

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9893 OF 2022

Shivkumar Shanarao Thakuar and Ors.

.. Petitioners

Versus

Bajranglal Makhanlal Agrawal

.. Respondent

- Mr. Vineet B. Naik, Senior Advocate a/w. Mr. Tejesh Dande, Mr. Bharat Gadhavi, Krupanshu Nandue and Ms. Seema Patil i/by Tejesh Dande & Associates for Petitioners
- Mr. Shailendra S. Kanetkar for Respondent

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 13, 2023.

P.C.:

1. Heard Mr. Naik, learned Senior Advocate for Petitioners and Mr. Kanetkar, learned Advocate for Respondent. Petitioners are Plaintiffs in the Suit.

2. Perused the impugned order dated 16.01.2020 passed below Exhibit-252 in Civil Suit No. 9 of 2011. Admittedly, the Suit proceeding pending before the Trial Court is at the stage of final arguments.

3. Considering the averments made in the plaint in paragraph No.3 thereof, an application was moved by the Petitioner seeking to place on record a fresh re-validation of the registration of 4 trademarks of the Petitioners and for exhibiting the same. The fresh re-validation Certificate dated 16.10.2018 is placed at Exhibit-E page Nos. 123 to 130 of the Petition and the re-validation has been granted w.e.f. 16.03.2019 to 16.03.2029 in respect of the same four trademarks as

mentioned in the plaint.

4. Considering that re-validation was in respect of the same four trademarks, the Application ought to have been allowed. However, the Trial Court has rejected the Application by assigning the reason of the date of the Application and delay in filing the same.

5. Mr. Naik would submit that delay is not applicable at all as the order dated 22.03.2022 passed by this Court in Writ Petition No. 3374 of 2017 in fact stayed the hearing of the suit proceedings from 22.03.2017 to 02.05.2019.

6. This order dated 22.03.2022 was not brought to the notice of the Trial Court. That apart, Mr. Naik submitted that though Petitioners had taken out Application for recall of the witness to submit the above documents subsequently, on instructions he now states that Petitioners shall not examine any witness regarding the same. He prays for the said documents to be taken on record and setting aside the impugned order.

7. Mr. Kanetkar submitted that Respondent has not filed reply, however, in his usual fairness he submits that if the Petitioners do not wish to recall and re-examine any witness, then the Respondents would not have any objection. Respondents objection is for recall and re-examination of the Petitioner's witness. He also submitted that Respondents have reservations for marking the said documents as Exhibits.

8. There cannot be any objection by the Respondents for placing 4 documents on record or for exhibiting the same as they are public documents. Considering the pendency of the suit, the registration of the subject trademarks has been revalidated. The objection of Respondents is therefore not sustainable and stands rejected. In view of the above, I find that the impugned order deserves to be set aside. The order dated 16.01.2020 passed below Exhibit-252 stands quashed and set aside. Needless to state that Exhibit-252 stands allowed and Exhibit-E to the Petition (Page Nos. 123 to 130) is directed to be taken on record and exhibited as prayed for under Exhibit-252 by the Petitioners. Petitioners shall not recall and re-examine their witness for the above documents. All contentions of the parties regarding the above documents regarding their validity are expressly kept open for submissions / arguments before the Trial Court at the time of final hearing.

9. Writ Petition is allowed in the above terms.

[MILIND N. JADHAV, J.]

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