



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M)-IPD 8/2023 & CM APPL. 31052/2023**
RAJESH SULTANIA AND ANR. Petitioners

Through: Mr. Tarun Biswas and Mr. Shantanu
Garg, Advocates.

versus

ARUN KUMAR MURARKA Respondent

Through: Mr. Pankaj Kumar, Ms. Mankaran
Singh and Mr. Rishabh Gupta,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
30.01.2024

1. The present petition under Article 227 of the Constitution of India, read with section 151 of the Code of Civil Procedure, 1908 ['CPC'] assails order dated 18th March, 2023 ('impugned order'). The impugned order has dismissed Petitioners' application under Order VII Rule 11 of CPC, which sought rejection of the plaint filed in the suit instituted by Mr. Arun Kumar Murarka, the Respondent.
2. The suit of the Respondent pertains to the trademarks "YEH KHILA YEH KHILA" and "TIN TIN" wherein they seek a permanent injunction to prevent the Petitioners from infringing upon these trademarks, engaging in passing off activities, and violating the copyright of the artistic work depicted on the label containing these marks.



3. While Petitioners had initially raised a broad array of arguments, the scope of their challenge before this Court has been narrowed. Counsel for Petitioners has now precisely directed the challenge towards asserting that the Respondent's suit for trademark infringement is non-maintainable. This assertion is predicated on the grounds that the Respondent does not possess the registration for the trademark "YEH KHILA YEH KHILA."

PETITIONERS' CONTENTIONS

4. The Counsel for Petitioners contends as follows:

4.1 The impugned order passed by Additional District Judge is erroneous and should be set aside. The lawsuit initiated by the Respondent alleging trademark infringement is not valid because the Respondent is neither the owner nor the registered user of the trademark "YEH KHILA YEH KHILA".

4.2 The trademark "YEH KHILA YEH KHILA" is registered with Murarka Exim Pvt. Ltd., and there has been no authorization given by this company to the Respondent/Plaintiff to initiate the lawsuit in question. In fact, paragraph no. 7 of the plaint reveals that the Plaintiff had allegedly allowed his companies to use the trademark/label/package/trade dress. The paragraph no. 7 reads as follows:

"7. That the Plaintiff permitted his said companies to use the said trademark/label/package/trade dress. It is pointed out that the plaintiff, being the Managing Director of Herumb Trade Private Limited filed application for registration of trademark YEH KHILA YEH KHILA bearing no. 1978802 in class 30 in the name of said company and subsequently amended the name of the applicant in the name of Murarka Exim (P) Ltd. wherein he and his son (Ravi Shankar Murarka) are directors. Any use of the said - trademark/label/package/trade dress by the said companies accrues to the benefits of the Plaintiff in view of Section 48 (2) of the Trade Marks Act, 1999"



The above-noted assertions made clearly indicate that the Respondent is not the proprietor of the trademark "YEH KHILA YEH KHILA". Additionally, as stated in paragraph no. 7 of the response to the application under Order 7 Rule 11, the Respondent has admitted to being merely a permitted user. Consequently, this lawsuit for infringement is precluded by Section 53 of the Trade Marks Act, 1999 (hereinafter 'the Act'). In support of this contention, Petitioners place reliance on the judgment of this Court in **Max Healthcare Institute Limited v. Sahrudya Health Care Private Limited**,¹ which held as follows:

“A bare reading of Sections 52 and 53 of the TM Act shows that only a registered proprietor or a registered user of the trade mark is competent to institute the proceedings for infringement in his own name. Thus, the very maintainability of a suit for infringement is by a registered proprietor/registered user.”

4.3 The Trial Court, relying on the decision in **George V Records Vs. Kiran Jogini and Ors**,² holds that “sister concerns for the purpose of proprietary rights, are considered as one economic entity”. Based on this interpretation, the Court determined that the Respondent, in this case, forms a single economic unit with Herumb Trade Private Limited and Murarka Exim Private Limited, thus providing a legitimate basis for the Respondent to initiate the lawsuit. However, this decision pertains to sister concern companies being treated as a unified economic entity, whereas, in the present scenario, the Respondent is an individual and not a corporate entity, thus not fitting the definition of a sister concern. Consequently, it is not appropriate to view the Respondent as part of a single economic entity along with Murarka Exim Pvt Ltd, the registered owner of the trademark "YEH

¹ CS(COMM) 866/2016



KHILA YEH KHILA." This distinction undermines the Trial Court's rationale, suggesting that the Respondent, being an individual, does not possess the standing to file the suit as an integral part of the owning entity of the mark.

4.4 Consequently, given that the Respondent is neither the proprietor nor a registered user of the trademark, he lacks the necessary legal standing (locus standi) or a valid cause of action to initiate the lawsuit.

RESPONDENT'S CONTENTIONS

5. Counsel for Respondent submits as follows:

5.1 The Respondent operates his business through two incorporated entities, namely Herumb Trade Private Limited and Murarka Exim Pvt Ltd. In M/s Herumb Trade Private Limited, the Respondent and Mr. Amar Nath Murarka (his brother) serve as directors. Similarly, in Murarka Exim Pvt Ltd., the positions of directors are held by the Respondent and Mr. Ravi Shankar Murarka (his son).

5.2. The trademark "YEH KHILA YEH KHILA" also comprises of a label, for which the Respondent, proprietor of M/s Tirupati Udyog, has a copyright registration. The Respondent has secured copyright registration for this label, as demonstrated in the excerpted copy:

² CS(OS) 739/2003



Date: 28/07/2014

1.	Registration Number	: A-111380/2014
2.	Name, address and nationality of the applicant	: M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI-110006-INDIAN
3.	Nature of the applicant's interest in the copyright of the work	: OWNER
4.	Class and description of the work	: ARTISTIC WORK
5.	Title of the author and if the	: YEH KHILA YEH KHILA
6.	Author is deceased, date of his decease work	: RAHUL MALIK, M/S. R.R. ENTERPRISES, 1721/11, RITCO RICE PALACE, NAYA BAZAR, DELHI-110006, INDIAN
7.	Language of the work	: ENGLISH, HINDI
8.	Whether the work is published or unpublished	: PUBLISHED
9.	Year and country of first publication and name, address and nationality of publisher	: 2008 INDIA M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI - 110006-INDIAN
10.	Year and countries of subsequent publication, if any and name, addresses and nationalities of the Publisher	: 2013 INDIA M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI - 110006-INDIAN
11.	Names, address and nationality of the owner of Various rights comprising the copyright in the work and	: M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI-110006-
12.	Names, addresses and nationalities of other persons, if any, authorised to assign or licence of rights comprising the copyright	: M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI-110006 - INDIAN
13.	If the work is an 'artistic work' the location of the original work, including name, address and nationality of the person in possession of the work (In the case of an architectural work, the year of completion of the work should also be shown)	: M/S TIRUPATI UDYOG, 1727/11, RITCO RICE PALACE, NAYA BAZAR, DELHI-110006 INDIAN
14.	If the work is an 'Artistic work', whether it is registered under the Designs Act 2000 if yes give details	: N.A
15.	If the work is an 'Artistic work', capable of being registered as a design under the Design Act 2002, whether it has been applied to an article through an industrial process and, if yes, the number of times it is reproduced.	: N.A
16.	Remarks, if any	: COPYRIGHT OF THE WORK IS ANNEXED

Diary Number : 49515/2014-CO/A
Date of Application : 16/05/2014
Date of Received : 15/05/2014

DEPUTY REGISTRAR, COPYRIGHTS

An averment to this effect is also found in paragraph no. 8 of the plaint:

"8. That the plaintiff uses his said registered trademark on its packaging as word mark and in artistic label form either in combination, or in isolation or as composite mark as depicted above. The art work involved, in the Plaintiff's said, trademark/label/packaging/trade dress are original artistic works and the Plaintiff is the owner and proprietor of



the copyright therein within the meaning of the Indian Copyright Act, 1957. The Plaintiff has been dealing with its art works/copyright in the course of trade in relation to its said goods and business inter-alia within the meaning of Section 14 of the Copyright Act, 1957 [All references to the said trademark/label/packaging/trade dress include the copyrights involved therein as the case may be]. Plaintiff has also taken steps for registration of the artwork of the said/subject matter trademark/label/packaging/trade dress. One such artwork is duly registered under the provisions of Copyright Act, bearing registration, no. A-1.11380/2014.”

5.3. That apart, Respondent is also the registered proprietor of the trademark “TIN TIN,” which bears the registration number 2235525. This claim is substantiated in paragraph no. 6 of the plaint.

ANALYSIS AND FINDINGS

6. The Court has considered the aforementioned contentions. Firstly, counsel for Petitioners, relies only a selective portion of **Max Healthcare Institute Limited v. Sahrudya Health Care Private Limited**.³ Notably, in the referenced decision, the Court ultimately dismissed an application under Order VII Rule 11 of the CPC. This dismissal came despite the plaintiff in the cited case not possessing a registered or usage rights for the word mark "Max." The suit was adjudged maintainable on the grounds that the plaintiff held registrations for six composite labels, which prominently incorporated the "Max" mark as an integral element.

7. Likewise, in the case in hand, we note that the Respondent alleges infringements concerning the trademarks “YEH KHILA YEH KHILA” and “TIN TIN,” as well as the copyright of the label displaying these marks. Thus, the Respondent has dual status as the copyright holder of the label embedding the trademarks and the registered proprietor of the “TIN TIN”

³ CS(COMM) 866/2016



wordmark. This dual ownership confers upon the Plaintiff a legitimate basis to initiate actions against both copyright and trademark infringements. The essence of the Plaintiff's lawsuit, encompassing trademark infringement, passing off, and copyright infringement, signifies a multifaceted legal dispute. Thus, the Court finds that the Plaintiff's comprehensive claim, integrating multiple aspects of intellectual property rights violations, discloses a valid cause of action for infringement of copyright and trademark, alongside passing off.

8. That apart, this Court has also been apprised of the fact that the trademark "YEH KHILA YEH KHILA", registered under no. 1978802 in Class 30 has recently been assigned by Murarka Exim Pvt. Ltd in favour of the Respondent through Deed of Assignment dated 6th December, 2023, copy whereof has been placed on record. Although this document has surfaced after passing of the impugned order, nonetheless it supports the contentions urged by Respondent in paragraph no. 7 of the plaint wherein it is suggested that the Respondent claims ownership of the trademark and stated that he had permitted the same to be used by the private limited companies, namely Herumb Trade Private Limited and Murarka Exim Pvt Ltd.

9. Furthermore, the criterion for assessing the rejection of a plaint under Order VII Rule 11 involves a comprehensive examination of the plaint to determine if it adequately discloses a cause of action. Importantly, the sustainability of such a cause of action is not to be adjudged at this preliminary stage. Instead, its viability will be thoroughly evaluated during the trial, based on the evidence presented by the parties.

10. In light of the aforementioned observations, in the opinion of the Court, the



view taken by the Trial Court in the impugned order, cannot be faulted with.

11. Consequently, Court does not find any merit to entertain the present petition and accordingly the same is dismissed along with pending applications.

SANJEEV NARULA, J

JANUARY 30, 2024

as