

(2000) 07 DEL CK 0066

In the Delhi High Court

Case No : IA. No. 6983/99 in Co. No. 6/87

P.M. Diesels Ltd.

APPELLANT

Vs

M/s. Thukral Mechanical Works and Another

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2

Citation : (2000) 5 AD 482 : AIR 1988 Delhi 282(1) : (2000) 3 ARBLR 108 : (2000) 86 DLT 579

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. K.R. Gupta and Mr. S.K. Aggarwal, for the Appellant; Mr. Hemant Singh and Mr. Dharmendra Tyagi, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application on behalf of the respondents under Order XIII, Rule 2 CPC, praying for bringing on record the additional documents which was filed by list of documents dated 27.2.95.

2. The petition is filed by the petitioner/non-applicant against respondent No. 1 under Sections 46, 56 and 107 of Trade & Merchandise Marks Act, 1958 for rectification of entry relating to the Registered Trade Mark by the respondent No. 1/Thukral Mechanical Works.

3. The petitioner's case is that they have registered trademarks for Diesel oil Engines and parts, Centrifugal Pumps, Agricultural Pumps, Electric Motors, Pumping Sets and parts thereof. They have been using since 1963 the trademark FIELD MARSHAL for the aforesaid goods and the said trademark is registered. The trademark which is sought to be rectified and registered in favor of the respondents is the trademark FIELD MARSHAL in respect of the Flour Mills, Circulation and centrifugal pumps etc.

4. The current stage of the proceedings in this petition is that the evidence of the respondent No. 1 after the evidence of the petitioner is over.

5. The respondent No. 1's case is that issues were framed on 5th April, 1984 and parties were directed in this matter as well as connected Suit No. 2408/85 to file additional documents and list of witnesses within six weeks. The petitioner had filed the list of witnesses on 14.2.95 and the respondent filed the list of witnesses Along with additional documents on 23rd, March, 1995.

6. The respondent submits that the petitioner never raised any objections from March, 1995 onwards when the documents sought to be brought on record by this application supplied to the petitioner. The reason given for production of documents beyond the stipulated period is the destruction of the records of the respondent in floods in Punjab in 1993 and the change in the partners of the respondent's firm.

7. In reply to this application, filed by the respondent No. 1, it is submitted on behalf of the, petitioner that the main petition was filed by the petitioner in the year 1987 and the petitioner had earlier filed the Suit No.2408/85 against the respondents for an injunction, restraining infringement of trademarks. The issues were framed in April, 1994 and the petitioner has already examined its witnesses and the respondent after leading some evidence has got this case wrongly adjourned so as to delay the proceedings. It is also stated that the documents filed by the list dated 27.2.1995 were filed without any orders by this Court and was a surreptitious attempt to bring these documents on record. It is also alleged that the respondents have been guilty of filing forging and fake documents. The petitioner's plea is that the respondents have prepared these documents later on and now wants to rely on these documents.

8. Considering the facts and circumstances of the case, I am of the view that while there is delay in moving this application for bringing the documents on record, The documents were also filed well beyond the stipulated time granted on the day when the issues were framed on 5th April, 1994. Apart from the laches, the petitioner has opposed the prayer made in this application on the ground that the documents are fabricated as an attempt to bolster the respondent's case.

9. However, notwithstanding the delay, in view of the fact that the respondent No.1's evidence has not yet been led and the respondents had filed these documents Along with the List dated 27.2.1995, I am of the view that the interest of justice would be best sub served if the respondent is permitted to bring these documents on record subject to payment of adequate costs to compensate the petitioner. The veracity of the documents can only be tested at the appropriate stage of the trial of the suit.

10. In this view of the matter, the application deserves to be allowed. However, it will naturally be open to the petitioner to challenge the veracity of these documents at the time of the evidence of the witnesses and the hearing of the suit. The application is, Therefore, allowed, subject to the payment of the costs quantified at Rs. 10,000/-, payable to the petitioner within eight weeks from

today.

The application is disposed of accordingly.

CO. 6/87

11. The matter be listed before the Joint Registrar for recording the remaining evidence.

12. List this matter on 21.7.2000 before the Joint Registrar for directions.