

Anuradha Doval Vs. The Controller of Patents and Designs and Ors.

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Court : Kolkata

Decided On : Apr-13-2017

Judge : Soumen Sen

Appellant : Anuradha Doval

Respondent : The Controller of Patents and Designs and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA SPECIAL JURISDICTION ORIGINAL SIDE
BEFORE: THE HONBLE JUSTICE SOUMEN SEN AID No.1 of 2015 ANURADHA
DOVAL versus THE CONTROLLER OF PATENTS AND DESIGNS & ORS.For the
Petitioner : Mr.Mr.Mr.Mr.Debnath Ghosh, Adv., Subhashish Sengupta, Adv.,
Sanjay Ginodia, Adv., Manoj Kumar Tiwari, Adv.For the Respondent No.3 :
Mr.Suddhasatva Banerjee, Adv., Mr.Supratik Roy, Adv.For the Respondents :
Mr.Rabi Prosad Mookherjee, Adv.Heard On : 09.02.2017, 16.02.2017, 09.03.2017,
30.03.2017, 06.04.2017.

Judgment On : 13.04.2017 Soumen Sen, J.:- The appeal is directed against an
order dated 10th December, 2014 under Section 36 of the Designs Act, 2000 by
which the application for cancellation of the design registered on 7th May, 2009
being registered design No.222799 in respect of Bottle Cap in Class 09-01 in the
name of Anuradha Doval was allowed.

The novelty statement endorsed in each representation sheet reads: The novelty of the said design resides in the shape and configuration of Bottle Cap as illustrated. The private respondent applied for cancellation of the registered design of the appellant on 24th December, 2012.

The ground stated in the petition for cancellation under Section 19 of the Designs Act, 2000 were: 1.

That the design has been previously registered in India.

2. That the design was published prior to the date of registration.

3. That the design is not a new or original design.

4. That the design is not registrable under the Act.

5. That it is not a design as defined under clause (d) of Section 2 of the Act.

The private respondent has contended before the Controller that a shape and configuration claimed as novel feature of the impugned design was conventionally used by the liquor industry since many years and thereby the design features are not new or original.

The impugned registration of the appellant was previously registered in India in view of previous registrations of Bottle caps and closures under registrations Nos. 195268, 195269, 200344, 200345 and 200682.

The shape and configuration of the impugned design is stated to be common feature of all plastic caps having been published in various documents.

The private respondent disclosed various documents including a magazine titled Ambrosia for issue of January/February, 2009 and submitted that in view of this prior art documents, the impugned design is neither new nor original.

It was further contended that the cylindrical shape of the cap as disclosed in the impugned design is conventionally used for bottles and the said shape is absolutely dictated by the nature of the product, as the containers where the

impugned design is to be used conventionally has cylindrical mouth.

The grid lines in the upper part of the bottle cap are used to provide maximum grip.

The appellant, however, contended that the design registered has distinct features of shape and configuration and it was never made and sold in India and other countries prior to its date of registration.

The representation of the registration consists of three sheets depicting front/rear view in the first sheet, top view in the second sheet and bottom view in the third sheet.

Novelty of the design has been claimed to be residing in the shape and configuration of the bottle cap.

Disclaimer statement was provided in respect of mechanical device, or other action of mechanism or in respect of any mode or principle of construction of the article.

Also colour or colour combination, letters, numerals, words or trademarks appearing in the representation were disclaimed.

The Assistant Controller after considering the definition of design in Clause (d) of Section 2 of the Act held that bottle cap is an article of manufacture and capable of being made and sold separately.

The design features of the article are applied by industrial process or means whether be manual, mechanical or chemical, separate or combined thereby developing a finished product.

The impugned design is not a mode or principle of construction and disclaimer statement regarding same has been provided in the representations.

The private respondent placed evidence of several registrations of India and abroad in respect of bottle caps having cylindrical shape and grid lines.

It is not corroborated that all the features of the impugned design are dictated solely by the function or functions which the article has to perform and, accordingly, the Assistant Controller construed that the impugned design is not a mere mechanical device.

However, on the issue relating to novelty or originality of the design, the Controller held that the appellants design cannot be held as new or original in view of prior published art documents.

The findings of the Controller on this issue are indicated below: Petitioners remaining evidences of prior publication are copies of one magazine Ambrosia.

Reference was particularly drawn to the pictures of bottles at rear page of front covers as well as back covers of the magazine issue of January 2009 (Vol.

16 No.8) and February 2009 (Vol.16 No.9). Comparison of the bottle caps of those pictures with the article of the impugned registration, it is observed that both the designs are substantially identical.

The broad features of the shape and configuration of the impugned registered design is not significantly different from the same article depicted in those pictures.

This magazine under evidence is stated to be a monthly journal printed and published in Mumbai.

It is stated to be of restricted circulation with rate of subscription by air as Rs.1000.00 in India and Euro 100/- a year worldwide.

This shows that those issues of the magazine Ambrosia were available in India as well as some other countries upon payment of subscription.

No condition has been mentioned in those issues of the magazine about non disclosure of secrecy to be maintained by the subscriber readers about the contents of the magazine.

It was held by Honble High Court in the matter of the Wimco Limited versus Meena Match Industries [Manu/DE/0255/1983].that: Para 10:It is not,

however, necessary to prove that large number of copies of the specification have been actually sold or circulated.

It is sufficient to show that the design was so described in the specification and some persons may fairly be supposed to have known of it.

The purpose of specification is an anticipation.

It was open to inspection in the Patent Office.

The presence of the specification or copies thereof constitute publication.

There is reasonable probability that a large number of persons obtained the knowledge of the specification including the design on the sides of the match box.

It constitutes a prior publication.

Para 15: The Newsletter, Ext.

P10, for the month of August 1977 contains the evidence of publication of the design prior to the date of registration...NEWSLETTER apart from being subscribed by M/s Pioneer Match Works was also having circulation in India.

Annexure D to the affidavit of Sr.Maheshwaran November dated 23, 1981 is the original publication of December 1976 of the British Matchbox Label and Booklet Society.

It gives the names of subscribers and members of the society.

In India it gives the names of Nahide Fatime, Sagar Rustom and Thiagraj Sr.M...These three persons in India were members and subscribers of the British Matchbox Label and Booklet Society in the years 1976, 1977 and 1978.

The copies of the Newsletter in the normal couRs.would have been sent to those three subscribers and it is reasonable to infer that they would have been received by them..The publication of the identical pattern in NEWSLETTER would be a publication in India on the receipt of the NEWSLETTER by those three persons.

Being published in India and as there is no obligation on the readers of those magazines in respect of disclosure and secrecy of the contents, the magazine can be considered as publication to destroy the novelty of a registered design.

Looking into the advertisements in those issues of th

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