

**(2002) 09 DEL CK 0185**  
**In the Delhi High Court**  
**Case No : CO. No. 17 of 1993**

Darshan Lal Dhooper

APPELLANT

Vs

Smt. Motia Rani and Others

RESPONDENT

**Date of Decision :** 02-09-2002

**Acts Referred:**

Trade and Merchandise Marks Act, 1958 — Section 44

**Citation :** (2002) 99 DLT 792

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Manmohan Singh, for the Appellant;

**Final Decision :** Disposed Off

## **Judgement**

Mukundakam Sharma, J.—The grievance raised in the present civil original petition is with regard to the entry relating to the registered trade mark No. 374796 on the ground that the same was obtained by the respondent Nos. 1 to 3 in violation of the principles of natural justice and by fraud and misrepresentation. The petitioner in this civil original petition has prayed for a direction to the respondent No. 4 to remove/cancel the registered trade mark No. 374796 in Class 3 and to rectify the register of trade marks accordingly.

2. It is stated in the petition that the petitioner is the proprietor of M/s. Plaza Chemical Industries. It is stated that M/s. Indra Perfumery Co. was the registered proprietor of the trade mark "PLAZA" registered under No. 140336 in Class 3 as of 7th September, 1949 registered in the name of Nanak Chand, Hari Ram and Darshan Lal trading as M/s. Indra Perfumery Co., Sadar Bazar, Delhi, in respect of goods including those in Class 3 particularly nail polish. By mutual consent, the said firm which was carrying on the business of manufacturing cosmetics and toiletries was dissolved by a dissolution deed dated 2nd April, 1970. A copy of the said dissolution deed is placed on record. It is also stated that the aforesaid terms and conditions of the dissolution deed was also accepted by the Registrar of Trade Marks by his order dated 16th September, 1985

pursuant to a request dated 31st December, 1983 on TM-24. It is stated that pursuant to the said order dated 16th September, 1985, the aforesaid trade mark "PLAZA" was entered in the name of Virender Kumar Oberoi, Veerawali Oberoi and Motia Rani Oberoi (legal representatives of Hari Ram) trading as M/s. Plaza Cosmetics (India) and Darshan Lal trading as M/s. Plaza Chemicals Industries, Calcutta.

3. It is stated that in terms of paragraph 6 of the dissolution deed, the aforesaid trade mark "PLAZA" belongs to Hari Ram, Darshan Lal jointly and both the parties would have all the rights, interest and benefits accrued to the said trade mark "PLAZA" and that they are also entitled to effect registration of the said trade mark transferred in their names. It is also stated that the respondent Nos. 1 to 3 on 16th April, 1981 filed an application for registration of the trade mark "PLAZA" for tooth paste, tooth powder, shoe polish, agarbatti and dhoop as proposed by them in Class 3. The said application was allegedly filed by the respondent Nos. 1 to 3 surreptitiously in their names without disclosing to Darshan Lal trading as M/s. Plaza Chemical Industries. The aforesaid application was accepted and advertised in the Trade Marks Journal dated 1st March, 1991, and thereafter the said trade mark was registered in the name of respondent Nos. 1 to 3. It is stated that the petitioner is engaged in the same trade and he is also one of the proprietors of the trade mark "PLAZA" and is entitled to use the same and, Therefore, the present petition was filed for removal of the wrong and illegal registration.

4. Notice was issued to the respondents. A Vakalatnama was also filed showing appearance on behalf of the respondent No.3. Time was also granted to the respondent No. 3 to file the reply. However, no written statement was filed on behalf of any of the respondents in spite of service of notice nor any reply was filed and accordingly, it was ordered that the petition would proceed ex-parte as against the respondents.

5. Permission was granted to the petitioner to lead ex-parte evidence through affidavits pursuant to which an affidavit by way of evidence is filed. The said affidavit is filed by Shri Darshan Lal Dhooper trading as M/s. Plaza Chemical Industries, the petitioner. He has proved the dissolution deed. Clause 6 of the said dissolution deed provides that the trade mark "PLAZA" would belong to and vest with Darshan Lal and Hari Ram who shall have all the rights, interest and benefits accrued to the said trade mark "PLAZA" and that they would be entitled to effect the registration of the said trade mark transferred in their name with the assistance, if necessary, of Nanak Chand. He has also stated in his affidavit that the Registrar of Trade Marks accepted the aforesaid terms and conditions of the dissolution deed by his order dated 16th September, 1985 and the said trade mark was entered in name of Virender Kumar Oberoi, Veerawali Oberoi and Motia Rani Oberoi trading as M/s. Plaza Cosmetics (India) and M/s. Plaza Chemicals Industries, Calcutta. It is also stated that as per dissolution deed, none of the aforesaid single party was or is entitled to claim to be proprietor of the trade

mark "PLAZA" or effect the registration of the said trade mark in its exclusive name.

6. It is also stated that the respondent Nos. 1 to 3 on 16th April, 1981 filed an application for registration of the trade mark "PLAZA" in respect of tooth paste, tooth powder, shoe polish, agarbatti and dhoop, which according to the witness was filed surreptitiously in their names without disclosing to Darshan Lal trading as M/s. Plaza Chemical Industries. It is stated that the said application was accepted and advertised in the Trade Mark Journal and the aforesaid trade mark was also registered in the name of the respondent Nos. 1 to 3 which was a wrongful act. It is also stated that registration of the impugned trade mark "PLAZA" has been obtained by the respondent Nos. 1 to 3 by misrepresentation and exercising fraud and without disclosing the true facts of the proprietor of the mark and that the respondent Nos. 1 to 3 concealed the agreement reached between Shri Hari Ram and Shri Darshan Lal in that regard and also that the said agreement/dissolution deed is binding upon the parties and their legal representatives. He has also stated that the impugned trade mark has been wrongly registered and it wrongly remains on the Register of Trade Marks and that if an application for registration of the trade mark "PLAZA" was required to be filed, the same was to be filed in the joint names of the petitioner as well as the respondent Nos. 1 to 3. He has also stated that the filing of the application by the respondent Nos. 1 to 3 before the Registrar of Trade Marks, the respondent No, 4 without disclosing the real facts is illegal and, Therefore, the Register of Trade Marks is to be rectified and the trade mark in the name of the respondent Nos. 1 to 3 is to be removed and/or cancelled. The respondents failed to appear and contest the petition. No rebuttal evidence is led by the respondents although reasonable opportunity was granted to them. Therefore, the evidence led by the petitioner go unrebutted and unchallenged.

7. Similar family arrangement in respect of family business has been taken notice of and given effect to by this Court. In this connection, reference may be made to the decision of this Court in Rajni Dua and Others Vs. Bhushan Kumar and Others, After considering the various judgments of the Supreme Court, this Court accepted the legal position that the family arrangement should not be disturbed as far as possible and that the peace, amity and family harmony could be restored if the family arrangement is adhered to and respected.

8. In my considered opinion, the aforesaid legal proposition settled by this Court and also by the Supreme Court fully applicable to the facts and circumstances of the present case. The dissolution deed proved in the present petition is in the nature of a family arrangement between the parties and, Therefore, the intention of the parties in the same should be given due weightage and should be respected in order to maintain peace, amity and harmony in the family. According to the said terms and conditions of the dissolution deed neither the petitioner nor the respondent Nos. 1 to 3 exclusively could claim to be the proprietor of the aforesaid trade mark "PLAZA" of its own. Therefore, any

application for registration of the trade mark "PLAZA" could have been filed only, in the joint names of the petitioner as well as the respondent Nos. 1 to 3 and not otherwise in terms of the aforesaid agreement.

9. Filing of the application by the respondent Nos. 1 to 3 before the Registrar of Trade Marks without disclosing the aforesaid correct and true position and without disclosing the terms of the dissolution deed was by means of suppression of material facts. Consequently the registration granted on the basis of such an application is also illegal and in violation of the principles of natural justice and also contrary to the provisions of Trade and Merchandise Marks Act, 1958. The aforesaid conclusions are supported by a decision of this Court in Kohinoor Paints Faridabad (P) Ltd. v. Paramveer Singh and Anr., reported in 1996 16 PTC 69. In the said decision, it was held by this Court that any order passed by the Registrar without giving any opportunity of hearing or even notice to the person in whose favor the registration was existing is illegal and is in violation of the principles of natural justice and is required to be set aside. In the said case reference was made to the earlier decisions of this Court in Radha Kishan Khandelwal Vs. Assistant Registrar of Trade Marks and Others, wherein, it was held that since the requirement of Section 44 is that the applicant should prove his title to the trade mark and that if the title set up by him is pitched against the title of someone else whose name is already borne on the register, an enquiry must be conducted in the presence of both the parties. Reference may also made to the decision Baljit Kumar, Trading as Grand Foundry, Punjab Vs. Ram Saroop and Others, . In the said decision, it was held that when both the parties were joint owners of a particular trade mark and one party by suppressing the material fact of the interest of the other party obtained its registration only in its own name, the act of the former party in obtaining the said registration was by fraud and that the other party was entitled to necessary rectification.

10. Accordingly, the registration granted in respect of the trade mark "PLAZA" in favor of the respondent Nos. 1 to 3 is held to be contrary to the provisions of the Trade and Merchandise Marks Act, 1958 and, Therefore, the same is required to be removed and /or cancelled. An order is, Therefore, issued directing the respondent No. 4 to remove and cancel the registered Trade Mark No. 374796 in Class 3 and to rectify the Register of Trade Marks in terms of the observations made herein. The petition stands disposed of in terms of the aforesaid order.