
(2018) 07 CAL CK 0083
In the Calcutta High Court
Case No : GA 1567 of 2018, CS 101 of 2018

Shambhu Nath & Brothers & Ors.

APPELLANT

Vs

Paras Nath Sharraf

RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Citation : (2018) 07 CAL CK 0083

Hon'ble Judges : SOUMEN SEN, J

Bench : Single Bench

Advocate : Debnath Ghosh, P.R. Sinha, S. Jana

Judgement

The petitioner No.1 is a registered partnership firm carrying on business under the trade name "Shambhu Nath and Brothers" since 1986. The

petitioner No.1 was engaged in the business of manufacturing and marketing electrical fans of all kinds including ceiling fans, table fans, pedestal fans

and exhaust fans. In order to distinguish the goods manufactured and marketed by the petitioners, in or about 1987, the petitioners adopted the

trademark "TOOFAN" written in a stylised manner with a gap at the top of the two "o"s in the word and the letter "F" written in

capital which is represented as "tooFAN". The said mark is written in a rectangular box with the sides curved and the word "TOOFAN"

forming only the distinctive and/or prominent feature in the said mark taken as a whole. The said mark "TOOFAN" and the stylised manner of

representation of the mark both have become distinctive of the product of the petitioners and no one else.

The petitioners had and have been carrying on manufacturing and marketing the said goods under the said trademark "TOOFAN" written in a

particular artistic get up continuously and extensively. The trademark 'TOOFAN' is printed on the products, packaging materials, brochures, warranty cards, bills and invoices of the petitioners. The petitioners have disclosed documents in the petition in justification of the statements made in the petition with regard to the distinctiveness of the said product and its wide sale.

In order to have statutory protection of the trademark 'TOOFAN', the petitioners, on 26th August 1993, filed an application being No. 605175 in

Class 11 under the Trade and Merchandise Marks Act, 1958 and the said mark was registered on 9th April 2012. The stylized representation of the

mark 'TOOFAN' was also registered under the Copyright Act on 30th April 2005. The petitioners claim that apart from the trademark

'TOOFAN', the petitioners adopted the mark 'SNB' as the house logo to represent their business, which is written in an artistic manner.

The three letters 'S', 'N' and 'B' have been derived from 'Shambhu Nath and Brothers' being the trade name of the petitioners.

The abbreviated trading name of the petitioner No.1, namely 'SNB' was also registered as a word mark on 18th August 2005. All the certificates form part of the petition.

The petitioners claim that since the said mark had over the years acquired goodwill and reputation in the market, unscrupulous traders tried to adopt

such marks and with a view to protect the property rights, the petitioners, from time to time, had to initiate several proceedings against such

unscrupulous traders. The basis of the petition appears to be that in December, 2017, the petitioners came to know that the respondent has applied for

registration of a composite label containing the marks 'TUUTANE' and 'TOOFAN' which was published in Trade Marks Journal 1827

dated 11th December 2017. It appears from the said advertisement that the respondent filed an application on 10th November 2017 in Class 11 under

the Trade Marks Act, 1999 for registration of a label mark containing 'TUUTANE' and 'TOOFAN' in respect of electrical fans and

including ceiling fans, exhaust fans etc. It also appears from the aforesaid application for registration and the advertisement published in the Trade

Mark journal that the respondent has not only adopted the deceptively similar Trade Mark 'TUUTANE' and 'TOOFAN' but also copies the

same artistic works comprising of petitioner's registered Trade Mark 'TOOFAN'.

It is also submitted by the petitioner that after the application for registration of the impugned mark 'TUUTANE' and 'TOOFAN' of the

respondent got advertised in the Trade Mark's journal the petitioner has filed a Notice of opposition as against the application for registration of

the respondent wherein it has been specifically stated that the adoption of the impugned mark was dishonest and wrongful and the same is against the

public interest. On comparison of the said two marks and having regard to the field of activity and the nature of the products, there cannot be any

doubt that the said mark 'TUUTANE' and 'TOOFAN' are deceptively similar to the marks

already registered in favour of the petitioners. In fact, the marks of the petitioners are infringed by user of the said infringing mark which clearly

shows the dishonest intention of the said respondent to ride on the reputation of the petitioners. That the respondent is seeking to infringe and pass off

his goods as that of the petitioners is prima facie established. In such circumstances and with the overwhelming evidence in favour of the petitioners,

in my view, the petitioners are entitled to an ex parte order since refusal to pass any such order would cause greater prejudice to the petitioners than

the passing would have under the facts and circumstances.

Under such circumstances, there shall be an order in terms of prayer (a) of the petition. The matter is made returnable two weeks hence. The interim

order shall continue for a period of eight weeks or until further order, whichever is earlier. The petitioners shall communicate this order along with a

copy of the plaint and petition by day after tomorrow by speed post with acknowledgement due and affidavit-of-service be filed on the next adjourned

date.