

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HON'BLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION No: 1230 of 2023

Petition under Article 227 of the Constitution of India, aggrieved by the order passed in E.P.No.07 of 2023 in IA No.802 of 2017 in O.S.No.402 of 2017 on the file of the Court of the XI Additional Chief Judge, City Civil Court, Hyderabad.

Between:

1. Shree Santosh Family Dhaba, Rep., by its proprietor Sri KailashBhati, S/o Late Heeralal Bhati, aged 32 years, Occ: Busniess, #3-5-890, Ground Floor, Paras Chambers, Himayathnagar, Hyderabad, TS.
2. Sri. Kailash Bhati, S/o Late HeeralalBhati, aged 32 years, Occ: Business, 3-5-890, Ground Floor, Paras Chambers, Himayathnagar, Hyderabad, TS.

...Petitioners/Defendants/Respondents/Judgment Debtors

AND

M/s. Santosh Dhaba Exclusive, R/o. H.No.4-1-364, Reddy Hostel Road, Hanuman Tekdi, Abids, Hyderabad-500001,Telangana Represented by its Partner Manoj Kumar Sankhla S/o SitaramSankhla, Aged:52years ,Occ: Business, Situated at 4-1-364, Hanuman Tekdi, Abids, Hyderabad, T.S

...Respondents/Plaintiff/Petitioner/Decree Holder

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance to the order dated.02-01-2023 in E P No.7 of 2023 in IA No.802 of 2017 in OS No.402 of 2017 passed by the Hon'ble XI Addl. Chief Judge, City Civil Courts, at Hyderabad, TS, pending disposal of the above CRP.

Counsel for the Petitioners: SRI BETHI VENKATESWARLU

Counsel for the Respondent: SRI AGARWAL ABHISHEK

The Court made the following: ORDER

THE HON'BLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO.1230 OF 2023

ORDER :

This C.R.P., is filed against the order in E.P.No.07 of 2023 in I.A.No.802 of 2017 in O.S.No.402 of 2017 passed by the XI Additional Chief Judge, City Civil Court, Hyderabad as contrary to law.

2. This revision is filed stating that in E.P.No.07 of 2023 the trial Court issued warrant for seizure of specific movable property mentioned in schedule of movable property which is neither mentioned in the E.P.proceedings nor in the decree and order passed in I.A.No.802 of 2017 nor in the plaint in O.S.No.402 of 2017. Therefore, the E.P., is not in accordance with the decree and as such, the same is liable to be set aside.

3. Originally the suit in O.S.No.402 of 2017 is filed for infringement of trade mark and I.A.No.802 of 2017 is filed to restrain the respondents by itself, its servants, agents, licensees, heirs or any one claiming through them from advertising or in any manner using in respect of their restaurant, hotel, eatery a deceptively similar Trade Mark "SANTOSH" or any other deceptively similar trade mark in any media and use the same in invoices, letter heads, literature, promotional material and visiting

cards or by using any other trade mark which is in any way conceptually, visually or deceptively similar to the plaintiffs' trade mark "SANTOSH DHABA" or by using any other trade mark which is in any way conceptually, structurally, visually, or phonetically similar to the plaintiffs' registered trade mark No.2391012 in Class 43 in respect of services relating to providing food & drink, hotel and restaurant services or in any other manner of services, and thereby infringe the plaintiff's registered trade mark till disposal of the main suit.

4. The contention of the revision petitioners is that the order in I.A., is not for seizure of any material whereas the E.P., is for seizure of movable property which contains name of "SANTOSH. As such, the order is contrary to law and it is liable to be set aside.

5. Heard Sri Bethi Venkateshwarlu, learned counsel for the revision petitioners and Sri Agarwal Abhishek, learned counsel for the respondent.

6. Learned counsel for the revision petitioners would submit that the trial Court gravely erred by allowing the E.P., giving warrant to seize the material containing the name of "SANTOSH" which is not according to the decree. Therefore, prayed the Court to set aside the same.

7. On the other hand, learned counsel for the respondent would submit that the suit is filed for infringement of trade mark and Interim Application is filed to restrain the revision petitioners from using the same and restraining order itself shows that they cannot use the same in their premises and it is implied meaning. He further submitted that the order in Interim Application is challenged by way of C.M.A.No.35 of 2023 & Batch by the revision petitioners and the said C.M.A., was dismissed by this Court on 28.08.2023 confirming the order of the trial Court. Therefore, there is no illegality in execution of warrant and there are no merits in the civil revision petition and prayed the Court to dismiss the same.

8. On going through the rival contentions and the material placed on record, the plaintiff in O.S.No.402 of 2017 is using the trade mark 'SANTOSH DHABA' with respect to almost all the activities enumerated from commencement of business from the year 1995 and got completely organized in the year 2004 due to hard work of the plaintiff. The name "SANTOSH" ought to have become famous to the general public and recognized the trade mark. In the year 2017 it came to the notice of the plaintiff that the defendants are using his trade mark "SANTOSH DHABA" and not maintaining the quality of "SANTOSH DHABA" due to which

his business is deepened and the public are misled by using identical mark with respect to identical services and the defendants' restaurant services are sub-standard in quality. As such, he is suffering from losses in the business. The unauthorized use by the defendants is bound to cause confusion in the marked places amounting to "abusing the defendant's services as that of plaintiff's".

9. Though the respondents filed counter in the said I.A., denying the same the trial Court ordered I.A.No.802 of 2017 in favour of the plaintiff restraining the respondents from using the trade mark "SANTOSH DHABA" or any other trade mark which is in any way conceptually, structurally, visually or phonetically similar to the petitioner's trade mark No. 2391012 in Clause 43 in respect of services relating to providing food and drink and the said order is confirmed by this Court by order dated 28.08.2023 in C.M.A.No.35 of 2023 & Batch. Later the respondent herein filed E.P., for issuing warrant and the trial Court issued warrant for seizure of any advertising material in the name of SANTOSH DHABA. When bailiff went for execution, he was restrained by the revision petitioners and report was filed before the Court. Now this revision is filed against the order in E.P., stating that it is not in confirmation with the order in I.A.No.802 of 2017 as the said

I.A., was filed to restrain the revision petitioners from using the license and trade mark "SANTOSH" or any other similar trade mark in restaurant business whereas the trial Court erroneously ordered for seizure of the articles. That apart, there is no schedule of property in the order and without any schedule of property, E.P., is not maintainable. Therefore, order is against the settled principles of law. As seen from the record, the order of the trial Court is restraining the revision petitioners from using trade mark when they are holding advertising material or any other material in the premises showing the name of SANTOSH amounts to infringement of rights of the respondent herein and the order simply means to seize the said material, unless it is seized, the order will become infructuous. Therefore, there is no illegality in the order of the trial Court and further contention of the revision petitioners is that there is no suit schedule property in E.P, and alternatively it is not sustainable without any schedule of property, whereas the order is against using of the trade mark and trade mark can be used in any of the premises in restaurant business, as it is not the order with regard to immovable property, the schedule of the property is not required in such type of orders.

10. Viewed from any angle there is no illegality in the order of the trial Court in issuing warrant in E.P.No.07 of 2023 in

I.A.No.802 of 2017 in O.S.No.402 of 2017. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous applications, if any, pending, shall stand closed.

**SD/- A.V.S.PRASAD
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The XI Additional Chief Judge, City Civil Court, Hyderabad
1. One CC to SRI BETHI VENKATESWARLU, Advocate [OPUC]
2. One CC to SRI AGARWAL ABHISHEK, Advocate [OPUC]
3. Two CD Copies.

kam
NS

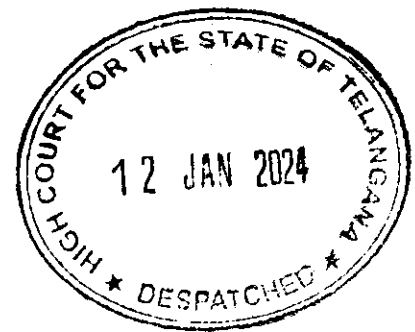


HIGH COURT

DATED:02/01/2024

ORDER

CRP.No.1230 of 2023



**DISMISSING OF CIVIL
REVISION PETITION**

6
[Signature]
02/01/2024