
(2006) 07 DEL CK 0133

In the Delhi High Court

Case No : WP (C) No"s. 11946-47 of 2006

Safari International and Another

APPELLANT

Vs

Subhash Gupta and Others

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Trade and Merchandise Marks Act, 1958 — Section 46, 47(4), 56

Citation : (2006) 33 PTC 616

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : A.M. Singhvi and Shailen Bhatia, for the Appellant; Neeraj Grover and J.P. Sengh and Garima Kapor, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the order of Intellectual Property Appellate Board dated 9th March, 2006 dismissing the application of petitioner for rectification of respondent No. 1's trade "mark "Safari" under Sections 46, 47(4) and 56 of the Trade and Merchandise Marks Act, 1958 on the ground that the registration of the trade mark "Safari" was obtained by respondent No. 1 without any bona fide intention and mark was obtained by playing fraud on the Registrar of Trade Marks as well as on the honest members of trade and business.

2. The respondent No. 1 had invented the word "Safari" and used trade mark for his tricycles, bicycles and baby cycles under this sole proprietorship concern, M/s. Shagun Udyog, since 1974. In 1979, he filed an application for the registration of the mark "Safari" in class 12 which was registered under No. 348920 in class 12 in July 1988 and the certificate was issued to respondent No. 1. During the pendency of the application for registration after it was filed in 1979, the respondent No. 1 had incorporated a private limited company "Safari Cycles Pvt. Ltd. with himself and his brother having equal shares in 1981. This company of the respondent No. 1 did not function till 1984 and in December, 1984 the brother of respondent No. 1 resigned from the Company and his shareholding

was transferred in the name of the respondent No. 1 and his wife thereby respondent No. 1 held 70% of the shares and his wife held 30% of the shares.

3. The plea of the petitioner that the fraud had been committed by the respondent No. 1 has been rejected by the Intellectual Property Appellate Board holding that respondent No. 1 remained the managing force of the company and, Therefore, without any intention to deceive anybody and without knowing the consequences of the technicalities he stated that he was the proprietor of the trade mark. As a proprietor of the firm, M/s. Shagun Udyog, he was the proprietor of the trade mark and he has the controlling and managing force of the company also where he held 70% of the shares and his wife held 30% of the shares and, Therefore, he was the proprietor of the trade mark in all senses. By claiming that he is the proprietor of the trade mark though the proprietor in technical sense may be his company M/s. Safari Cycles Pvt. Ltd. where he held 70% shares and his wife 30% shares the respondent No. 1, according to respondent No. 3, did not derive any advantage which he could have not have by disclosing that the assignment of the trade mark was in the name of his company.

4. The respondent No. 3 has observed that the respondent No. 1 has not suppressed the material facts which have resulted in advantage to him which he would not have received otherwise, as respondent No. 1 was the sole proprietor of M/s. Shagun Udyog and had a holding of 70%- shares in his name and 30% in the name of his wife in the company M/s. Safari Cycles Pvt. Ltd. It was held that respondent No. 1 has not derived any advantage for non-disclosure about the assignment of trade mark Safari from his proprietorship firm M/s. Shagun Udyog to his company M/s. Safari Cycles Pvt. Ltd. which he could not have had it been disclosed that the trade mark has been assigned to M/s. Safari Cycles Pvt. Ltd.

5. The finding of the Appellate Board that the plea of fraud in absence of any details, is liable to be rejected, can also not be faulted in the present facts and circumstances. The petitioner in his statement of case in his application has only alleged that the registration was obtained by respondent No. 1 by playing fraud on the Registrar of Trade Marks. The plea raised by the petitioner is as under:

16. That the impugned registration was obtained by playing fraud on the Registrar of Trade Marks as well as on the honest member of trade and business and as such retaining entry relating to the said trade mark on the Register will amount to perpetuate fraud.

6. The learned Senior Counsel for the petitioner has referred to paras 6 and 7 and 3 of the statement of case and contended that if all the paragraphs are read together they will show that the details of the fraud had been given. Perusal of the paragraphs referred to by the learned Senior Counsel, what rather emerges is that the petitioner has rather raised a vague plea more with a view to mislead and did not give the details. The petitioner did not state that respondent No. 1 was the sole proprietor of firm M/s. Shagun Udyog and the trade mark "Safari" was assigned to M/s. Safari Cycles Pvt. Ltd. which is the company of respondent

No. 1 where he holds 70% shares in his name and 30% shares in the name of his wife, but as the limited company is distinct entity, Therefore, respondent No. 1 cannot claim that he is the proprietor of trade mark. The petitioner rather pleaded that the trade mark "Safari" stood registered in the name of registered proprietor without disclosing further contents as that would have shown the hollowness of his plea. In the circumstances, the judgment of the Intellectual Property Appellate Board on this ground cannot be faulted.

7. The finding of the Appellate Board that the respondent No. 1 did not commit any fraud in the facts and circumstances, cannot be faulted as has been vehemently contended by Dr. Singhvi, learned Counsel for the petitioner.

8. The learned Senior Counsel, Dr. Singhvi, has referred AIR 1965 Supreme Court 40, Tata Engineering and Locomotive Co. Ltd. and Ors. v. State of Bihar and Ors. GYNOMIN Trade Mark 1961 (15) Reports of Patent Design and Trade Mark Cases 408 : B.S. Ramappa Vs. B. Monappa and Another, and Space Enterprises Vs. M/s. Srivivasa Enterprises Ltd., to contend that by not disclosing about his company M/s. Safari Cycles Pvt. Ltd. where respondent No. 1 held 70% shares in his name and 30% shares in the name of his wife, has committed fraud as the company of respondent No. 1 was a distinct entity and the corporate veil could not be lifted as lifting of corporate veil is resorted to only in tax evasion, or to circumvent tax obligation or to perpetuate fraud and or trading with enemies are concerned. In my opinion, lifting of corporate veil could be resorted in this case also to ascertain whether the respondent No. 1 has committed fraud in claiming that he is the proprietor of the trade mark or not and cannot be restricted to any such situations as has been canvassed by the learned Senior Counsel.

9. Considering the present facts and circumstances, I do not feel, the necessity to deal with judgments relied on by the petitioner in detail as the fact situation of the present case is apparently distinguishable from the fact situation of the decisions relied on behalf of petitioner. A decision is only an authority for what is actually decides. What it of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the presidential value of a decision. The Supreme Court in Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been

stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr. To decide Therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive.

10. Suffice it will be to say that the precedents relied on by the petitioner are not applicable to the facts and circumstances of the present case.

11. The respondent No. 3 has held that the use of trade mark by a private limited company where the respondent No. 1 and his wife are the shareholders of 70% and 30% respectively should be and must be construed as use of trade mark either by the respondent No. 1 himself or with the implied permission or license of the respondent No. 1's company and, Therefore, it cannot be held that the trade mark was not used by the company of respondent No. 1.

12. Respondent No. 3 in its order dated 9th March, 2006 has rather found the lack of bona fide of the petitioner inasmuch as the petitioner filed his application for registration of identical mark only in 1995 and immediately on filing of the application of registered trade mark, he filed the application for rectification of respondent No. 1's mark whereas the word "Safari" was invented by respondent No. 1 in 1974 when he started his sole proprietorship concern, M/s, Shagun Udyog.

13. In the totality of facts and circumstances, there is no error or illegality in the order of the respondent No. 3 and there are no grounds to interfere with the same. Therefore, the writ petition is without any merit and is liable to be dismissed and is dismissed. Parties, however, to bear their own costs.