

(2017) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : 4186 of 2012

Sr. Supdt. of Post Offices

APPELLANT

Vs

Shri Mohan Lal Gupta

RESPONDENT

Date of Decision : 28-08-2017

Acts Referred:

Citation : (2017) 08 SHI CK 0005

Hon'ble Judges : Tarlok Singh Chauhan

Bench : Single Bench

Advocate : Ashok Sharma, Angrej Kapoor, Varun Rana

Judgement

1. When the case was taken up today for hearing, it was jointly represented by the parties that the issue in the instant writ petition is no longer res intergra in view of the judgment rendered by a Division Bench of this Court in bunch of writ petitions, lead case there being CWP No. 1849 of 2016, titled as Union of India and another vs. Ram Kishan, decided on 19.7.2016, the relevant portion of which reads thus:-

"It is stated that the issue involved in all these writ petitions is similar, based on similar facts. Accordingly, we deem it proper to club all these writ petitions and determine the same by this common judgment.

2. Issue notice. Mr. Varun Rana, Advocate, waives notice on behalf of the respective respondents. 3.

3. Mr. Varun Rana learned counsel for the respondent(s), stated at the Bar that the similar issue was raised before the High Court of Punjab and Haryana in a batch of writ petitions, which became subject matter of batch of LPAs, LPA No. 406 of 2009, titled as Senior Superintendent of Post Offices, Jalandhar Division, Jalandhar versus Darshan Ram, being the lead case, decided on 28th February, 2014, and LPA No. 1363 of 2014, titled as Sr. Superintendent of Post Offices Hoshiarpur Division versus Kishan Chand and others, alongwith other connected matters, decided on 25th August, 2014, which was also followed in LPA No. 1875

of 2014, titled as The Senior Superintendent of Post Offices, Hoshiarpur Division, Hoshiarpur versus Hari Dev and others, decided on 14th November, 2014, and prayed that these writ petitions be decided in terms of the judgments (supra).

4. We have examined the pleadings and gone through the judgments(supra), are of the considered view that the law thrashed out by the Punjab and Haryana High Court in the judgments (supra) is legally correct and we are also of the same view.

5. It is apt to record herein that the Apex Court in a latest judgment in the case titled as Neon Laboratories Limited versus Medical Technologies Limited and others, reported in (2016) 2 Supreme Court Cases 672, has directed that every High Court must given due deference to the law laid down by other Higher Courts. It is profitable to reproduce para 7 of the judgment herein:

"7. The primary argument of the Defendant- Appellant is that it had received registration for its trademark ROFOL in Class V on 14.9.2001 relating back to the date of its application viz. 19.10.1992. It contends that the circumstances as on the date of its application are relevant, and on that date, the Plaintiff- Respondents were not entities on the market. However, the Defendant-Appellant has conceded that it commenced user of the trademark ROFOL only from 16.10.2004 onwards. Furthermore, it is important to note that litigation was initiated by Plaintiff-Respondents, not Defendant-Appellant, even though the latter could have raised issue to Plaintiff-Respondents using a similar mark to the one for which it had filed an application for registration as early as in 1992. The Defendant-Appellant finally filed a Notice of Motion in the Bombay High Court as late as 14.12.2005, in which it was successful in being granted an injunction as recently as on 31.3.2012. We may reiterate that every High Court must give due deference to the enunciation of law made by another High Court even though it is free to charter a divergent direction. However, this elasticity in consideration is not available where the litigants are the same, since Sections 10 and 11 of the CPC would come into play. Unless restraint is displayed, judicial bedlam and curial consternation would inexorably erupt since an unsuccessful litigant in one State would rush to another State in the endeavour to obtain an inconsistent or contradictory order. Anarchy would be loosed on the Indian Court system. Since the Division Bench of the Bombay High Court is in seisin of the dispute, we refrain from saying anything more. The Plaintiff- Respondents filed an appeal against the Order dated 31.3.2012 and the Division Bench has, by its Order dated 30.4.2012, stayed it operation.

(Emphasis added)

6. At this stage, it is stated that the judgment in LPA No. 1875 of 2014 (supra) was questioned before the Apex Court by the medium of SLP (C) No. 1819 of 2016, titled as The Senior Superintendent of Post Offices Hoshiarpur versus Hari Dev, which came to be dismissed on 1st February, 2016.

2. In view of the above, I deem it proper to dispose of this writ petition in view of

the Judgments (supra) rendered by the Punjab & Haryana High Court, which shall form part of the judgment of this writ petition.

3. According, the writ petition is disposed of, alongwith pending application(s), if any.