
(2001) 07 DEL CK 0156

In the Delhi High Court

Case No : Suit No. 1255 of 1998 and is No"s. 10089/98 and 2445 of 2001

Shashi Industries

APPELLANT

Vs

Mohinder Kaur trading as Maja Cosmetics

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151, 24

Citation : (2001) 60 DRJ 400

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : R.K. Aggarwal, for the Appellant; Amarjeet Singh, for the Respondent

Judgement

A.K. Sikri, J.—The plaintiff firm has filed the present suit for injunction restraining, passing off trade mark and for rendition of accounts against the defendant from using the trade mark MAZA for its product of Aggarbattis. This suit was filed in this court on 22nd June, 1998. Before that the defendant had filed similar suit against the plaintiff for restraining the plaintiff from the using the trade mark MAZA in respect of Aggarbattis and cosmetics. The said suit was filed in March, 1998 being Suit No. 34/98 and is pending before Ms. Sunita Gupta ADJ, Delhi. The defendant has filed IA.No. 10089/98 u/s 10 of CPC for staying the proceedings in the present suit on the allegations that the subject-matter of the two suits being substantially the same, this suit which is filed later in point of time should be stayed till the decision in Suit No. 34/98 filed by the defendant against the plaintiff and pending in District Court. On the other hand, the plaintiff has filed is No. 2445/2001 u/s 24 read with Section 151 CPC wherein prayer is made by the plaintiff for transfer of Suit No. 34/98 to this court, consolidate the two suits and try them together.

2. Admittedly in a suit filed by the defendant which is pending before the District Court, the relief claimed by the plaintiff in this suit would not be available to the plaintiff. Therefore, it would be more appropriate to transfer the Suit No. 34/98 to this court and try both the suits together. This was the course of action

adopted by this court in the case of Sardar Prithpal Singh Sabharwal v. Jagjit Singh Sabharwal 1996 III AD(Delhi) 281 in identical circumstances, the view I am taking also finds support from the judgment of the Supreme Court in the case of Pizza Hut Inc. USA v. Pizza Hut (I) 1997 PTC (17) 91.

3. Accordingly both these applications are disposed of with the directions that Suit No. 34/98 be transferred to this court and is consolidated with Suit No. 1255/98 and the proceedings would be taken in Suit No. 34/98.

Suit No. 1255/98

4. The case file of Suit No. 34/98 pending in the court of Ms. Sunita Gupta, ADJ, Delhi be sent of this court.

5. Renotify again on 16th October, 2001.