

2024:PHHC:108422



2024:PHHC:108424



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

DATE OF DECISION: 21.08.2024

I. CR No. 3357 of 2022

SHRI BHANWAR PURI G. GOSWANI SINCE DECEASED THROUGH HIS LR KAVITA DEVI
@ KAMLA DEVI AND ANOTHER

.....PETITIONERS

Versus

SUBHASH RAI GUPTA (SINCE DECEASED) THROUGH HIS LRS AND OTHERS

.....RESPONDENTS

II. CR No. 5366 of 2022

SHRI BHANWAR PURI G. GOSWANI SINCE DECEASED THROUGH HIS LR KAVITA DEVI
@ KAMLA DEVI AND ANOTHER

.....PETITIONERS

Versus

SUBHASH RAI GUPTA (SINCE DECEASED) THROUGH HIS LRS AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Vikas Bali, Advocate and
Ms. Ravisha Mahajan, Advocate for the petitioners.

Mr. Shvetanshu Goel, Advocate for respondent No. 1.

DEEPAK GUPTA, J.(ORAL)

Civil Suit No. CS-01-2016 bearing CNR No.HRRH01-000095-2016 titled '*Subhash Rai Gupta (since deceased) etc. versus Bhanwar Puri G. Goswami and others*' is pending on the original side before Learned District Judge, Rohtak. During proceedings of the suit, orders dated 02.04.2022 (*Annexure P-14*) and order dated 22.07.2022 (*Annexure P-18*) have been passed by the Court , which have been assailed by the defendants of the case before this Court by filing CR No. 3357 of 2022. Another order dated 14.10.2022 passed by the District Judge, Rohtak (*Annexure P-27*) has been assailed by the defendants by way of CR No. 5366 of 2022.

2. Dispute between the parties is regarding the Trade Mark. Plaintiffs claim that the Trade Mark '*Gulab*' and '*Gulab Ka Phool*' since 1944

in class 30 is with them, with user since 1910. On the other hand, defendants are contesting the suit on the ground that they are using the Trade Mark 'Gulab Halwa Wala'.

3.1 After settling the issues, evidence of the plaintiff started. Satbir, Assistant Superintendent, Trade Mark Registry Delhi was examined as PW-1 on 02.03.2019, who produced documents Exhibit PW1/A to PW1/E with regard to entry in the register of the Trade Mark. Thereafter, Sh. Aditya Rai Gupta, Special Power of Attorney holder of the proprietor of the plaintiff appeared in the witness box as PW-2. His statement was recorded during 01.07.2019 to 19.10.2019, but the same remained inconclusive.

3.2 During his cross-examination, the plaintiffs moved an application under Order XVI CPC (*Annexure P-12*) to summon the concerned official of Trade Marks Registry, Delhi with the direction to bring all the records of the Trade Mark application No. 94636 in Class 30 including all the applications and documents filed and communications made by the Registered proprietor/plaintiff and the orders passed thereon. Said application was allowed by the Court vide order dated 02.04.2022 (*Annexure P-14*).

3.3 Pursuant thereto, Mr. Anuj Kumar, Examiner appeared in the witness box and produced the record. His statement was recorded on 2.5.2022 without oath and as per his statement, no other record, except the record produced by him, was available with their department. The request of counsel for the defendants to cross-examine the witness was declined on the ground that the witness had not taken the oath and had merely produced the record of their department.

3.4 Thereafter, defendants moved an application under Section 151 CPC (*Annexure P-16*) seeking direction of the Court to direct the Trade Mark Registry to provide the legible copies of the papers, as were produced by Mr. Anuj Kumar. In the said application, it was specifically mentioned that voluminous record containing 234 pages was produced by Mr. Anuj Kumar, the concerned officer of the Trade Mark Registry. Defendants mentioned about the numerous pages of this record, stating that these were not legible at all. However, the application was dismissed by Ld. District Judge, Rohtak

vide impugned order dated 22.07.2022 (*Annexure P-18*) by observing that case was being delayed on account of one or the other reason, as the same was pending since January 2016 and that the present application was premature causing obstacle in the early disposal of the case. It was further observed that objection regarding admissibility of the documents may be seen at the time of final arguments, as mere exhibiting the documents does not absolve the party to prove its admissibility at the time of arguments.

3.5 Thereafter, defendants moved another application to summon the official from the office of the Registrar, Trade Mark to enquire as to why certain documents had been concealed. Another application was moved to ask the plaintiffs to disclose all legal heirs of Sh. Sumer Chand. Both these applications were dismissed by the Court of learned District Judge vide common order dated 14.10.2022 (*Annexure P-27*), which has been assailed in CR No. 5366 of 2022.

4. Assailing the aforesaid orders, it is contended by learned counsel for the petitioners herein (*defendants before the trial Court*) that when PW-2 Sh. Aditya Rai Gupta was unable to answer the questions put to him during his cross-examination by the defendants, in order to fill in the lacuna, the application was moved by the plaintiffs to summon the concerned official of the Trade Mark Registry so as to produce all the record. Despite the fact that Court allowed that application with the direction to bring all the record, the entire record was not produced. Even the record as was brought by Sh. Anuj Kumar, Examiner, was not legible and that without giving any cogent reasons, the application of the defendant to provide the legible copies of the record has been dismissed by the trial Court.

5. On the other hand, learned counsel for the respondents defended the impugned orders by submitting that in case any other record is available with the Trade Mark Registry, as is contended by the petitioners-defendants, they can summon the same during their evidence.

6. After considering submissions of both the sides, this Court is of the view that these revisions deserve to be partly allowed.

7. As far as the order dated 02.04.2022 (*Annexure P-14*) passed by learned trial Court allowing the application under Order XVI CPC is concerned, there is no reason to set aside the said order. As noticed earlier, dispute between the parties is regarding the Trade Mark. By way of this order, the Court on the application of the plaintiffs has summoned the record pertaining to Trade Mark application No. 94636 in class 30 including all the applications and documents filed and communications made by the Registered Proprietor/ Plaintiff and orders passed thereon, which certainly shall be relevant to decide the controversy involved between the parties. It cannot be stated that the application, on which this order was passed, was meant to fill in the lacuna.

8. However, the order dated 2.5.2022 (*Annexure P-15*) of the District Judge, Rohtak, whereby Mr. Anuj Kumar, Examiner, who produced the record as per the order dated 02.04.2022, was not examined under oath, cannot be sustained. Because of the non-examination of this witness on oath, the defendants did not get the opportunity to cross-examine the witness as to whether he had brought the complete record or not. Counsel for defendants could not get the opportunity to ask the witness as to whether the original record had been brought by him or not, or as to whether the record brought by him was the certified copy or the photocopy of the entire record. As such, order examining PW Anuj Kumar without oath, is set aside.

9. Apart from above, it is mentioned even in the impugned order dated 22.07.2022 (*Annexure P-18*) that numerous documents out of the record produced by Mr. Anuj Kumar, were not legible. Despite the same, the application of the defendant so as to provide the legible copies of the documents has been declined by the District Judge, without giving any cogent reasons. Simply because, the matter is being delayed cannot be a reason to decline the request. Fair opportunity to both the parties is required to be given, which cannot be curtailed on the ground of delay. Unless the legible copies of the documents are provided to the defendants, obviously they will not be able to effectively cross-examine PW-2 Sh. Aditya Rai Gupta,

on whose request, the record was got produced from the official of the Trade Mark Registry. As such, the order dated 22.07.2022 (*Annexure P-18*), as passed by the trial Court, is hereby set aside being not sustainable.

10. As far as the order dated 14.10.2022 (*Annexure P-27*) assailed in CR No. 5366 of 2022 is concerned, counsel for the petitioners could not convince this Court as to how the disclosing the names of all the legal heirs of Sh. Sumer Raj Gupta is relevant to decide the controversy. Besides, in case complete record has not been produced by the official of the Trade Mark Registry, he can be cross-examined in this regard, when he is to be summoned as per this order being passed by this Court.

11. Consequent to the entire discussion above, these petitions are hereby disposed of with the direction to the trial Court to summon Mr. Anuj Kumar, Examiner of the Trade Mark Registry; or any other concerned official of the said department with the direction to bring the entire record as per the order dated 02.04.2022 (*Annexure P-14*). It is further directed that said official shall be examined on oath so as to provide the opportunity to the defendants to cross-examine the witness on the relevant points. It is further directed that the said official of the Trade Mark Registry will be directed to produce the entire original record along with the certified copies thereof. The certified copies shall be placed on the file, whereas after showing the original record, the same can be taken back by the witness. It is also directed that legible copies of all the documents to be brought by the witness shall be supplied to the counsel for the defendants/defendants for providing fair opportunity to them to cross-examine the witnesses.

12. The petitions are accordingly disposed of.

13. Pending application(s), if any, stands disposed of.

A photocopy of this order be placed on the file of connected case.

21.08.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No