

DL. April 18,
8. 2022

F.M.A. 1184 of 2021

Mousumi Khan & ors.
Vs.
Sri Amarnath Khan & ors.

Mr. Tanmoy Kumar Mukherjee,
...for the appellants.

Mr. Uday Sankar Bhattacharjee,
Ms. Banani Bhattacharjee,
Ms. Manasi Mukherjee,
...for the respondents no. 4 and 5.

The affidavit of service filed on behalf of the appellants in court today is taken on record. In spite of service, the principal defendants/respondents are not represented, nor any accommodation is prayed for on their behalf.

The learned trial judge, while refusing to pass an order of injunction, had relied upon several documents submitted on behalf of the principal defendants no. 2 and 3 by way of firisti, which includes the memorandum of settlement dated May 27, 2004, the declaration of Chandan Khan, the letter dated September 24, 2004 written by Chandan Khan to the Assistant Labour Commissioner, Bishnupur, Pankura, and the declaration dated September 26, 2004 executed by Amarnath Khan.

The learned advocate appearing on behalf of the appellants submits that the appellants are the heirs and legal representatives of Chandan Kumar Khan, being the original plaintiff, and the documents, alleged to have been submitted by the contesting defendants no. 2 and 3 by way of firisti, were never

supplied to the appellants nor there be any existence of the said documents. Our attention has been drawn to an application filed by the present appellants on or about January 2018 for discovery of documents and the written objection thereto filed by the principal defendants no. 2 and 3. It is submitted on behalf of the appellants that since the copies of the documents and declarations were never supplied to the appellants, reliance on the said documents cannot be made without giving any opportunity to the appellants to controvert the existence, authenticity and/or contents of the said documents.

In absence of the contesting defendants and having regard to the documents disclosed in this proceeding, it appears that Chandan Kumar Khan, the husband of the appellant no. 1, was the registered owner of the trade mark, namely, **Beautiful Bishnupur Mukh Pora Bidi**. It appears that the trade mark of his business under the name and style of **Beautiful Bishnupur Mukh Pora Bidi** was registered in Class 38 with the Trade Marks Registry, Government of India, on April 28, 2004. The learned trial judge relied upon the documents alleged to have been submitted by the principal defendants no. 2 and 3, the authenticity of which is in dispute, to show that the original plaintiff and the defendant no. 1 already relinquished their rights in respect of the labours of the said company including the logo and label.

The registration of a trade mark gives certain statutory right to the registered owner of the trade mark under Section 28 of the Trade Marks Act, 1999. The said right cannot be defeated unless there has been a clear case of acquiescence, abandonment or assignment. The Trade Marks Act, 1999 also elaborately lays down

the procedure for assignment of trade mark.

We do not find from the impugned order that there is any assignment of the said trade mark in favour of the contesting respondents nor there is any registered user agreement. The respondents have never prayed to contest the present proceeding and to produce the documents relied upon by the learned trial judge to show that there has been any abandonment or assignment of the trade mark in favour of the respondents.

Under such circumstances, we set aside the order impugned in this appeal and direct the learned trial judge to rehear the injunction application on merits requiring the defendants no. 2 and 3 to produce the said documents and declarations mentioned above and to ascertain whether there has been any abandonment or relinquishment of right or whether there has been any registered user agreement in favour of the defendants no. 2 and 3 to use the said trade mark. The defendants no. 2 and 3 are directed to furnish accounts to the trial court from 2015 till date to be verified by a qualified accountant within a fortnight from date. The trial court is requested to dispose of the injunction application on merits after taking into consideration the aforesaid observations within eight weeks from the date of communication of this order. the statement of accounts to be filed by the defendants no. 2 and 3 shall be made available to the appellants.

We make it clear that the said documents and declarations showing assignment or relinquishment of right in the said trade mark in favour of the respondents no. 2 and 3 are required to be established by production of relevant documents as required

under the Trade Marks Act, 1999, as we are, prima facie, of the view that the respondents no. 2 and 3 have no right at all to use the said trade mark.

With the aforesaid observations, the appeal stands disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains in the application for injunction filed under CAN 2 of 2021 and the same is also disposed of.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

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(Ajoy Kumar Mukherjee, J.)