OIPD-13

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

TMA/6/2022
IA NO: GA/1/2022

ELITE GOLD LTD
VS
THE ASST REGISTRAR OF TRADE
MARKS AND GI AND ANR

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 16th July, 2025.

Appearance:
Mr. Debnath Ghosh, Sr. Adv.
Mr. Biswarrop Mukherjee, Adv.
Mr. Nilankan Banerjee, Adv.
Mr. B. Banerjee, Adv.
…for the appellant

Mr. Siddhartha Lahiri, Adv.
Ms. Mary Dutta, Av.
…for the respondent nos. 1 and 2

The Court: None appears on behalf of the private respondent no. 3 despite service.

Affidavit of Service filed on behalf of the appellant be kept with the records.

This is an application arising from an order dated 5th July, 2022 rectifying 7 different registered trademarks of the appellant bearing the mark "KOPIKO" on an application filed by the respondent no. 3.

By the impugned order, the mark has been expunged primarily on the following grounds:

a. The invoices produced by the appellant stood in the name of Inbisco India Pvt. Ltd. and not the registered proprietor.

b. The advertisement in Hindu Retail Plus shows KOPIKO expresso and KOPIKO cappuccino and the trademarks mentioned in the Invoice copies are KOPIKO expresso and KOPIKO cappuccino. The said marks are not registered trademarks of the registered proprietor.

c. None of the registered trade mark shown as used by the registered proprietors in the documents were produced.

d. The tax invoice copies stood in the name of Inbisco India Private Limited which is alleged to be the local distributor of the registered proprietor. However, there is no document produced by the registered proprietor in support of the same.

e. The applicants for the rectification have proved that the registered proprietors are not using the registered trade marks in question nor do they have any bona fide intention to use the same. As such, the same is liable to be removed from the Registrar.

It is submitted on behalf of the appellant that the appellant is well-known internationally and is the proprietor of the mark “KOPIKO” in relation to coffee-flavoured candy and are selling their products through one Inbisco India Private Limited now known as Miyora India Private limited.

It is further contended that the registration in favour of the appellant has been internationally recognized. The appellant also relies on the Deed of Assignment dated 15th August, 1998, the general advertisement dated 29th

May, 1992 and the other documents which suggest that the appellant is the registered proprietor of the said mark.

During the pendency of this application, the appellant has also filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, inter alia, to bring on record additional documents.

On behalf of the respondent authorities, it is submitted that there are no grounds whatsoever to interfere with the impugned order. The impugned order is fully reasoned. It is also contended that there are no documents to suggest that the appellant is the registered proprietor of the above mark.

The crux of the disputes between the parties is as to whether there were any documents produced before the respondent authorities to suggest that the appellant was the registered proprietor of the said mark "KOPIKO".

It is submitted by both the parties that in view of the application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and the additional evidence sought to be relied on by the appellant, the entire question requires re-examination. The finding in the impugned order that no single document was produced by the registered proprietor before the Registry indicates that the entire issue has not been examined by the respondent authorities.

In view of the above, the impugned order is set aside.

The matter is remanded back to the Controller to hear the subject application afresh in accordance with law. It is made clear that there has been no adjudication on the merits of the case and all issues are left open to be decided by the Controller.

Liberty is granted to the appellant to file a fresh application under Rule 48 of the Trademarks Rules before the appropriate authority in seeking to adduce additional evidence. If filed, any such application is to be heard and disposed of in accordance with law within a period of six months from date of communication of this order.

In view of the above, TMA/6/2022 alongwith IA NO: GA/1/2022 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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