
(2015) 05 P&H CK 0317
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 101 of 2015 (O&M)

Vardhaman Crop. Nutrients Private Limited	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Companies Act, 1956 — Section 20, 22, 22(1)(b)
Trade Marks Act, 1999 — Section 33

Citation : (2015) 128 CLA 162 : (2015) 192 CompCas 312 : (2015) 180 PLR 547 : (2015) 131 SCL 529

Hon'ble Judges : Satish Kumar Mittal, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Anand Chhibar, Senior Advocate and Riya Bansal, for the Appellant; Alok Jain, Advocate, Senior Panel Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 17.12.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 13589 of 2012) filed by the appellant Company challenging the order dated 07.05.2012 (Annexure P-21) passed by the Regional Director (Northern Region), Ministry of Corporate Affairs (respondent No. 2 herein) directing the appellant Company under Section 22(1) (b) of the Companies Act, 1956 (hereinafter referred to as "the Companies Act") to delete the word "VARDHAMAN" from its existing name, has been dismissed.

2. We have heard learned counsel for the parties and have gone through the impugned order passed by the learned Single Judge as well as the order passed by respondent No. 2.

3. The brief facts of the case are that respondent No. 4, namely M/s. Vardhaman Fertilizers and Seeds Private Limited, is engaged in business of manufacturing and marketing Class I fertilizers, water soluble fertilizers and micro nutrients. The Company was/is selling its products under the brand name and trade mark

"VARDHAMAN" since the year 1991. The respondent Company was incorporated with the Registrar of Companies on 09.07.1987 with the name "M/s. Vardhaman Fertilizers and Seeds Private Limited". The respondent Company got registered its Trade Mark "VARDHAMAN" with the Trade Mark Registry on 08.02.2007 and the same is valid for a period of 10 years upto 08.02.2017. The appellant Company got itself incorporated with the Registrar of Companies on 29.05.2009 and started its business of manufacturing and marketing Class I fertilizers, water soluble fertilizers and micro nutrients, i.e. similar to the business of the respondent Company, under the brand name and trade mark "VARDHAMAN". On 11.10.2011, the respondent Company filed an application under Section 22 of the Companies Act seeking direction to the appellant Company to change/delete the brand name "VARDHAMAN", the registered Trade Mark of the respondent Company, as the same was undesirable and causing great loss of business, reputation and goodwill of its Company, and the appellant Company, doing business in the same field, was not entitled to get its Company registered with the same name. After issuing notice to the appellant Company, providing opportunity of hearing to both the Companies and considering the various documents produced by them, respondent No. 2 vide order dated 07.05.2012 allowed the said application, while recording a finding that "VARDHAMAN" is the registered trade mark of the respondent Company since 08.02.2007 and the appellant Company cannot deal in the same business with the brand name "VARDHAMAN", therefore, use of the same brand by the appellant Company is infringement of the rights of the respondent Company under the Trade Marks Act, 1999 (hereinafter referred to as "the Trade Marks Act"), and directed the appellant Company to delete the word "VARDHAMAN" from its existing name.

4. The appellant Company challenged the aforesaid order of respondent No. 2 by filing CWP No. 13589 of 2012, which has been dismissed by the learned Single Judge vide the impugned order.

5. Learned counsel for the appellant Company assailed the order passed by respondent No. 2 on the following grounds :--

"(i) That in the facts and circumstances of the case, respondent No. 2 was having no jurisdiction/power to direct the appellant Company to delete the word "VARDHAMAN" from its existing name, on the ground that it infringed the rights of the respondent Company under the Trade Marks Act. In that situation, the respondent Company has the remedy under the common law to file suit for injunction restraining the appellant Company from using the trade name, which is registered in the name of the respondent Company.

(ii) That the respondent Company is not entitled to the relief under Section 22 of the Companies Act, as while entering into an agreement dated 03.08.2009 with the appellant Company, the respondent Company had waived or acquiesced or acknowledged the use of its trade mark by the appellant Company.

(iii) That respondent No. 2, while passing the order dated 07.05.2012, did not

record a finding that the act of the appellant Company in using the registered trade mark of the respondent Company, was/is undesirable. Without recording such finding, respondent No. 2 could not pass the order under Section 22 of the Companies Act.

(iv) That there are 401 different Companies registered under the Companies Act with the Registrar of Companies with the name "VARDHAMAN", therefore, the appellant Company alone should not have been directed by respondent No. 2 to delete the word "VARDHAMAN" from its existing name."

6. After hearing the arguments of learned counsel for the parties, we do not find any substance in any of the contentions raised by learned counsel for the appellant Company.

7. In this case, it is an undisputed factual position that the respondent Company got itself incorporated under the Companies Act on 09.07.1987 with the name "M/s. Vardhaman Fertilizers and Seeds Private Limited", whereas the appellant Company got itself incorporated under the Companies Act on 29.05.2009 with the name "M/s. Vardhaman Crop Nutrients Private Limited". Both the Companies are dealing in the same business, i.e. manufacturing and marketing Class I fertilizers, water soluble fertilizers and micro nutrients, under the brand name "VARDHAMAN". It is also undisputed that the brand name "VARDHAMAN" for selling Class I fertilizers, water soluble fertilizers and micro nutrients, is the registered trade mark of the respondent Company since the year 1991.

8. It is the contention of the appellant Company that logo and packaging of its products are completely different from the respondent Company and there is no resemblance of shape of colour of packaging of the appellant Company. But this contention was not accepted either by respondent No. 2 or by the learned Single Judge, and it has been found as a fact that both the Companies are dealing in the same products under the same trade mark. In these facts, we are of the opinion that respondent No. 2 has ample power under Section 22 of the Companies Act to direct the appellant Company to delete the word "VARDHAMAN" from its existing name.

9. Sub-section (1) of Section 20 of the Companies Act provides that "No company shall be registered by a name which, in the opinion of the Central Government, is undesirable." Sub-section (2) lays down that a new company, which is identical with, or too nearly resembles--

"(i) the name by which a company in existence has been previously registered; or

(ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999,"

may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

10. Section 22 of the Companies Act further lays down that if a company is

registered by a name which in the opinion of the Central Government (which is respondent No. 2 in the instant case) is identical with, or too nearly resembles,

"(i) the name by which a company in existence has been previously registered, or
(ii) a registered trade mark of such company under the Trade Marks Act,"

it (Central Government), on an application by the first mentioned company, may direct the newly registered company to change its name. The proviso to Section 22 of the Companies Act provides that no such application shall be made after five years of coming to notice of registration of the company.

11. The power under Section 22 of the Companies Act is an independent power provided to the Central Government, and the remedy of filing suit for injunction restraining the defaulting company from using its registered trade name and mark is a different remedy available to the aggrieved company. The learned Single Judge, while relying upon a judgment of the Karnataka High Court in *Surya Elevators and Escalators India Private Limited Vs. Union of India and Others*, (2012) ILR (Kar) 5587, has rightly held that remedy under Section 22 of the Companies Act was not barred once the respondent Company had taken remedy of common civil law. Both these remedies, one under Section 22 of the Companies Act, and the other under the common civil law, operate in different fields. Under Section 22 of the Companies Act, the Central Government has no jurisdiction to grant injunction against the use of an undesirable name by a company, whereas in a suit for permanent injunction the Court cannot pass an order as could be passed under Section 22 of the Companies Act by the Central Government, directing the offending company to delete the registered trade mark of the previously registered company from its name. The jurisdiction of the Central Government under Sections 20 and 22 of the Companies Act and the jurisdiction of the Civil Court operate in two different fields. No contrary judgment has been cited before us. Thus, we do not find any force in the first contention raised by learned counsel for the appellant Company.

12. The second contention raised by learned counsel for the appellant Company that in the facts and circumstances of the case, by its conduct, waiver or acquiescence, the respondent Company be estopped from getting the word "VARDHAMAN" deleted from the existing name of the appellant Company, is also not sustainable. In support of this contention, learned counsel for the appellant Company relied upon Marketing Agreement dated 03.08.2009 (Annexure P-4) alleged to be entered into between the appellant Company and the respondent Company, whereby the appellant Company agreed to market the fertilizers supplied by the respondent Company with the trade name "VARDHAMAN". It has been argued that when the said agreement was executed, the respondent Company was well aware of the name of the appellant Company and its use for the same business, which is being run by the respondent Company. Learned counsel argued that from this conduct of the respondent Company, it should be inferred that the appellant Company had got incorporated itself with the

Registrar of Companies with the name "M/s. Vardhaman Crop Nutrients Private Limited" with the consent and knowledge of the respondent Company. The respondent Company has given its own version with regard to the said agreement and conduct of Shri Deepinder Singh Randhawa, who was earlier working with the respondent Company and has now incorporated the appellant Company. Be that as it may, the question remains as to whether in the facts and circumstances of the case, the plea of waiver/acquiescence is available to the appellant Company to assail the order passed by respondent No. 2. Undisputedly, in the present case, brand name "VARDHAMAN" is the registered trade mark of the respondent Company since the year 1991. If that is so, then the appellant Company was not legally entitled to get itself registered with the same name, particularly when both the companies are dealing in the same business, in view of the requirement of sub-section (1) of Section 20 of the Companies Act, which clearly provides that no company shall be registered by a name which, in the opinion of the Central Government, is undesirable and sub-section (2) clearly provides that registration of a company in the name which is being used by a previously registered existing company, or having a registered trade mark, may be deemed to be undesirable by the Central Government. In our opinion, if any one of these two facts are established, i.e. (i) that name of the new company to be registered is identical with, or too nearly resembles, the name by which a company in existence has been previously registered; and (ii) if the previously registered company is having a registered trade mark in the same name, in that situation, it will be deemed to be undesirable by the Central Government to register the said company in the same name. Further, in that situation, a right has been given to the aggrieved company to move an application before the Central Government seeking direction to the newly registered company to delete the same name from its name. The limitation prescribed is that no such application shall be considered after five years of coming to notice of registration of the new company.

13. Further, Section 33 of the Trade Marks Act lays down the effect of acquiescence. Sub-section (1) of this section provides as under :

"Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark, being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark--

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was not applied in good faith."

14. This provision further provides that acquiescence with regard to use of trade mark by another company must be for a continuous period of five years. Only in that situation, proprietor of the registered trade mark company is debarred from

taking action against the defaulting company. Because of this bar, limitation of five years has been provided under the proviso to Section 22 of the Companies Act. In the present case, the alleged acquiescence by the Marketing Agreement was on 03.08.2009, whereas the application for rectification was filed by the respondent Company on 11.10.2011, i.e. well within the period of five years. Therefore, in our opinion, the plea of waiver/acquiescence taken by the appellant Company has been rightly rejected by the learned Single Judge.

15. The third contention raised by learned counsel for the appellants is also without any substance. Whether in a given case, the act and conduct of registration of a company with a particular name is undesirable or not, is a question of inference. On the basis of the proven fact, the said inference can be drawn. Therefore, the contention that in the order passed by respondent No. 2, it was not recorded that the act of the appellant Company in using the registered trade mark of the respondent Company, was undesirable has no effect. In the facts and circumstances of the instant case, it has been proved that the appellant Company got itself incorporated with the name "M/s. Vardhaman Crop Nutrients Private Limited", which was identical to the already incorporated respondent Company; that "VARDHAMAN" was already registered trade mark of the respondent Company; and that both the companies are dealing in the same business. On the basis of these facts, inference could have been drawn that the act of the appellant Company was undesirable. Thus, we do not find any force in this contention.

16. In support of the fourth contention that there are 401 different Companies registered under the Companies Act with the Registrar of Companies with the name "VARDHAMAN", learned counsel for the appellants has drawn our attention to the list of 401 Companies, annexed with the writ petition as Annexure P-22. This contention is also devoid of any merit, because out of this list, only the appellant and the respondent Company are engaged in the business of manufacturing and marketing Class I fertilizers, water soluble fertilizers and micro nutrients. They are operating in the same field and business. The other companies are using the word "VARDHAMAN", but are engaged in different businesses. Even otherwise, it is for the already registered company to raise grouse to the Central Government under Section 22 of the Companies Act. If the newly registered company is infringing the rights of the already registered company under the Trade Marks Act, the later can approach the Central Government under Section 22 of the Companies Act. In the present case, the respondent Company had filed application under Section 22 of the Companies Act only against the appellant Company. On that application, respondent No. 2, after satisfying himself that registration of the appellant Company is undesirable, directed the appellant Company to delete the word "VARDHAMAN" from its existing name. Thus, we do not find any illegality in the said direction issued by respondent No. 2.

17. In view of the above, we do not find any merit in the instant appeal and the

same is, hereby, dismissed. However, the appellant Company is granted three months" time from the date of receipt of certified copy of this order, to change its name to some other name, after deleting the word "VARDHAMAN" from its existing name.