
(2016) 07 SHI CK 0050

In the High Court Of Himachal Pradesh

Case No : CWPs No. 1849 of 2016 a/w CWPs No. 1671, 1779, 1822 to 1824 and 1832 of 2016

Union of India

APPELLANT

Vs

Ram Kishan

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 HimLR 2368 : (2016) LatestHLJ(HP) 1569

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Ashok Sharma, Assistant Solicitor General of India, with Mr. Ajay Chauhan, Advocate, for the Petitioners; Mr. Varun Rana, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - 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. 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 v. Darshan Ram, being the lead case, decided on 28th February, 2014, and LPA No. 1363 of 2014, titled as Sr. Superintenant of Post Offices Hoshiarpur Division v. Kishan Chand and others, along with 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 v. 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 v. Medical Technologies Limited and others, reported in (2016) 2 Supreme Court Cases 672, has directed that every High Court must give due deference to the law laid down by other High 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 its 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 officers Hoshiarpur v. Hari Dev, which came to be dismissed on 1st February, 2016.

7. In view of the above, we deem it proper to dispose of all these writ petitions in view of the judgments (supra) made by the Punjab and Haryana High Court, shall form part of this judgment also.

8. The writ petitions are disposed of accordingly along with all pending applications.