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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 22nd December, 2023*

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W.P.(C)-IPD 30/2021**RISHI LAL GUPTA**

..... Petitioner

Through: None.

versus

UTTAM CHEMICAL UDYOG & ORS

..... Respondents

Through: Ms. Arushi Singh, Ms. Anjalika
Arora, Ms. Manviya Arun, Adv.
(M. 9717234611)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present writ petition under Article 226 and 227 of the Constitution of India has been filed by the Petitioner-Rishi Lal Gupta challenging the impugned order dated 5th July 2007 passed by the IPAB.
3. The impugned order arose out of a rectification petition under Section 56 of the Trade and Merchandise Marks Act, 1958 filed before the IPAB by the Respondent-M/s. Uttam Chemical Udyog (the Applicant before the IPAB) against the Petitioner herein - Mr. Rishi Lal Gupta (the Respondent before the IPAB), seeking removal/cancellation of the registered trade mark of the Petitioner, namely, 'BHAIBHAI' bearing no.371858 dated 4th February, 1981 in Class 3. The extract from the Trade Mark Journal No. 1145 dated 16th February, 1997 is as follows:



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व्यापार चिन्ह पत्रिका : संख्या 1145, 16 फरवरी, 1997/27 भाग, शक 1918, खण्ड LIV

Class-3 contd.....

Class-3 contd.....



Advertised before acceptance under section 20 (1) proviso.

The portrait appearing on the mark is that of Rajinder kumar and Mukesh Kumar both are the sons of the applicant.

371858 - February 4, 1981. RISHI LAL GUPTA, trading as RISHI SOAP WORKS, Plot No. 37, Sector No.4, Ballabgarh, Haryana; Manufacturers and Merchants. User claimed since 1/6/1973. (DELHI)

Washing soap for sale in the state of Haryana and the Union Territory of Delhi.

Registration of this Trade Mark shall give no right to the exclusive use of word 'BHAIR'.

Whole label shall be used as one trade mark.

स्वीकृति के पूर्व विज्ञापित धारा 20(1) परन्तुक

चिन्ह पर दृश्यमान चित्र राजिन्दर कुमार और मुकेश कुमार का है जो दोनों आवेदक के पुत्र हैं।

371858- 4 फरवरी, 1981- अवि लाल गुप्ता जो अवि सोप वर्क्स के नाम से व्यापार करते हैं, प्लॉट नंबर 37, सेक्टर नंबर 4, बल्लभगढ़, हरियाणा, विनिर्माता और व्यापारी। दिनांक 1-6-1973 से उपयोग का दावा किया गया है। (दिल्ली)

हरियाणा और केन्द्र शासित राज्य दिल्ली में बिक्री हेतु धुलाई साबुन।

इस व्यापार चिन्ह का रजिस्ट्रीकरण चिन्ह पर रोमन लिपि में दृश्यमान 'भाई' शब्द के अनन्य उपयोग का अधिकार नहीं देगा।

संपूर्ण लेबल एक व्यापार चिन्ह के रूप में प्रयुक्त होगा।

4. The grounds for rectification of the said mark 'BHAIR-BHAIR' were that the Petitioner is not the proprietor of the said mark and that the mark has remained without sufficient cause. The IPAB vide the impugned order dated 5th July, 2007 observed as follows:



- The Respondent i.e. Uttam Chemical Udyog bears the burden of proof in cases of alleged fraud. The Petitioner had committed fraud before registration by withdrawing and then refiling a similar application without explanation, thus suppressing facts from the Registrar of Trade Marks.
- Another ground for removal is the violation of Sections 9 and 11 of the Trade and Merchandise Marks Act, 1958 with the marks being deceptively similar, causing potential confusion. The Respondent used their mark prior to the Petitioner, and thus acquired valid rights.
- The Petitioner, who began using the mark later than the Respondent, cannot be considered the proprietor of the mark under Section 18(1) of the Trade and Merchandise Marks Act, 1958.

5. Thus, the said petition before the IPAB was allowed and the mark was rectified. The relevant paragraph of the said order reads as under:

“28. We are further of the opinion that the first respondents who are later in point of time of user to that of the applicants cannot be considered to be the proprietors of the mark as per Section 18(1) of the Act.

29. Taking into consideration the facts and circumstances of the case, we are of the view that the registration has been obtained by committing fraud seen from the attitude of the first respondent who had withdrawn the earlier application and filed a new application suppressing the fact. On this ground alone the mark is to be removed from the Register.

30. We, therefore, allow the application for rectification directing the Registrar of Trade Marks, to remove the trade mark No.371858 in class 03 from the



Register of Trade Marks. However, there shall be no order as to costs.”

6. In the present petition, vide order dated 10th September, 2007, notice was issued. As on date, the Court is informed by Id. Counsel that the mark ‘BHAI-BHAI’ stands removed from the website as no interim order was granted. The status from the website of the CGPD TM is as follows:

As on Date : 22/12/2023

Status : Removed

[View TM Application](#) | [View Additional Representation Sheet](#)

TM Application No.	371858
Class	3
Date of Application	04/02/1981
Appropriate Office	DELHI
State	PUNJAB
Country	India
Filing Mode	Branch Office
TM Applied For	BHAI - BHAI
TM Category	TRADE MARK
Trade Mark Type	DEVICE
User Detail	06/01/1973
Certificate Detail	Certificate No. 212504 Dated : 29/01/1998
Valid upto/ Renewed upto	
Proprietor name	(1) RISHILAL GUPTA. Trading As : RISHI SOAP WORKS. Single Firm
Proprietor Address	PLOT NO.37,SECTOR NO.4, BALLABGRAH, HARYANA.
Email Id	
Agent name	THE CALCUTTA TRADE MARK CO.[7768]
Agent Address	236, CHANDNI CHOWK, FATEHPURI, DELHI- 110 006.
Goods & Service Details	[CLASS : 3] WASHING SOAP FOR SLAE IN THE STATE OF HARYANA AND THE UNION TERRITORY OF DELHI.
Conditions	REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXLCUSIVE USE OF WORD "BHAI".
Publication Details	Published in Journal No. : 1145-0 Dated : 16/02/1997

7. By way of background, a suit was filed by the Respondent against the Petitioner, being ‘*Suit No. 3/1975*’ before the District Judge, Gurgaon seeking an injunction against infringement and passing off for using the



Respondent's trade mark '5-BHAI'.

8. In the said suit, the *ex parte* injunction was granted on 20th May, 1975. Thereafter, an application under Order XXXIX Rule 4 CPC was also filed and at that stage, Mr. Rishi Gupta moved for stay of the suit under Section 111 of the earlier Trade and Merchandise Marks Act, 1958. The interim order was modified vide order dated 11th June, 1975. The Petitioner was then permitted to file a rectification petition. The Petitioner was further directed to deposit a quarterly statement of account with Rs.1250/- till disposal of the suit.

9. Since the suit was stayed, the matter before the IPAB continued to remain pending and thus as on date, in view of this writ petition, the suit has continued to remain stayed.

10. None is appearing for the Petitioner in this matter for the last several hearings.

11. Both the marks stand removed from the Register of Trade Marks as noticed from above. In this view of the matter, this Court is not inclined to continue the writ petition. Under Article 227 of the Constitution of India in a writ challenging the IPAB's order, the extent of the exercise of jurisdiction by this Court is limited. The impugned order of the IPAB is reasoned.

12. In this view of the matter, the petition is dismissed.

13. The Respondent- Uttam Chemical Udyog is free to reactivate the suit bearing no. '*Suit No. 3/1975*' and seek remedies in accordance with law. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 22, 2023*Rahul/dn*