

IA No: GA-Com 1 of 2024
APOT No. 58 of 2024
With
CS No. 64 of 2020
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Berger Paints India Ltd.
Versus
JSW Paints Pvt. Ltd.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice PRASENJIT BISWAS
Date: 10th April 2024

Appearance:
Mr. Abhrajit Mitra, Sr. Advocate
Mr. Sayantan Basu, Advocate
Mr. Niladri Khanra, Advocate
Mr. Kavach Kashyap, Advocate
Ms. Abanti Bose, Advocate
for the appellant

Mr. Debnath Ghosh, Advocate
Mr. Shounak Mitra, Advocate
Ms. Vaibhavi Pandey, Advocate
for the respondent

The Court: We have heard both learned counsel for the parties.
The arguments were so fair and to the point that we are in a position to
dispose of this appeal dispensing with all formalities.

Learned counsel are ad idem that the word "silk" on the
tumbler of the products of the parties should denote description of the
products. But when this word is so couched with the trademark or
trade name of a product it might tend to pass off the goods of one party
as those of the other.

In those circumstances, there shall be no interference with the
impugned judgment and order dated 12th December 2023 provided the
respondent uses the word "silk" on the tumbler only when the product
contained therein has a silk finish and does not use that word when the

product has any other finish/sheen. Such description would be maintained in the website of the respondent and in any other form of advertisement of the product.

Mr. Abhrajit Mitra, learned senior counsel appearing for the appellant submits that the above observation would not defeat his claim in the suit that his client has proprietary rights over the word “silk” in relation to the product.

This is denied by Mr. Denbath Ghosh, learned counsel appearing for the respondent.

At this prima facie stage, we maintain our observation made above and hold that such a right is yet to be established at the trial of the suit. All contentions are kept open to be decided at the trial.

The appeal (APOT 58 of 2024) and the stay application (IA No: GA-com 1 of 2024) are disposed of.

As affidavits were not invited, the allegations contained in the stay application are deemed to have been not admitted.

We expect that the suit would be speedily got ready for trial and hearing so as to conclusively decide the issues in question.

(I. P. MUKERJI, J.)

(PRASENJIT BISWAS, J.)