



2025:DHC:2609



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: April 07, 2025

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Pronounced on: April 16, 2025

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C.A.(COMM.IPD-TM) 18/2024

GREY SWIFT PRIVATE LIMITED THROUGH MR. SHIVAM SINGLA**Petitioner**

Through: Mr. Siddharth Nath, Mr. Asjad Hussain and Mr. Anunay Chowdhary,
Advs

versus

THE REGISTRAR OF TRADE MARKS**Respondent**

Through: Ms. Rukhmini Bobde, CGSC with Mr. Jatin Dhamija, Mr. Amlaan Kumar and Mr. Vinayak Aren, Advs

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

Preface:

1. By way of the present appeal under *Section 91* of the Trade Marks Act, 1999¹ read with *Rule 156* of the Trade Marks Rules, 2017², the appellant seeks to assail the impugned order dated 02.01.2024 passed by learned Senior

¹Hereinafter referred as "*the Act*"

²Hereinafter referred as "*the Rules*"



Examiner of Trade Marks, Trade Mark Registry, New Delhi³, whereby its application no.4872027 for registration of the mark “*BharatStamp*” in Class 9 of the Act has been rejected.

Brief Factual Matrix:

2. The appellant, on 20.02.2021, applied for registration of the mark “*BharatStamp*” (word) in Class 9 of the Act on a ‘*proposed to be used*’ basis. The respondent, on 20.03.2021, issued an Examination Report raising an objection under Section 9(1)(a) of the Act stating that “*the mark is a non-distinctive and as such it is not capable of distinguishing the goods of one person from the others*”.

3. Thereafter, the respondent passed the impugned order dated 02.01.2024, relevant portions thereof are as reproduced as under:-

“...The mark applied for registration is objectionable under S 9(1)(a) of the Trade Marks Act 1999, as it is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person.

Ld. Advocate submitted various documents in support of distinctiveness of the subject mark. The said documents have been perused thoroughly. However, it has been observed that the mark is well-within the public domain and common in use. The subject mark has lack of distinctive feature and not able to differentiate the goods/ services of applicant from others. Hence the objection raised u/s 9(1)(a) in examination report is maintained.

After perusal of all the documents on record and submission made by the applicant/ authorised agent, it is concluded that applied mark is not registrable because of the reason stated as above. Hence application no 4872027 cannot be accepted and refused accordingly.”

³Hereinafter referred as “*impugned order*”



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4. Aggrieved thereby, the appellant has preferred the present appeal.

Submissions of the Appellant:

5. Based on the pleadings as also the arguments advanced in support thereof by Mr. Siddharth Nath, learned counsel for appellant before this Court, as per the case set out, the respondent has adopted an inconsistent approach by refusing registration of the mark “*BharatStamp*” to the appellant in as much as the respondent has *on the one hand* granted registration to trademarks incorporating the term ‘*Bharat*’ like ‘Bharat Bijlee’, ‘Bharat Sangeeth’, and ‘BharatMatrimony.com’ as also to those trademarks containing the word ‘*Stamp*’ like ‘StampXpress’, ‘MatrimonyStamp’, and ‘StampTac’ to multiple entities, but *on the other hand* has refused registration of the mark “*BharatStamp*” to the appellant, even though it has granted registration of the mark ‘*BharatSign*’ in *Class 42* of the Act to appellant herein.

6. Learned counsel submitted that the mark “*BharatStamp*” of the appellant is a novel and unusual juxtaposition of two terms: “*Bharat*”, a proper noun of Sanskrit origin, and “*Stamp*”, an English word with varied meanings. He submitted that the word “*Stamp*” is polysemous and does not exclusively mean legal stamp papers to any average person and hence, the word does not directly veer attention of a person to the concept of digital stamping which is the core nature of appellant’s product.



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7. He further submitted that the mark “*BharatStamp*” of the appellant being distinctive, has to be taken as a whole and is capable of registration and the two words cannot be dissected in its individual components ‘*Bharat*’ and ‘*Stamp*’ and it is a settled principle of law that registrability of a trademark must be assessed in its entirety. For the aforesaid, he placed reliance ***Global Super Parts v. Blue Super Flame Industries***⁴, ***Ticona Polymers, Inc. v. Registrar of Trade Marks***⁵, ***Muneer Ahmad v. Registrar of Trade Marks***⁶ and ***Mikko Vault LLC v. Registrar of Trade Marks***⁷, wherein it has been held that a mark has to be seen as a whole while considering it for eligibility for registration.

8. Learned counsel for the appellant placing reliance upon ***T.V. Venugopal v. Ushodaya Enterprise Ltd. & Anr.***⁸, ***M/s Telecare Network India Pvt. Ltd. v. M/s Asus Technology Pvt. Ltd. & Ors.***⁹ and ***Evergreen Sweet House v. Ever Green & Ors.***¹⁰, submitted that trademarks are categorized based on distinctiveness, in five categories: (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful, with *generic* being the least distinctive and *fanciful* being the most distinctive. As per him, since the mark “*BharatStamp*” of the appellant falls under the ‘*suggestive*’ category since, it requires some degree of imagination, thought and perception to reach

⁴1985 SCC OnLine Del 373

⁵2023 SCC OnLine Del 1234

⁶2023 SCC OnLine Del 7345

⁷2022 SCC OnLine Del 3506

⁸(2011) 4 SCC 85

⁹2019 SCC OnLine Del 8739

¹⁰2008 SCC OnLine Del 1665



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a conclusion as to the nature of goods, thereby making it inherently distinctive, as such the said mark of the appellant can proceed for registration.

9. Learned counsel for the appellant then submitted that the mark “*BharatStamp*” of the appellant has also, since acquired a ‘*secondary meaning*’ in terms of the proviso to *Section 9(1)* of the Act, by virtue of the *novelty* associated with the product and for the nature of the product involved, as it provides a platform for customers to procure stamp papers from over twenty States, it has been in continuous use for over six years and has garnered a marquee clientele comprising more than 300 prominent institutions and companies and it has gained recognition, as evidenced by several awards and nominations received by the appellant for the product, including empanelment by the State of Rajasthan. For the aforesaid, reliance was placed upon *Ishi Khosla v. Anil Aggarwal &Anr.*¹¹, *Info Edge (India) Pvt. Ltd. & Anr. v. Shailesh Gupta &Anr.*¹² and *Zydus Wellness Products Limited v. Cipla Health Ltd. & Anr.*¹³ to substantiate that a mark can acquire ‘*secondary meaning*’ through prior and consistent commercial use, even within a short period.

Submissions of the Respondent:

10. *Per Contra*, Ms. Rukhmini Bobde, learned counsel for the respondent submitted that the mark “*BharatStamp*” of the appellant is not distinctive, to

¹¹2007 SCC OnLine Del 126

¹²2002 SCC OnLine Del 239

¹³2023 DHC 4344



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enable consumers to associate it with appellant's company or to its product, and it fails to distinguish itself from similar good and services offered by others. For the aforesaid, she placed reliance upon *M/s Telecare Network India Pvt. Ltd. v. M/s Asus Technology Pvt. Ltd. & Ors. (Supra)* and *Ilu a Sole Proprietorship Concern v. Asian Hobby Crafts LLP*¹⁴ wherein, it has been held that a trademark should be capable of enabling people to identify its source and that monopoly over descriptive marks cannot be granted.

11. She further submitted that the reliance upon *Muneer Ahmad (supra)* by the learned counsel for the appellant, wherein similarly situated trademarks were granted registration, is misplaced as the said decision is pertaining to a 'device' mark whereas in the present case the mark "BharatStamp" of the appellant is a 'word' mark.

12. She then submitted that since the appellant applied for the mark "BharatStamp" on a 'proposed to be used' basis, it cannot be contended that it has a 'secondary meaning'. In any event, the correctness of the impugned order cannot be assessed on the basis of (fresh) materials qua the mark "BharatStamp" of the appellant having acquired a 'secondary meaning' since they, pertaining to a subsequent period after the same was passed, were not a part of the record before the respondent.

13. In light of aforesaid submissions, she urges for dismissal of the present appeal.

¹⁴ 2024 SCC OnLine Del 8299



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Rejoinder submissions of the Appellant:

14. In rejoinder arguments, learned counsel for the appellant reiterated his submissions made hereinbefore, and captured hereinabove.

Analysis and Reasoning:

15. This Court has heard Mr. Siddharth Nath, learned counsel appearing on behalf of appellant as also Ms. Rukhmini Bobde, learned senior counsel appearing on behalf of respondent and have also gone through the relevant documents on record along with the relevant judgments cited by the parties during the course of arguments.

16. Before proceeding to adjudicate the above on merits, as specified in *Section 9(1)(a)* of the Act which is pertaining to “**Absolute grounds for refusal of registration**”, a trademark is not registrable if it is “*devoid of any distinctive character*”, i.e. a trademark has to be capable of distinguishing the goods or services of one person from those of another person. The trademark applied for registration has to have the ability to act as a source identifier.

17. In the present scenario, though the “*BharatStamp*” of the appellant is a combination of two words, ‘*Bharat*’ and ‘*Stamp*’ but they cannot be dissected and read/ taken separately. More so, since the mark “*BharatStamp*” of the appellant is, *admittedly*, a composite singular mark it has to be taken/ read as a whole. The said “*BharatStamp*” of the appellant is also neither a colloquial term nor which is/ can be found in the Dictionary. When read/ taken as it is, as a whole it has no meaning. It is, in fact, purely a self-created, arbitrary and fanciful word coined by the appellant. The said mark “*BharatStamp*” of the



appellant does not convey any connection with the goods and/ or services for which it is sought to be granted registration to anyone, much less, the average consumer. It is non-existent for all practical and theoretical purposes. What is not there cannot be given any shape and/ or configuration and/ or denotation and/ or significance.

18. While dealing with the similar issue, the Hon'ble Supreme Court is ***F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.***¹⁵ held as under:-

“13. It is true that the word “Dropovit” is coined out of words commonly used by and known to ordinary person knowing English. But the resulting combination produces a new word, a newly coined word which does not remind an ordinary person knowing English of the original words out of which it is coined unless he is so told or unless at least he devotes some thought to it. It follows that the word “Dropovit” being an invented word was entitled to be registered as a trade mark and is not liable to be removed from the Register on which it already exists.”

[Emphasis Supplied]

19. In fact the aforesaid issue also finds mention in ***McCarthy on Trademarks and Unfair Competition*** that:-

*“a combination of generic terms may result in a composite mark that itself is not generic name of the goods and services in issue. The whole composite may create a distinct commercial impression that is more than just the sum of its parts.”*¹⁶

20. Moreover, the mark “***BharatStamp***” of the appellant has to be read/ taken as a whole and when read/ taken as a whole, it is not open to dissection. In fact, the principle of anti-dissection is now well-settled with a consistent

¹⁵(1969) 2 SCC 716

¹⁶McCarthy, J. T. (2004). *McCarthy on Trademarks and Unfair Competition* (4th ed., Vol. 2). Thomson West.



line of judgments passed by Court(s) from time to time. Lately, a Co-ordinate Bench of this Court in ***Ticona Polymers, Inc. v. Registrar of Trade Marks***¹⁷, while dealing with a similar issue has reiterated the same principle while by holding as under:-

“12. It is well settled that a mark cannot be dissected into its individual parts while examining its entitlement to registration. Though Section 17(1) of the Trademarks Act statutory embodies this anti-dissection principle in the context of infringement proceedings, the principle would apply, mutatis mutandis, even at the stage when the mark is examined for its entitlement for registration as it is only the factum of registration which brings, in its wake, the privileges that follow, including protection against infringement.”

[Emphasis Supplied]

21. In view of the aforesaid, the said mark “*BharatStamp*” of the appellant does not convey any connection with the goods and/ or services for which it is sought to be granted registration to anyone, much less, the average consumer. It would require a higher degree of imagination for the average consumer to come to that conclusion. The said mark “*BharatStamp*” of the appellant is, thus, inherently distinctive. Even though the present mark “*BharatStamp*” of the appellant was filed on a ‘*proposed to be used*’ basis, however, the same can acquire distinctiveness on or before it is granted registration subsequently. The same view has been expressed by a Co-ordinate Bench of this Court in ***Zydus Wellness Products Limited (supra)***, which was following an earlier decision by the Division Bench of this Court

¹⁷2023 SCC OnLine Del 1234



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in *Marico Limited v. Agro Tech Foods Limited*¹⁸, wherein it has held as under:-

“55.5. In Marico, the Division Bench of this Court held that the terminus ad quem fixed by the proviso to Section 9(1), of the date of application for registration, stands statutorily extended by Section 31(2) to the date of registration of the mark. In other words, if the mark, for which an application has been submitted for registration, has acquired distinctiveness or is recognised as a well-known trade mark on or before the date when the mark was registered, it would be entitled to registration, even if it otherwise infringed any of the clauses of Section 9(1).”

22. Lastly, based on what was argued by the learned counsel for the appellant, this Court finds that the very same respondent has also been granted registration to ‘word’ mark(s) like *BharatPe*, *Bharat ScanPay*, *ibharath*, *BHARAT VISION*, among others, in various Classes of the Act as well as ‘device’ marks like *B BHARAT BIJLEE*, *BHARATH SANGEETH*, *BHARAT ELECTRONICS*, among others, also in various Classes of the Act.

Conclusion:

23. Accordingly, in view of the above the appeal is allowed and the impugned order dated 02.01.2024 passed by learned Senior Examiner of Trade Marks, Trade Mark Registry, New Delhi, is set aside.

24. Resultantly, the mark “*BharatStamp*” applied for registration vide trademark application no.4872027 by the appellant is liable to proceed for registration.

25. Needless to say, the registration of the composite mark “*BharatStamp*”

¹⁸2010:DHC:5337-DB



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shall not confer any exclusive right over any individual component/ part of the mark i.e., '*Bharat*' or '*Stamp*' upon the appellant herein.

26. A copy of this judgment be forwarded to the Registrar of Trade Marks for compliance.

SAURABH BANERJEE, J

APRIL 16, 2025/Ab