

(2012) 03 DEL CK 0301

In the Delhi High Court

Case No : Regular First Appeal No. 850 of 2010

Pachranga International (Chander Group) (M/s.)

APPELLANT

Vs

M/S. Pachranga International Pvt. Ltd.

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Copyright Act, 1957 — Section 15(2), 26, 45, 50
Copyright Rules, 1958 — Rule 16, 16(3), 16(4)

Citation : (2012) 4 AD 37 : (2012) 189 DLT 246 : (2012) 50 PTC 511

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : S.K. Bansal and Mr. S. Kumar, for the Appellant; Neeraj Grover, Advocate and Ms. Shilpa Arora, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The instant appeal arises out of order dated 30.9.2010 passed by the Copyright Board (hereinafter referred to as "the Board"). By means of that order, the Board has allowed the application of the respondent herein preferred u/s 50 of the Copyright Act, 1957 (hereinafter referred to as "the Act") for rectification of register by expunction of 11 registration numbers which had been granted to the appellant under the Act inasmuch as the Board found that the said registration was in violation Section 15(2) of the Act. For arriving at this conclusion, the Board followed the judgment of this Court in the case of Microfibers Inc. Vs. Girdhar and Co. & Anr. [2009 (4) PTC 519 (Del) (DB)].After stating these preliminaries, it is now stage to traverse through material facts in brief. In the year 1983, a partnership firm under the name and style of M/s Pachranga International was constituted with Sh. Asa Nand Dhingra and Sh. Rajinder Dhingra as its partners vide partnership deed dated 01.1.1983. The trademark PIP was coined and adopted by that firm for use in the business of the partnership firm in addition to the trademark PACHRANGA which was being used

in the course of business since many years after the same was adopted by Sh. Murli Dhar Dhingra, i.e., father of Sh. Asa Nand Dhingra and grandfather of Sh. Rajinder Dhingra in respect of the goods, i.e., pickles, chutneys and other allied products.

2. As per the respondents, Sh. Rajinder Dhingra also got created the artistic work(s) in respect of the Labels used for packaging various products under the trade mark PIP under his supervision, guidance and instructions through the printers of labels. The said labels had a unique get-up, colour combination and layout and thus qualified to be "original artistic work(s)" and Sh. Rajinder Dhingra was the owner of such artistic works which were then allowed by him to be used in the partnership firm "M/s. Pachranga International". In the year 1984, Sh. Chander Mohan Dhingra, i.e., the brother of Rajinder Dhingra and Son of Sh. Asa Nand Dhingra requested his father and brother to join him in the business of M/s Pachranga International and accordingly he was joined in the said firm as partner with effect from 01.1.1984 vide partnership dated 01.1.1984. Thereafter, another partnership deed dated 01.4.1994 was executed which inter alia included the following term:

14. That each partner shall devote his full time & attention to the business of the partnership firm and cannot do any other business or business as a proprietor or any partnership or any other capacity unless he seeks written permission from all the partners of this deed.

3. However, later on in the year 1994, Sh. Chander Mohan Dhingra created and promoted a company Pachranga Syndicate Pvt. Ltd. Some disputes erupted thereafter. According to the respondent, Sh. Chander Mohan Dhingra was expunged from the partnership vide registered notice dated 15.2.2001 in terms of Clause 10 of the Partnership Deed. Since the dispute proceeded in the partnership firm, even Sh. Rajinder Dhingra promoted and incorporated the company Pachranga International Pvt. Ltd. (respondent herein) on 18.7.2001. It is not necessary to state in detail various disputes arose between the two factions, one led by Sh. Chander Mohan Dhingra and other by Sh. Rajinder Kr. Dhingra and various Court proceedings between them. Suffice is to state that insofar partnership firm is concerned, there were divisions and both the groups started operating as M/s. Pachranga International (Chander Group) and M/s. Pachranga International (Rajinder Group). In one of the proceedings, the respondent came to know that the appellant was claiming ownership of copyrights registered under the Act in respect of 11 such registration, details of which are as under:

[1] A-65566/2003: PIP Amla pickle.

[2] A-65567/2003 : PIP Mango Sweet Chutney.

[3] A-65568/2003 : PIP Mangao Peeled pickle.

[4] A-65569/2003: PIP Lime Pickle spiced.

- [5] A-65570/2003 : PIP Red Chillies Stuffed pickle.
- [6] A-65571/2003 : PIP Mango unpeeled pickle.
- [7] A-65572/2003 : PIP Tenti Dela pickle.
- [8] A-65573/2003 : PIP Green Chillies pickle.
- [9] A-65574/2003 : Turnip Cauliflower Carrot Sweet pickle.
- [10] A-65575/2003 : PIP Karonda pickle.
- [11] A-65576/2003: PIP Achar Pachranga.

4. According to the respondent these registrations were obtained by the appellant Chander Mohan's group by committing fraud on the Registrar and registry of Copyrights. Thus, the respondent filed application u/s 50 of the Act on 30.3.2009 before the Board for cancellation of the aforesaid copyright registration. The grounds on which expunction was sought are following:

- (a) Impugned works are not original artistic works of respondent No. 1 or its partners and the same are in fact the original artistic works of the predecessor in interest and the title of the petitioner company, that is, M/s. Pachranga International;
- (b) Names disclosed in column no. 7 of the certificates is not the artist of the impugned works;
- (c) No Objection Certificates u/s 45 were fraudulently obtained from the Registrar of Trade Marks;
- (d) Impugned registrations are illegal and have been granted in violation of the provisions of the Copyright Act and the rules framed thereunder;
- (e) There is non-compliance of rule 16(3) of the Copyright Rules as no notice of the same was served on the petitioner company or on Shri Rajinder Dhingra who was the owner of the said works and had a valid interest in the said works.

5. The appellant contested this petition by refuting the aforesaid grounds and claiming as under:

- (a) It is wrong and denied that the impugned works are not the original artistic work of respond No. 1 or its partners. It is wrong and denied that the same are the original artistic work of the predecessor-in-interest and title of the petitioner company;
- (b) It is denied that the name disclosed in column No. 7 of the impugned entries is not the artist of the impugned label nor he can claim to be the first owner of the works;
- (c) It is wrong and denied that the particulars furnished by the respondent before the Registrar are false and wrong and the respondent has committed

fraud upon the Registrar of Copyrights while seeking the impugned registration;

(d) It is wrong and dented that the registration of the impugned works have been wrongly granted and are wrongly remaining on the Register in favour of the respondent;

(e) It is wrong and denied that no objection certificate granted u/s 45 of the Copyright Act, 1957 were obtained fraudulently by the partners of the respondent No. 1 from Registrar of Trade Marks.

6. After hearing the parties, the Board came to the conclusion that there was violation of Rule 16(3) of the Copyright Rules, 1958 (hereinafter referred to as "the Rules") as well as no notice was served upon the respondent even when the respondent had interest in the matter. In the opinion of the Board proceedings, the subject matter of copyright is a design and therefore, registration was in violation Section 15(2) of the Act. On these two grounds, the application of the respondent has been allowed directing the Registrar to expunge the impugned entries. The reasons- for coming to this conclusion are contained in Para 6 of the impugned order, which reads as under:

6. Impugned registrations relate to "2003 and the family business comprising of two brothers and the father is of much earlier origin and there is enough to be cited as argued and supported by evidences that the respondent had a knowledge of the presence of the subject matter of the labels and that too within the family before making application for the impugned registrations. Hence, there is irrefutable inference in favour of the alleged violation of rule 16(3). Besides going into it, it is true in no uncertain terms that the proposed labels are meant to be sued in relation to goods and the product in question, that is, pickles, etc. are items to be sold in hundreds of packages every day. Respondent is having good production line and thus quite a big number with the impugned labels must have gone out in the market by now. It needs reproduction in relation to the products involved through a mechanical manner for more than 50 times - magic figure could have crossed not over a long period but in span of a day itself. It is a clear case of violation of section 15(2) of the Copyright Act, 1957 as judicially elaborated in Microfibers Inc Vs. Girdhar and Co. & Anr. 2009 (4) PTC 519 (Del) (DB).

7. The appellant has assailed both the grounds on which the order of the Board rests in this appeal filed u/s 26 of the Act questioning the said order of the Board.

Re: Violation of Rule 16(3) of the Rules:

9. Rule 16 of the Rules reads as under:

16. Application for Registration of Copyright. - (1) Every application for registration of copyright shall be made in accordance with Form IV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in accordance with Form V.

(2) Every such application shall be in respect of one work only, shall be made in triplicate and shall be accompanied by the fee specified in the Second Schedule in this behalf.

(3) The person applying for registration shall give notice of his application to every person who claims or has any interest" in the subject-matter of the copyright or disputes the rights of the applicant to it.

(4) If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application by him, he shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.

(5) If the Registrar of Copyrights receives any objections for such registration within the time specified in sub-rule (4), or, if he is not satisfied about the correctness of the particulars given in the application, he may, after holding such inquiry as he deems fit, enter such particulars of the work in the Register of Copyrights as he considers proper.

(6) The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register of Copyrights to the parties concerned.

9. Sub-rule (3) of Rule 16 of the Rules puts an obligation on the person who applies for registration to give notice of the application to every person who claims or has any interest in the subject matter of the copyright or disputes the right of the applicant to it. It was the submission of the learned counsel for the appellant that no notice was required to be given by the appellant when the appellant applied for the registration because of the reason that the respondent had neither claimed nor had any interest in the subject matter nor has disputed rights of the appellant to it. His submission, in this behalf, was that the two groups who were earlier united and had formed the partnership firm Pachranga International and had inter alia entered into the partnership deed on 01.4.1998, the same was revised by entering into afresh partnership deed on 01.4.1999. It had become defunct in the year 2002. Thereafter, the appellant started its business in the year 2003 and created new labels which was the subject matter of copyright registration. In such a situation, argued the learned counsel, there was no question of giving the notice. He also submitted that in the application for registration dated 25.11.2005 filed for this purpose, the label which were annexed clearly describe the firm as "Pachranga International (Chander Group)". His submission was that mentioning of "Chander Group" was inadvertently omitted in the application and for this reason amendment application was filed on 31.10.2006 seeking amendment in the name of M/s. Pachranga International (Chander Group). He submitted that this aspect was totally ignored by the Board while passing the impugned order. Learned counsel also argued that if the requirement of Rule 16(3) of the Rules is read as held by the Board, it may be impossible for the applicant for registration to find out as to who could lay its

claim or dispute the claim of the applicant in the copyright registration and also to give notice to each and every manufacturer of the same/similar products.

10. This argument of the appellant is too naive and cannot be accepted on the facts of the present case. As already noticed above, the factions which are related to each other had been doing the business jointly. They had formed the partnership firm "M/s. Pachranga International". This firm was using the trademark "PIP", which had become quite famous. The sale of the product manufactured by this firm runs into 100 Crores of rupees. Thereafter, the two partners fell apart owing to certain disputes created thereon separate groups. The appellant formed the partnership firm M/s. Pachranga International (Chander Group). It started to using the said trademark. Here the appellant claims that it had created its own copyright in respect of certain works. The essence and foundation of these works remain the same with use of same trademark on the alleged copyright work., In this backdrop, it is too innocent argument to state that it would have no inclination that the respondent would not be interested and would not lay claim over these kinds of purported copyright works. When we probe the matter by going little deeper into the documents, we also find that the move of the appellant in filing application for registration was not bona fide and there was an attempt to mislead. In the application, name of the application was shown as "Pachranga International". Chander group was not mentioned therein at all. Further, in column (9) year of the first publication was mentioned as 1983. This was palpably a false statement, as in 1983 it was the united partnership firm which was working. It negates the claim of the appellant that the impugned work was commenced in the year 2003. The registration was obtained by giving this particular which was clearly a mala fide move. In a clever manner, application for amendment was filed in the year 2006. Moreover, when we see the labels submitted for registration and compare them with the labels which were used by the erstwhile firm, we find that they are substantially the same. We, thus, find that the respondent herein clearly had interest in the subject matter and was disputing the right of the appellant. The word "dispute" would not mean legal dispute. The respondent was, thus, entitled to a notice in terms of Rule 16(3) of the Rules and non-giving of this notice and obtaining the registration at the back of the respondent in a fraudulent manner, would clearly vitiate such a registration.

11. We, thus, sustain the order of the Board on this ground. It is not necessary to go into other grounds alleging violation of Section 15(2) of the Act, as the counsel for the respondent had also conceded that the order of the Board may not be correct on that aspect. In view of this, we are not recording our findings on this issue. To sum up, when the order of the Board can be sustained on the ground that there is a violation of Rule 16(3) of the Rules coupled with the fact that the registration was obtained in a fraudulent manner, it would lead to inevitable conclusion that the appeal is totally misconceived and without merits. We ,thus, accordingly dismiss this appeal with cost quantified at ` 25,000/-.