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A.No.5519 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.01.2025

Pronounced on: 10.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.No.5519 of 2024

in

A.No.3986 of 2024

1.S.Sudhakar

2.S.Dhinakar

3.Shri Lakshmi Agro Foods,
No.9, N.N.Garden,
10th Street, Chennai – 600 021
Rep. by its Partner,
S.Sundhakar

..Applicants

Vs

S Giridharan

...Respondent

PRAYER in A.No.5519 of 2024: This Application is filed to initiate appropriate action and punish the respondent for giving false statements on oath in the affidavit dated 26.07.2024 filed in support of A.No.3986 of 2024 before this Court as provided for under Sections 227 to 229 of the Bharatiya Nyaya Sanhita, 2023 .

For Applicants : Mr.B.Madhan Babu



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For Respondent : Mr.S.N.Subramani

ORDER

This is an application taken out under Sections 227 & 229 of the Bharatiya Nyaya Sanhita, 2023, for initiating action and to punish the respondent for giving false statements on oath in the affidavit dated 26.07.2024 filed in A.No.3986 of 2024 before this Court.

2. I have heard Mr.B.Madhan Babu, learned counsel for the Applicants and Mr.S.N.Subramani, learned counsel for the respondent. I have also gone through the records.

3. The primordial contention of the learned counsel for the applicants is that, though the Trademark Application in TM.No.595393 dated 23.04.1993 was in the name of the Partners of the Firm Shri Lakshmi Agro Foods and that the respondent has willfully made false and repeated allegations, not only before the Arbitral Tribunal, but also before this Court, as if the respondent is the sole and absolute owner of the mark, which amounts to perjury. The learned counsel for the applicants would take me through the false statements, which according to the applicants would entitle



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this Court to pull up the respondent for perjury. In this regard, he would take me through the nine instances that have been set out by way of a tabulation in the affidavit in support of the Application. Based on the same, the learned counsel for the applicants would contend that the false claim of ownership of the trademark was intentional and contrary to documents, mainly the statutory journal publication. Therefore, the applicants are entitled to the prayer as sought for.

4. Per contra, Mr.S.N.Subramani, learned counsel appearing for the respondent would deny all the allegations made in the affidavit in support of the Application. He would further contend that, all along, the respondent has claimed ownership over the registration “Shri Lakshmi Agro Foods” and that first and second Applicants are only his younger brothers. He would also invite my attention to several litigations between the parties. He would also contend that, though the applicants possess all relevant records of the registered trademark “UDHAIYAM”, which are only in the name of the respondent, they have falsely stated before the Arbitral Tribunal that the license No.595393- B is in the name of the Firm. He would also invite my attention to the order passed in A. No.3986 of 2024 regarding documents to



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be produced from various authorities.

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5. He would also state that the Applicants have moved a writ petition for rectification of an alleged error in the Trademark No.595393, suppressing the A. No.3986 of 2024, as well as the Application dated 20.07.2021 before the Trademark Registry. He would further state that the Applicants 1 and 2 were not partners of Shri Lakshmi Agro Foods during 23.04.2018 to 08.12.2023 and it is only the Applicants who have filed a false affidavit and also complaint against the respondent.

6. It is the further case of the respondent that right from the beginning, the respondent has been objecting to the Firm's Application annexure containing the names of four partners, which are written in hand and there is already cross examination on this aspect before the Arbitral Tribunal. It is also the case of the respondent that he has not signed any Reconstitution Deed dated 04.06.2001 and according to the respondent, the respondent is the sole proprietor of the registered mark. The learned Counsel would also take me through the issues framed for consideration before the Arbitral Tribunal and contend that in the light of the issues framed by the Tribunal,



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the question of perjury does not and cannot arise and the ownership would have to be decided only by the Arbitral Tribunal.

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7. I have carefully considered the rival contentions advanced by the learned Counsel on either side.

8. Admittedly, Shri Lakshmi Agro Foods is a partnership Firm. According to the applicants, the respondent was a party to a Reconstitution Deed dated 04.06.2001 and under the same, the respondent received a sum of Rs.25 lakhs and he ceased to be a partner thereafter. However, according to the respondent, he is the sole proprietor of the registered mark “UDHAIYAM” and that being his consistent defence, the question of perjury cannot be pressed into service.

9. Admittedly, before the Arbitral Tribunal, issue No.7 has been framed as follows;

“ Whether the respondent is the proprietor of the trademark (device) “UDHAIYAM” under T.M.No. 595393 as claimed by him, and if so, since when ?”

The Arbitral Tribunal has therefore consciously considered the pleadings available on record and framed the above issue amongst several other issues.



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This is an issue that has to be decided by the Arbitral Tribunal after the parties lead oral and documentary evidence. The respondent, in line with the defence taken before the learned Arbitrator, has averred in the affidavit in support of A.No.3986 of 2024 that he is the owner of the registered device.

10. By no stretch of imagination, the defence taken by the respondent before the Arbitral Tribunal, which has been reiterated in the affidavit in support of A.No.3986 of 2024 before this Court, would amount to perjury, warranting criminal action to be initiated against the respondent. Even if the respondent may have taken a false plea, it is for the Arbitral Tribunal to decide the truth of such defence taken by the respondent at the time of passing the final award, taking into consideration the oral and documentary evidence brought on record by the parties. At this juncture, I am unable to hold that the claim of sole ownership to the registered device “UDHAIYAM” would amount to perjury and consequently, attract the provisions of Sections 227 and 229 of The Bharatiya Nyaya Sanhita, 2023.

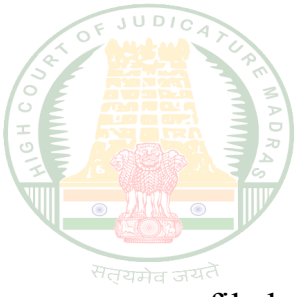
11. Even though Mr. Madan Babu, learned counsel for the applicants, has vehemently contended that the respondent had initially filed a counterclaim and has subsequently given up the same, it is not open to the



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respondent to thereafter claim sole ownership of the registered mark, I am unable to countenance the said submission for the simple reason that in the pleadings, the specific defence put up by the respondent to the claim of the Applicants is that he is the registered sole proprietor of the mark and not the applicants/partners of the Firm. Though, I do not find any material placed on record before this Court to evidence that the respondent has given up the counterclaim, even assuming that the counterclaim has not been pressed or is not being prosecuted, the fact that in the pleadings, the respondent's defence is that he is the registered owner of the mark and de hors the counterclaim, it would survive as a defence in the main proceeding. Moreover, as already discussed herein above, the specific issue in this regard is also framed.

12. In *Chajoo Ram vs. Radhey Shyam & Anr* reported in. 1971 AIR SC 1367, a three Judge bench of the Hon'ble Supreme Court held the statements made must be 'deliberate' and 'conscious' for it to be hit by the provision, and cautioned that initiating a claim for perjury too readily or too frequently without due care and caution and on inconclusive and doubtful material, would defeat the purpose of provision.



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13. Applying the above ratio, I am unable to entertain the Application filed to initiate action and punish the respondent for bringing a false statement on oath in the affidavit dated 26.07.2024.

14. In the light of the above, there is no merit in the above Application and consequently, the application is dismissed.

10.01.2025

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Index : Yes / No
Internet : Yes / No

P.B.BALAJI, J.,

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