61431/2002, A-64130/2003 and A-64132/2003 for artistic work ROCHAK from the Register of Copyrights.

2. The brief facts required to be noticed for the disposal of the present appeals are that the appellant is a registered partnership firm comprising of three partners being (i) Shri. Suresh Kumar Poddar; (ii) Shri. Ratan Lal Poddar; and (iii) Smt. Asha Devi Poddar. Shri. Suresh Kumar Poddar and Shri. Ratan Lal Poddar are real brothers, while Smt. Asha Devi Poddar is the wife of the third brother.
3. The appellants claim to be an established firm engaged in the business of manufacturing and marketing ayurvedic and medicinal products such as churan tablets for digestive purpose since the year 1982. The appellant firm is registered with the Sales Tax Department, Delhi and has been allotted sales tax registration No. 07/107962/05/85. It is submitted that the appellant firm adopted the trade mark ROCHAK for the goods- churan tablets in the year 1982. They also, for the first time, invented and adopted an artistic label in the form of a pouch bearing the trade mark ROCHAK. An examination of the pouch would suggest the following distinctive features:
 - a) a colour combination of blue, white and red
 - b) face of a person artistically designed in a manner so that the face is mounted on the handle of the spoon and the spoon is crisscrossed by a knife

- c) a two-toned red plate is in the background of this crisscrossed spoon and knife
 - d) ROCHAK is written in red letters in the blue strip and in blue in the white portion
 - e) the word VISAKHA is written in a hexagon
 - f) the trade mark ROCHAK is written in English and Hindi.
4. The appellant claims a trade mark in colour combination and the entire label as well. The labels are in different sizes for different packaging but the principle is the same.
5. It is submitted that the appellant invented and adopted an artistic label in the form of a pouch bearing the trade mark AMPACHAN for the goods – churan tablets, in the year 1985. An examination of the pouch would suggest the following distinctive features:
- a) a colour combination of light green, red, white and yellow
 - b) AMPACHAN is written in Hindi and English in an artistic manner so that the first letter of the trade mark AMPACHAN starts from the middle of an artistically designed mango
 - c) two pairs of children are shown on the packet in a special posture (in the big pack and a single child in the small pack)
 - d) AMPACHAN is written in a box with yellow colour in the background
 - e) the word VISAKHA is written in a hexagon.
6. The appellant has five copyright registrations, 3 for artistic label ROCHAK and 2 for artistic label AMPACHAN. The details of copyright registrations are as follows:

<u>TITLE OF</u>	<u>DATE OF</u>	<u>DATE OF REGN.</u>
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	<u>THE WORK</u>	<u>APPLICATION</u>	<u>WITH REGN. NO</u>
A.	ROCHAK	27.06.2001	04.06.2002 No. A-61431/2002
B.	ROCHAK	08.05.2002	12.03.2003 No. A-64130/2003
C.	ROCHAK	08.05.2002	12.03.2003 No. A-64132/2003
D.	AMPACHAN	25.02.2000	06.02.2001 No. A- 58545/2001
E.	AMPACHAN	31.05.2001	18.06.2002 No. A- 61480/2002

7. The Copyright Board vide order dated 21.01.2009 held that in all the five copyright registrations, Shri. Ratan Lal Poddar, being the first owner of the work, in terms of Section 17 of the Act, did not comply with Section 19 of the Act, which required him to grant the rights of the works to the firm through an assignment in writing.
8. Learned counsel for the appellant contends that Shri. Ratan Lal Poddar is mentioned as the author of the said artistic works and the appellant firm is a family concern of the said Shri. Ratan Lal Poddar. Mr. Bhatia submits that Shri. Ratan Lal Poddar was an employee of the family concern from 1982 to 1987 and after 1987, he has become a partner. The copyright applications were specifically signed by Shri. Ratan Lal Poddar as partner of the appellant and the same mention that the registrations are sought in the name of the firm- M/s Visakha

Chemicals. The written statements filed in the rectification petition were also signed by Shri. Ratan Lal Poddar.

9. Counsel further contends that the firm and Shri Ratan Lal Poddar always treated the trade mark/ labels ROCHAK and AMPACHAN as a partnership property. The partnership firm took a drug license for ROCHAK on 29.09.1982 and the trade mark registration ROCHAK was in the name of the firm. Moreover, a notice was issued by M/S K.G. Bansal and Co. in 1986 for the trade mark ROCHAK on behalf of the appellant. Further, litigations were filed and contested by the appellant firm for the trade mark ROCHAK/AMPACHAN.
10. Counsel further contends that the Copyright Board has cancelled the five registrations on the solitary ground that Shri. Ratan Lal Poddar, being the author of the artistic work, did not assign the copyright works to the firm. Mr. Bhatia submits that the Copyright Board ignored that- firstly, there is no dispute inter se the partners and the firm; secondly, the applications for registration of Copyright were signed by Shri. Ratan Lal Poddar and the registration was sought in the name of the firm; and thirdly, the written statement and affidavits were filed by Shri. Ratan Lal Poddar in the proceedings to defend the firm. It is also submitted that the respondent, being a third party, has no locus standi to challenge the internal matters of the appellant.
11. Counsel submits that the respondent sought to acquire copyright registration of labels ROCHAK and AMPACHAN in its own name and the same stand rejected. It is submitted that the Copyright Board has not disputed the copyright of Shri. Ratan Lal Poddar as the artist of the works, however, a rather technical approach has been adopted

without there being any protest or contest in any manner by the author who is none else but a partner of the firm and real brother of the other partner. Therefore, it is submitted that as only the assignment was disputed, the Copyright Board as an alternate, ought to have directed that the copyright registration may continue in the personal name of Shri. Ratan Lal Poddar or else granted time to cure the defect, if any.

12. Counsel further contends that the order of the Copyright Board is contrary to provisions under Section 14 of the Partnership Act, 1932. Section 14 of the Partnership Act, 1932 reads as under: -

“The Indian Partnership Act, 1932

14. The property of the firm.—Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business. Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.”

13. Reliance is placed upon ***Sunil Aggarwal v. Kum Kum Tandon***, PTC supp (1) 709, paras 10, 11, and 14, ***Sun Pharmaceuticals Industries Limited v. Cipla Limited***, 2009 (108) DRJ 207, ***Hindustan Sanitaryware & Industries Limited v. Champion Ceramic***, 2007 (34) PTC 695, para 9, ***Bharati Dutta v. Dr. Sarabindu Basu***, 2008 (37) PTC 178 (CB), ***B. Mohamed Yousuf v. Prabha Singh Jaswant Singh***, 2008 (38) PTC 576, ***Zee Entertainment Ltd. v. Gajendra Singh***, 2008 (36) PTC 53 (BOM.), ***Narayanappa v. Bhaskara Krishnappa***, AIR 1966 SC 1300, ***Firm Ram Sahay v. Biswanath***,

AIR 1963 Patna 221(DB), *State v. Chidambaram*, AIR 1970 MADRAS 5 (V 57 C 3).

14. *Per contra*, learned counsel for the respondent submits that the respondent is engaged in the business of manufacture and trade of ayurvedic medicines including churan and digestive tablets along with confectionery and baked products. The respondent carries on business in the name of and is the sole proprietor of Bindal Food Products.
15. Counsel contends that three copyright applications were filed for ROCHAK in 2002 and 2003, and two applications for AMPACHAN were filed in 2001 and 2002 respectively. Further, the year of first publication of the copyrighted work for ROCHAK was identified as 1982 and for AMPACHAN was identified as 1984. The registration of the copyrights was challenged before the Copyright Board and rectified essentially on the ground of faulty copyright registrations as Shri. Ratan Lal Poddar, being the first owner of the work under Section 17 of the Act, retained his ownership over the artistic works in question. It is further contented that the provision under Section 19 of the Act required assignment via a written deed. We would like to extract Section 19 of the Partnership Act, 1932 which reads as under: -

“The Indian Partnership Act, 1932

19. Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

- (a) submit a dispute relating to the business of the firm to arbitration,*
- (b) open a banking account on behalf of the firm in his own name,*
- (c) compromise or relinquish any claim or portion of a claim by the firm,*
- (d) withdraw a suit or proceeding filed on behalf of the firm,*
- (e) admit any liability in a suit or proceeding against the firm,*
- (f) acquire immovable property on behalf of the firm,*
- (g) transfer immovable property belonging to the firm, or*
- (h) enter into partnership on behalf of the firm.*

16. Reliance is placed by the counsel for the respondent on ***Saregama v. Puneet Prakash***, (2010) 4 CALLT176 (HC), ***Venugopal v. Suryakantha***, AIR 1992 KANT 1 and ***Vijayraghavan v. Sellappappa***, 2011 SCC OnLine Mad 577.
17. It is further contended that Shri. Ratan Lal Poddar was only 18 years old in 1982 and therefore, could not have designed the work in question. Moreover, there is no document filed in support of his having been employed by the appellant at the time of creation of the work.
18. Learned counsel draws the attention of the court to Section 104 of the Evidence Act, 1872, to submit that the burden of proof is on the appellant to prove that either the impugned artistic works were works for hire and were expressly assigned by Shri. Ratan Lal Poddar or that the works were created by Shri. Ratan Lal Poddar in his capacity as an employee of the appellant.
19. It is contended that it is not the case that the impugned artistic works were works for hire and were expressly assigned by Shri. Ratan Lal

Poddar and if it is the case that that the works were created by Shri. Ratan Lal Poddar in his capacity as an employee of the appellant, then the onus is on the appellant to prove the factum of Shri. Poddar's employment through primary or secondary evidence.

20. Learned counsel for the respondent has drawn the attention of this court to the materials filed/documents relied upon to prove the employment of the appellant, which we reproduce hereinunder:

- a) An affidavit filed before the Copyright Board declaring that Shri. Ratan Lal Poddar was an employee of the appellant at the time of creation of the impugned works
- b) The particulars of Shri. Ratan Lal Poddar's employment such as the duration, his designation and responsibilities etc are not disclosed nor is there any direct evidence of employment such as Contract of Employment or Letter of Employment
- c) It is alleged by the counsel for the respondent that the documents filed by the appellant along with the appeal do not establish employment of Shri. Ratan Lal Poddar in the firm on the stated dates i.e. 1982 and 1984 respectively.

They essentially comprise letters to the Rastriya Banijya Bank, Kathmandu, Nepal signed by an unnamed person in the capacity of 'Manager.' Apart from the fact that the documents are of 1986 and not 1982 or 1984 when the artistic work was created, and therefore cannot constitute proof of employment of Shri. Ratan Lal Poddar in those years, in the appeal these documents are referred in the grounds by the appellant with a mere assertion that Shri. Ratan Lal Poddar was earlier an employee

and all the work were done by him. However, it neither describes the capacity in which he was employed, nor does it provide any secondary evidence of employment such as salary slips, proof of deduction of TDS, reimbursement of expenses etc.

Even if the said documents filed by the appellant are assumed to pertain to Shri. Ratan Lal Poddar, despite the documents not bearing his name, they would best prove as he was functioning as manager/working the Sales Division of the appellant in 1986 which is irrelevant to the subject matter of the present proceedings.

21. It is further contended by the learned counsel for the respondent that the sum and substance of the submissions made by the appellant are that Shri. Ratan Lal Poddar being a partner of the firm, the artistic works created by him will automatically inure to the benefit of the partnership under Section 14 of the Partnership Act, 1932. The arguments would have been correct and the ratio of the earlier decision of the *Copyright Board in Hindustan Sanitary Ware and Industries Ltd v. Champion Ceramic*, 2007 (34) PTC 695 (CB), would have been applicable to the present case provided Shri. Ratan Lal Poddar was a partner of the appellant at the time the work was created. That was however not the case, hence, Section 14 of the Partnership Act not apply.
22. Learned counsel for the respondent places reliance on *Nariman Aspandiar Irani v. Adi Merwan Irani*, AIR 1989 Bom 362, more particularly para 12, which is reproduced hereinunder:

“12. The property of the firm includes all property and rights and interests in property ``originally brought into the stock of the firm`` Section 14 - Partnership Act . But this is subject to contract between the partners. Under Section 14 of the Partnership Act , property belonging to a person , in the absence of an agreement to the contrary, does not, on the person entering into a partnership with others, become the property of the partnership, merely because it is used for the business of the partnership. It will become property of the partnership only if there is an agreement - express or implied - that the property was, under the agreement of partnership, to be treated as the property of the partnership (Arjun Kanoji Tankar v. Santram Kanoji Tankar .) In view of this statement of law by the Supreme Court, the question is whether there is any agreement to treat the tenancy of the premises at 7, Jer Messian, Gowalia Tank Road, Bombay 26, as the property of the partnership deed and the balance-sheets exclude inference of such agreement. Therefore, when the Plaintiff made `` a gift`` of his ``half partnership of the hospital``, he gave all his share except the share in the tenancy, for, the tenancy was never the property of the firm. This inference is difficult to escape.”

23. Reliance is also placed on the decision rendered by the Division Bench of the Madras High Court in ***B.Mohammad v. M/S Prabha Singh***, 2008 (38) PTC 576, submitting that the said judgment is not applicable as it pertains to curing a defect in the assignment and cannot be applied to a situation when there is admittedly no assignment. The question of the Copyright Board cross examining Shri. Poddar as to the terms of his employment or its failure to accept his assertion to that effect in his affidavit, as urged in his grounds, cannot hold substance in the absence of an Assignment Deed and lack of any primary or secondary evidence of employment of Shri Poddar in the appellant firm in the year 1982. It is also submitted that the

Copyright Board is not required to cross examine the deponent and it is the appellant who has failed to discharge the burden on them.

24. It is further contended that it may also be argued that the contents of the affidavit need not be gone into as in the absence of an assignment or proof of employment being at the time of applying for registration of copyright, the registration was obviously faulty and could not be rectified by the introduction of evidence in sub-sequential proceedings for cancellation of said copyrights, as the mandatory statutory threshold had not been met at the time of filing the application.
25. It is further submitted that the argument as to an absence of a locus standi on the part of the respondent to challenge the assignment of the impugned work by Shri Poddar to the appellant is incorrect as it is not the merit of the assignment that has been challenged, which is a mandatory statutory pre requisite under Section 19 of the Act. Given that admittedly civil and criminal cases can be filed against the respondent on the basis of these copyright registrations, the respondent has a locus standi to challenge the appellant's title in them. Therefore, it is contended on the basis of the facts and documents on record that the appellant cannot be entitled to the impugned copyright registration and therefore the order of cancellation of Copyright Board is correct in law.
26. Ms. Swetashree Majumdar, learned Amicus Curiae submits that either Shri. Poddar ought to be free to reapply for the said registration in his own name and thereafter execute a Deed of Assignment in favour of the appellant firm as on the present date or the appellant should be permitted to seek the aforesaid registration in their own favour. It is

further submitted that given that registration of a copyright is not a mandatory pre-requisite condition under the Berne Convention, the absence of registration should not disentitle the owner of the copyright in the impugned labels, which appears to be Shri. Poddar at the present moment, or in enforcing them in ongoing and future civil and criminal actions.

27. We have heard the learned counsels for the parties and the learned Amicus Curiae and considered their rival submissions.
28. A perusal of the order passed by the Copyright Board shows that the Board has not questioned the ownership of Shri Ratan Lal Poddar over the works in question, but rather has observed that Shri Ratan Lal Poddar is exclusively the first owner of the said works. The Copyright Board has also observed that Shri Ratan Lal Poddar being the creator of the work, exercises an exclusive right over the same and his action of passing the same to the appellant consisting of three partners including Shri Ratan Lal Poddar, created collective interests which amounted to assignment in terms of Section 18 and 19 of the Act. Counsel for the respondent, while relying upon the observation made by the Copyright Board, has strongly contended that under Section 19 of the Act, assignment in writing is a mandatory statutory prerequisite for permitting usage of the copyrighted works. The said contention of the respondent cannot be accepted and lacks merit for the reason that Shri Ratan Lal Poddar, while applying for the registration of the said artistic works, mentioned the appellant *i.e.* M/s Visakha Chemicals as the owner of the artistic works. Additionally, after examining the affidavit of Shri Ratan Lal Poddar, we may also note that the appellant

is a family concern of Shri Ratan Lal Poddar and he had been working in the appellant firm as an employee since 1982 and in 1987 joined the appellant firm as a partner; and the artistic works in question were developed by Shri Ratan Lal Poddar for the appellant firm while he was employed in the firm. Also, as the ownership of Shri Ratan Lal Poddar over the challenged artistic works is not disputed and in the absence of any disputes regarding the creation or usage of the said artistic works amongst the partners in the firm, the signing of the application form for the registration of the copyright for the challenged artistic works amounts to assignment made in favour of the appellant firm.

29. We may note that bare distinction in this case is that Shri Ratan Lal Poddar claims to be the author which is not disputed by the appellant firm. Shri Ratan Lal Poddar claims that he created artistic works for the appellant firm and applied for the registration in the name of the appellant firm which fact is not disputed by the partners in the firm. Moreover, Shri Ratan Lal Poddar is the real brother of one of the partners and it is claimed that at the time when he created the artistic works he was employed in the appellant firm. It is pertinent to mention that in Indian culture it is not unusual that the family members, irrespective of age and qualification, share the burden in the family business even while pursuing their education. Even otherwise, it is common knowledge that boys after college manage shops and other business centres with their respective fathers and other family members.

30. We are also of the view that since there was no dispute regarding the usage of the said artistic works amongst the partners in the appellant firm, the respondent cannot challenge the assignment since neither the respondent is an assignor nor is claiming prior assignment. The respondent therefore being a third party has no locus to challenge the assignment made by Shri Ratan Lal Poddar.
31. In view of the above discussion, we are of the view that the decision rendered by the Copyright Board in expunging the five entries bearing registration numbers A-58545/2001, A-61480/2002 for artistic work AMPACHAN and A-61431/2002, A-64130/2003 and A-64132/2003 for artistic work ROCHAK from the Register of Copyrights is incorrect.
32. Accordingly, the present appeals are allowed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

JANUARY 10, 2020

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