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

+ **C.O. (COMM.IPD-TM) 77/2021**

CINNI FOUNDATION (TRUST) Petitioner

Through: Mr. Chandra Prakash, Adv.

versus

MAHENDRA PAL SINGH AND ANR. Respondents

Through: None for Respondent 1

Mr. Harish Vaidyanathan Shankar, CGSC
with Mr. Srish Kumar Mishra, Mr. Sagar
Mehlawat, Mr. Alexander Mathai Paikaday,
Mr. M. Sriram and Mr. Krishnan V., Adv.
for Respondent 2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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21.09.2023

(Through Video-Conferencing)

C.O. (COMM.IPD-TM) 77/2021

1. This petition was originally filed before the learned Intellectual Property Appellate Board (IPAB) under Section 57 of the Trade Marks Act 1999, for rectification of the register of trade marks by removal, therefrom, of the mark CINNI, registered *vide* Registration Certificate No. 476770 dated 30 November 2005 w.e.f. 27 September 2004 in favour of Respondent 1.

2. The rectification petition avers that the word mark CINNI stood registered in favour of M/s. Raj Kumar Sah & Sons w.e.f. 18 November 1964 in Class 7 in respect of machine and machine tools,

motors (except for vehicle large size agricultural implements). The



mark was subsequently assigned on 5 November 2000 to M/s. CINNI Foundation, i.e. the present petitioner. CINNI Foundation, a Trust, which was at that time, managed by Mr. Chandra Kumar Sah, as its trustee (Though the petition, apparently, inadvertently refers to Mr. Chandra Kumar Sah as the Chairman of CINNI Foundation at that time). Consequent on removal of Mr. Chandra Kumar Sah, as the Managing Trustee of the petitioner, this Court has, according to Mr. Chandra Prakash, learned Counsel for the petitioner, *vide* its orders dated 1 March 2013 and 5 April 2013, in CS(OS) 783/2009 (***CINNI Foundation v. Raj Kumar Sah and Anr.***), noted that the interest of the petitioner foundation was being protected by the present petitioner.

3. The petition avers that the registration of the mark CINNI in favour of the petitioner had lapsed on 18 November 2006 owing to failure, on the part of the persons In-charge of the petitioner Trust at that point of time to prosecute the mark but that, consequent to the present petitioner coming into control of the petitioner's CINNI Foundation, Application No. 2112419 dated 9 March 2011 has been filed by the present petitioner for renewal of the mark. Mr. Chandra Prakash, learned Counsel for the petitioner, to a specific query from the Court, submits that the said application is still pending with the Registry of Trade Marks.

4. Be that as it may, it is not in dispute that, on the date when the application was preferred by Respondent 1 for registration of the word mark CINNI in its favour in Class 7 on 27 September 2004, as well as when it was registered in favour of Respondent 1 on 30 November 2005, the registration of the same word mark CINNI in favour of the



petitioner, in the same Class 7, was valid and subsisting.

5. It is in these circumstances that the petitioner has moved the present petition seeking rectification of the register of trade marks by removal, therefrom, of the impugned Registration No. 476770, whereby the word mark CINNI stands registered in favour of Respondent 1 w.e.f. 27 September 2004.

6. Notice was issued on this petition, by the learned IPAB on 19 January 2018. Appearance was entered by the respondents for the first time before this Court on 27 September 2022, 14 December 2022 and 14 February 2023, when the matter was listed before the learned Joint Registrar. There is, thereafter, no appearance on behalf of Respondent 1. Today, Mr. Nishant Mahtta has, who appeared on behalf of Respondent 1, submitted that he had at some point of time been instructed by the said respondent but that Respondent 1 has ceased to instruct him in the matter. No other Counsel has entered appearance for the said respondent.

7. Nor has any response to this petition been filed by either of the respondents.

8. It appears that respondents are not seriously contesting what has stated in the present petition. In any event, assertions in the petition have been deemed as admitted on the ground of non-traverse.

9. The marks in question being identical, i.e. CINNI and CINNI, and being used in favour of the same class of goods in Class 7, the likelihood of confusion in the market, if the marks are allowed to



subsist together, cannot be gainsaid. On the date when Respondent 1 had applied for registration of its mark, as also on the date when the mark came to be registered, the petitioner's mark was already on the register of the trade marks. As such, registration of Respondent 1's mark is *prima facie* in violation of Section 11(1)(a)(b) of the Trade Marks Act.

10. As there has been no response to this petition by either of the respondents, based on the assertions in the petition, this Court has no option but to declare the impugned Registration No. 476770 dated 30 November 2005, whereby word mark CINNI stands registered in favour of Respondent 1 w.e.f. 27 September 2004 in Class 7 to be illegal and to set aside the said registration.

11. Accordingly, this petition is accordingly allowed. The impugned word mark CINNI, as registered in favour of Respondent 1 *vide* Registration Certificate No. 476770 dated 30 November 2005, w.e.f. 27 September 2004 shall stand quashed and set aside.

12. The Registrar of Trade Marks shall take steps forthwith to rectify the register by removing therefrom, the impugned registration. Let a copy of this order be transmitted by the Registry of this Court to the learned Registrar of Trade Marks for consequential action.

13. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 21, 2023/rb

Signature Not Verified

Digitally Signed
By: HARIOM
Signing Date: 22.09.2023
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