



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-COM-13 of 2023 (O&M)
Decided on: 20.08.2024.

Mohinder Pal Bhalla and another

....Appellants

Versus

Deepak Fasteners Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Promila Nain, Advocate
with Mr. Harveen Mehta, Advocate
for the appellants.

Mr. Gaurav Chopra, Sr. Advocate with
Mr. Manish Verma, Advocate and
Mr. Reshabh Bajaj, Advocate
for respondent No.1.

VIKRAM AGGARWAL J.

1. The instant appeal challenges the order dated 19.05.2023 passed by the Commercial Court, Ludhiana vide which the application filed by the appellants-defendants under Section 124 read with Sections 34 and 35 of the Trade Marks Act 1999 (for short 'the Act') was dismissed and the order dated 10.08.2023 vide which the review application preferred against the said order was dismissed.
2. The respondent No.1-plaintiff filed a suit for permanent injunction restraining the appellants-defendants from infringing or using in any manner the registered trademark of the plaintiff 'UNBRAKO' or any other similar or deceptively similar trademark. During the pendency of the



suit, while the matter was fixed for consideration on the application moved under Order 39 Rules 1 and 2 CPC, an application under Section 124 read with Sections 34 and 35 of the Act was filed by the appellants-defendants No.1 and 2 for stay of proceedings of the suit during the pendency of rectification proceedings which had been filed by respondent No.1-plaintiff. By way of the impugned order dated 19.05.2023, the said application was dismissed, leading to the filing of a review application which too was dismissed on 10.08.2023.

3. When the instant appeal came up for preliminary hearing before a Co-ordinate Bench on 02.09.2023, the following order was passed:-

“Inter alia contends that prior to the filing of the Civil Suit, the respondents-applicants had filed application for rectification of the register for the removal of the trademark in favour of the appellants entered as “UNBAAKO” under Trademark Registration No.5293935 in class 06 from the Register of Trade Marks on the ground that it is liable to be expunged under Section 52 of the Trade Mark Act, 1999 (for short, the ‘1999 Act’). Show cause notice was issued to the appellants on 02.01.2023 (Annexure P-4) to which reply was filed on 28.03.2023 (Annexure P-5).

The suit was filed thereafter on 27.04.2023 (Annexure P-6) by the plaintiffs-respondents for permanent injunction and rendition of accounts and recovery of damages wherein necessary averments were made regarding rectification proceedings being pending. The present appellants filed application under Section 124 read with Sections 34 & 35 of the 1999 Act for stay of proceedings during the pendency for the rectification and in the reply filed (Annexure P-9) again it was admitted but challenge had been raised to the registration done in favour of the present appellants-defendants.



It is submitted that the reply was taken on record on 19.05.2023 and also the application was also dismissed on the same day on the ground that the defendants had not denied the validity of the Trademark “UNBRAKO” while reproducing part of Section 124 of the 1999 Act and not reproducing the relevant part pertaining to Section 124(1)(b)(i) whereby it is provided that if the proceedings for rectification are pending before the Registrar, the suit shall be stayed till final disposal of the said proceedings. It is submitted that the application for review was also filed which was dismissed on 10.08.2023 on the ground that revision would lie to this Court in spite of the fact that there was an error patent on the face of the record.

Notice of motion for 13.12.2023.

In the meantime, further proceedings before the Trial Court shall remain stayed.”

4. We have heard learned counsel for the parties.

5. Having argued the matter at some length, learned counsel for the parties concede that the impugned orders are not sustainable since they have not been passed in accordance with law, are non-speaking and do not even refer to the bare provisions of the act. Learned counsels are *ad idem* that the orders reflect complete non-application of mind.

6. Learned counsel representing respondent No.1-plaintiff has also raised an objection as regards the maintainability of the appeal in view of the bar laid down under Sections 13 and 8 of the Commercial Courts Act, 2015.

7. Learned counsel for the appellants also submits that though vide order dated 10.08.2023, two other applications namely an application under Order 7 Rule 11 CPC had been dismissed, but the same has not been



challenged in the instant appeal and the appellants would reserve their right to challenge the same in appropriate proceedings. Learned counsel are *ad idem* that the matter needs to be remitted to the Commercial Court, Ludhiana for a fresh decision on the application moved by the appellants-defendants under Section 124 of the Act as also the application under Order 39 Rules 1 and 2 CPC in accordance with law.

8. Considering the statements given by learned counsel for the parties, the orders dated 19.05.2023 and 10.08.2023 (only as regards dismissal of the review application) are set aside and the matter is remitted to the Commercial Court, Ludhiana to decide the application moved under Section 124 of the Act afresh in accordance with law as also to decide the application under Order 39 Rules 1 and 2 CPC of course in accordance with law. It is expected that the Commercial Court, Ludhiana would decide the said applications expeditiously considering that such issues with regard to infringement/violation of trademarks are time sensitive matters. As regards the objection with regards to maintainability of the appeal, the same is left open to be decided in appropriate proceedings.

The appeal is disposed off in the above terms.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

August 20, 2024
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No