
(2003) 12 DEL CK 0033

In the Delhi High Court

Case No : CO. 11 of 1997

Shiva Tobacco Co.

APPELLANT

Vs

Naresh Kumar Jain and Another

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Trade Marks Act, 1999 — Section 100, 83

Citation : (2004) 72 DRJ 683 : (2004) 28 PTC 151

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Amarjit Singh, for the Appellant; S.K. Bansal and Rajan, for the Respondent

Judgement

Manmohan Sarin, J.—By this order, I would be deciding the plea of the petitioner in CO. 11/97 that the present Co. is not liable to be transferred to the Appellate Board, constituted u/s 100 of the Trade Marks Act, 1999. By this petition, petitioner seeks that the trade mark "TIGER" in the name of Madan Lal Jain trading as Ramji Lal Madan Lal Jain, be expunged from the Register of Trade Marks.

2. On a point of background, it may be noted that earlier IA. No. 10962/2002 was moved in this petition, seeking transfer of Suit No. 268/97, then pending in the Court of Sh. Chandershekhar. Additional District Judge, titled Shiva Tobacco Co. v. Madan Lal Jain and Anr.

3. With the consent of the parties, the said suit was transferred to this Court, to be tried Along with the present petition and Co. Nos. 22, 23 and 24/2001. On 14.10.2003, it was urged before the Court that the order dated 29.7.2003, transferring Suit No. 268/97 was liable to be recalled as Co. Nos. 11/97, 22, 23 and 24/2001 were to be sent to the Appellate Board u/s 100 of the Trade Marks Act, 1999. Suit No. 268/97 Along with counter claim, now renumbered as S. No. 81/2003, had been transferred to this Court with a view to ensure its hearing

with the above Cos. In view of the constitution of the Appellate Board to hear the Co., it was directed that the suit be listed before the Joint Registrar for appropriate orders on transfer. At that stage, Mr. Amarjit Singh, learned counsel for the petitioner had appeared and submitted that the present CO and the suit should not be transferred. He submitted that the order of transfer of suit was a consent order, exercising the discretion u/s 24 CPC and now the same could not be undone by the CO being sent to the Appellate Board and the suit being re-transferred to the District Courts.

4. I have heard Mr. Amarjit Singh, learned counsel for the petitioner in opposition but I am unable to accede to the request. It is well settled that when as a result of a legislative enactment exclusive jurisdiction is given to a particular authority, the jurisdiction in the other Courts to entertain the same stand out sled. Reference is invited to Hira Lall and Sons and Others Vs. Lakshmi Commercial Bank, to the following:-

".....Apart from this fact, we may notice that when exclusive jurisdiction has been given to the Tribunal under the Act in respect of matters that could be dealt with u/s 17 of the Act, the jurisdiction in other courts to entertain and decide such matters for recovery of debts due to banks and financial institutions stood ousted as provided u/s 18 of the Act. Further, Section 31 of the Act provides for transfer of cases from civil Courts to the Tribunal....."

Reference may also be invited to the following observations of the Supreme Court in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . The Court noted the judgment in AIR 1941 5 (Federal Court) which referred to the rule adopted by the Supreme Court of United States in Patterson v. State of Alabama, (1934) 294 US 600.

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change either in fact or in law, which has supervened since the judgment was entered."

5. Applying the above legal principles, it would be seen that by virtue of Sections 83 and 100 of the Trade Mark Act, 1999, the jurisdiction to try and entertain Cos exclusively vests with the Appellate Board. It is a case of ouster of jurisdiction of the Court. Accordingly, the Cos are liable to be transferred to the Appellate Board. The remaining question is whether Suit No. 268/97, which was transferred solely for the purposes of trial, with the consent of the parties, to be heard Along with Cos., is liable to be retained or not? The Appellate Board, admittedly, does not have the jurisdiction to try and entertain the suit. The CO can no longer be tried by this Court. The sole reason has ceased to exist for which the Court had exercised its power u/s 24 CPC to transfer the suit to this Court. Accordingly, this suit should be best left to be tried by the Court of competent jurisdiction. The plea of the petitioner for retention of Cos and suit in

this Court is accordingly, rejected. The CO be transferred to the Appellate Board and matter be listed before the registry. The order dated 29.7.2003, transferring Suit No. 268/97, now renumbered as S. No. 81/2003, titled Shiva Tobacco Co. v. Madan Lal Jain and Anr. from the District Courts, is recalled.

6. A copy of this order be also placed in the file of Suit No. 268/97. Now renumbered as S. No. 81/2003, titled Shiva Tobacco Co. v. Madan Lal Jain and Anr., pending in the Court of Mr. O.P. Gupta. Civil Judge, Delhi.