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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 05th August, 2024**+ **C.O. (COMM.IPD-TM) 28/2024 & I.A. 3613/2024****SHRI RAJESH CHUGH**

.....Petitioner

Through: Mr. Chander Shekhar Patney,
Advocate
(M:9810024608,email:cspatney@gmail.com)

versus

MEHRUDDIN ANSARI & ANR.

.....Respondents

Through: Mr. Harsh Mr. Akhil Saini,
Advocates for R-1 (M:9810981067)
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday,
Advocates (M:9810788606)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed seeking removal/rectification of the



trademark ANDAAZ-E-NIZAAM, registered in the name of respondent no.1 in Class-43, being deceptively similar and identical to the trademark of the petitioner, i.e., NIZAM'S.

2. It is submitted that the petitioner is the proprietor of the trademark NIZAM'S vide Registration No. 2164405 in Class-43, with user claim since



1st January, 1978, in respect of providing food and drink, temporary Accommodation included in Class-43.

3. The table showing the registered trademarks in favour of the petitioner, is reproduced as under:

Sno	Application	Class	Trade Mark	Status
1	434790	29	NIZAM'S	Registered
2	780164	30	NIZAM'S	Registered
3	780166	32	NIZAM'S	Registered
4.	780167	33	NIZAM'S	Registered
5	780168	34	NIZAM'S	Registered
6	1440247	42	NIZAM'S	Registered
7	2164405	43	NIZAM'S	Registered

4. As per the petitioner, the petitioner had adopted the trademark NIZAM'S for its various goods and services in the year 1978, and under the said trademark, the petitioner is maintaining its trade identity and its products are sold in the market, under the same name. The trademark NIZAM'S has been used openly, continuously and extensively by the petitioner since the year 1978, and has become distinctive to the goods, services and products, as well as being associated exclusively, with the petitioner and no one else.

5. Learned counsel for the petitioner submits that trademark of the petitioner has become a house mark of the petitioner's preparations/products, the same being duly registered in different classes.

6. It is further submitted that the trademark of NIZAM'S has been used on each and every packing from the very beginning. Thus, the trademark NIZAM'S has come to be exclusively identified and recognized by the



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purchasing public and trade with the goods of the petitioner, and no one else.

7. It is the case of the petitioner that it came to his knowledge in the last week of January, 2024, that the respondent no. 1 has got registered the mark,



ANDAAZ-E-NIZAAM. It is submitted that the impugned trademark is deceptively similar and identical as well as phonetically similar to the petitioner's prior registered trademark.

8. Thus, it is submitted that the petitioner is an aggrieved person under Section 57 of the Trade Marks Act, 1999, being the first user of the trademark NIZAM'S.

9. Learned counsel for the petitioner has handed over a copy of the documents, which is the menu card of the respondent no.1 to submit that the respondent no.1 is not using its registered trademark ANDAAZ-E-



NIZAAM. Rather, the respondent no.1 has started using another name, i.e., DAAWAT-E-NIZAAM, which is not registered.

10. At this stage, learned counsel appearing for the respondent no.1 submits that the respondent no.1 does not intend to use the trademark



ANDAAZ-E-NIZAAM. It is submitted that the respondent



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no.1 intends to run its business under the name DAAWAT-E-NIZAMUDDIN, and ANDAAZ-E-NIZAMUDDIN.

11. Learned counsel appearing for the petitioner submits that he would have no objection if the respondent no.1 carries out its business under the name, DAAWAT-E-NIZAMUDDIN or ANDAAZ-E-NIZAMUDDIN.

12. Learned counsel for respondent no.1 submits that the respondent no.1 shall change the name of their trade name/restaurant as well as their partnership firm to DAAWAT-E-NIZAMUDDIN or ANDAAZ-E-NIZAMUDDIN, as the case may be.

13. The aforesaid undertaking, given by learned counsel for respondent no.1, is taken on record.

14. In view of the aforesaid undertaking given by learned counsel for respondent no.1, it is directed that the respondent no.1 shall take appropriate steps for change of their trade name/name of their business/restaurant/partnership firm to the new name, within a period of four weeks from today.

15. It is noted that in terms of Section 47 of the Trade Marks Act, 1999, a registered trademark may be taken off the Register in respect of goods and services, in respect of which it is registered, on account of non-use of the said trademark.

16. Thus, this Court notes the admission on part of the respondent no.1



that the registered trademark being ANDAAZ-E-NIZAAM, has been abandoned by the respondent no.1, and is no longer, in use.



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17. Accordingly, the present petition is allowed. The respondent no.2, Registrar of Trademarks, is directed to remove/cancel the registered



trademark, ANDAAZ-E-NIZAAM, registered under Class-43, in favour of respondent no.1, vide Registration No. 5226592 and Certificate No. 3001658 dated 29th November, 2021.

18. The Registrar of Trademarks is directed to take steps to rectify the Register of Trademarks, expeditiously, within a period of four weeks from today.

19. The Registry is directed to communicate the copy of this Order to the Registrar of Trade Marks, at Email: llc-ipo@gov.in, for compliance.

20. With the aforesaid directions, the present petition is disposed of, along with the pending application.

MINI PUSHKARNA, J

AUGUST 5, 2024/au