
(2012) 01 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No. 3213 of 2010

Mr. Jakir Hossain and Another

APPELLANT

Vs

Shiv Kumar Shakarrao Thakur and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 01 CAL CK 0044

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Ashoke Kr. Banerjee, Mr. Samit Talukdar, Mr. Probal Kr. Mukherjee, Ms. Sudeshna Bagchi, Mr. A. Chaturvedi and Mr. Soumya Roychowdhury, for the Appellant; Sayantan Bose and Mr. Tanmoy Roy for the opposite party Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—Challenge is to the Order No.180 of 2010 dated July 30, 2010 passed by the Hon''ble Intellectual Property Appellate Board in OA/93/09/TM/KOL thereby allowing the misc. petition being No.330 of 2009.

2. In allowing a miscellaneous petition being Misc. Petition No.330 of 2009 filed by the appellant, the Hon''ble Appellate Board stayed the operation of the order dated March 9, 2009 passed by the Joint Registrar of Trade Marks till the next date of hearing. The Registrar was also directed not to issue the certificate of registration in Application No.769516B in class 34.

3. The Joint Registrar of Trade Marks, that is, the opposite party no.4 herein accepted the application of the petitioners being No.769516B in class 34 upon certain terms and conditions for registration under the provisions of the Trade Marks Act, 1999 and in consequence, the opposition being no. CAL-169298 to the Application No.769516B in class 34 was dismissed. Being aggrieved by such orders, the opposite parties/appellants preferred an appeal before the Hon''ble Intellectual Property Appellant Board and the said Board allowed the misc.

petition being Misc. Petition No.330 of 2009 granting the prayer for stay of the portion of the order dated March 9, 2009 till the next date of hearing. Being aggrieved, this application has been preferred.

4. Now, the question is whether the impugned order should be sustained.

5. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that, while allowing the application of the petitioners, the opposite party no.4 imposed certain terms and conditions relating to the use of the word "SPECIAL" and restrictions of the sale of the goods, namely, Biris in certain States only such as, West Bengal, Assam, Behar, Uttar Pradesh, Punjab, Hariyana, Delhi and Rajasthan only along with other terms.

6. The application being No.769516B in class 34 was filed for Registration of the Trade Mark with the expressions "No.203 SPECIAL SHIV BIRI" label in the name of the petitioner on September 17, 1997 contending, inter alia, that the said trade mark is being used since April 1, 1992. Upon taking into consideration of the materials on record, the opposite party no.4 allowed that application and thereby dismissing the opposition as referred to earlier.

7. The appellants have contended that they are entitled to use the Trade Mark by a deed of assignment dated January 29, 2009 and thus, they claim as the Joint Proprietors of the Registered Trade Mark label containing the word "Shankar" or "Shankar Chhap Biri" and the device of Lord Shankar was inscribed in the circle under different trade marks as an essential feature thereof. The said trade mark, that is, the device of Lord Shankar has been continuously and extensively use as a trade mark in respect of biris since 1920 in different parts of India.

8. Under the circumstances, when the appellants preferred an appeal, the appellate authority granted the prayer of stay of the operation of the order dated March 9, 2009 till the next date of hearing and the concerned Registrar was directed not to issue the certificate of registration in Application No.769516B in class 34.

9. Thus, I find that since an appeal has been preferred against the order of the opposite party no.4 and the said appeal has been admitted, if no interim order of stay as prayed for is granted and the registration as prayed for by the petitioners/respondents is granted, the appeal would be infructuous. The contention of the appellants is that they have been using the trade mark as referred to above since 1920. Under the circumstances, prima facie, the respondent no.4 was not proper to allow the application for registration under the terms and conditions as stated earlier.

10. From the materials on record, I find that the appellants have shown enough grounds in support of their opposition to the Application No.769516B in class 34. So, the prima facie case to proceed with the matter has been established. The balance of granting stay lies in favour of the appellant and if the order of stay is not granted, it is the appellants who are likely to suffer. Under the circumstances,

I think the learned Appellate Authority was justified in granting the stay of the operation of the order dated March 9, 2009 for the time being.

11. During the argument, Mr. Ashoke Kumar Banerjee, learned Senior Advocate appearing on behalf of the petitioners has contended that in passing the impugned order, the appellate authority has recorded that the opposite party no.4 possibly passed the order hurriedly and as such, the matter in dispute was not properly considered. Under the circumstances, in view of the decision of Jagvir Singh and Others Vs. State (Delhi Admn.), the matter ought to have been placed before the concerned authority, while the matter was still in the mind of the concerned authority and thus, he submits that instead of passing the impugned order, the appellate authority should have referred the matter to the respondent no.4. With due respect to Mr. Banerjee, I am of the view that the ratio of the said decision will not be applicable in the instant case inasmuch as, save and except, using the word "hurriedly" i.e. the impugned order was passed "hurriedly", there is no other adverse comment in the impugned order. Under the circumstances, I am of the view that the said decision will not be applicable in the instant case and that there is no need of sending the matter to the respondent no.4 for decision afresh.

12. Mr. Banerjee has next referred to the decision of The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others, particularly paragraph no.s 40, 41 and 42 and thus, he submits that while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The recording of reasons is a principle of natural justice and every judicial order must be supported by reasons. But, in the instant case, no such reasons have been assigned. In this regard, upon perusal of the impugned order, I am of the view that the impugned order cannot be stated to be without any reasons at all. The Hon"ble Board has recorded reasons as to why the impugned order should be stayed till the next date of hearing. So, with due respect to Mr. Banerjee, I am of the view that the impugned order relating to stay cannot be stated to be without any reasons.

13. In that view of the matter, I am of the opinion that since stay which has been granted for a limited period under the circumstances stated earlier, should not be interfered with. There is no material irregularity or illegality which calls for interference with the impugned order.

14. Accordingly, the application is devoid of merits and is, therefore, dismissed.

15. Considering the circumstances, there will be no order as to costs.

16. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.