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Nirmal Kumar Vs. M/S Tommy Hilfiger Licensing Llc and Ors

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Court : Delhi

Decided On : Jan-09-2015

Judge : Rajiv Sahai Endlaw

Appellant : Nirmal Kumar

Respondent : M/S Tommy Hilfiger Licensing Llc and Ors

Advocate for Def. : Mr. Vikas Mahajan, Mr. Vishal Mahajan

Advocate for Pet/Ap. : Mr. Kamal Kishore Arora, Mr. Gaurav Arora, Mr. Himanshu Arora

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

9. h January, 2015 % + LPA No.9/2015 NIRMAL KUMAR Through: .... Appellant Mr. Kamal Kishore Arora with Mr. Gaurav Arora & Mr. Himanshu Arora, Advs. Versus M/S TOMMY HILFIGER LICENSING LLC & ORS. Respondents Through: Mr. Vikas Mahajan, CGSC with Mr. Vishal Mahajan, Adv. for R-3&4. CORAM:HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 This intra-court appeal impugns the order dated 29th September, 2014 of the learned Single Judge of this Court, allowing the application of the respondent No.2 M/s Tommy Hilfiger Licensing BV to be substituted as a petitioner in W.P.(C) No.826/2014 originally filed by the respondent No.1 M/s Tommy Hilfiger Licensing LLC, as well as of allowing the

said writ petition.

2. Having gone through the paper book and being prima facie of the opinion that the order of the learned Single Judge requires no interference, we have heard the counsel for the appellant at length on the admissibility of the appeal.

3. The writ petition from which this appeal arises was filed by the respondent No.1 seeking a direction to the respondent No.4 (Registrar of Trade Marks) herein to cancel/withdraw/recall the Search Certificate No.TMR-D/CC/34267 issued under Rule 24(3) of the Trademark Rules, 2002 issued to the appellant (respondent No.3 before the learned Single Judge) and/or impugning the said Search Certificate.

4. The learned Single Judge in the impugned order dated 29th September, 2014 has noted that the Controller General of Patents, Designs and Trademarks had filed an affidavit in the said writ petition stating that a Committee was constituted on 11th February, 2014 for conducting an inquiry into how the impugned Search Certificate could have been issued and the said Committee had submitted its report dated 22 nd August, 2014 inter alia to the effect that the Certificate could not have been issued under the law and the issuance of the said Search Certificate amounted to utter misuse of power by the official concerned. The impugned order further records the statement of the counsel for the Registrar of Trademarks that explanation of the official who had issued the said Certificate had been called as to why disciplinary action should not be taken against him. The learned Single Judge in view of the said stand of the Registrar of Trademarks held that the petition had to be allowed and the Certificate had to be set aside / quashed. The learned Single Judge however recorded the contention of the counsel for the appellant that the respondent No.1 / writ petitioner having assigned its brand / subject trademark to the respondent No.2, was not entitled to maintain the writ petition. The learned Single Judge further recorded that respondent No.2 had filed an application for being substituted as a petitioner and for amendment of the writ petition and held that in view of the said application of the respondent No.2, the objection of the appellant did not survive.

5. As the aforesaid would show, the learned Single Judge in the impugned order has not himself adjudicated the validity of the Search Certificate impugning which

the writ petition was filed and has quashed the certificate in the face of admission of the Registrar of Trademarks who had issued the certificate that the same had been wrongly issued. We have thus enquired from the counsel for the appellant as to what possibly can be the grievance of the appellant against the impugned order and the grievance if any of the appellant has to be to the finding of the Committee constituted by the Registrar of Trademarks that the Search Certificate was wrongly issued.

6. The counsel for the appellant while not disputing the aforesaid, contends that no notice was given to the appellant by the Registrar of Trademarks or by the Committee constituted by the Registrar of Trademarks before concluding that the Certificate had been wrongly issued and thus the said decision of the Registrar of Trademarks is contrary to the principles of natural justice.

7. However what the counsel for the appellant forgets is that the challenge in the writ petition was to the issuance of the certificate by the Registrar of Trademarks and not to the decision of the Registrar of Trademarks that the certificate had been wrongly issued. It was / is for the appellant, if aggrieved from the subsequent decision of the Registrar of Trademarks, to take appropriate remedy thereagainst. The learned Single Judge in the impugned order has rightly observed that upon such stand being taken by the Registrar of Trademarks who had issued the Certificate, he had no option but to allow the writ petition.

8. The counsel for the appellant then contends that in fact the writ petition itself was not maintainable as alternative remedy against the issuance of certificate was available under the statute itself.

9. However we may mention that the rule, of not entertaining a writ petition if alternative remedy is available, is not an absolute but a discretionary rule. In the facts of the present case, when the authority issuing the impugned Search Certificate itself had admitted its mistake, the writ petition was rightly entertained.

10. The counsel for the appellant has next contended that the learned Single Judge erred in allowing the respondent No.2 to be substituted as a writ petitioner in place of respondent No.1 and ought to have dismissed the writ petition upon

finding that the respondent No.1 which had filed the writ petition was in fact not entitled to or had no locus to maintain the writ petition. It is further contended that no opportunity was given to the appellant to even file a reply to the said application. Reliance in this regard is placed on Anandilal Vs. State of Rajasthan 1975 RLW34laying down that an act which is void at its very inception, cannot be ratified by the principal.

11. In the aforesaid facts, we are of the view that this objection also has no merit. The learned Single Judge has rightly held that upon the Registrar of Trademarks who has issued the certificate itself admitting that the Search Certificate had been wrongly issued, the setting aside / quashing thereof was but consequential. Moreover, such substitution is permissible even under Order I Rule 10 of the CPC, sub rule (1) whereof permits substitution of plaintiff where a suit has been instituted in the name of the wrong person as plaintiff through a bona fide mistake. Though the CPC is not applicable to writ proceedings but the general principles thereof are applicable. We see no reason to interfere with the discretion exercised by the learned Single Judge in so substituting the respondent No.2 as the writ petitioner in place of respondent No.1. Further, in the face of Order I Rule 10 of CPC, the proposition laid down in Anandilal supra has no application.

12. The counsel for the appellant has lastly contended that such substitution as allowed in the writ petition would have consequences qua civil litigation pending between the appellant and the respondents No.1&2.

13. The learned Single Judge as well as this Bench was / is concerned only with the writ petition and not with the other civil litigation and the said argument also thus has no merits.

14. We do not find any merit in the appeal and dismiss the same. No costs. RAJIV SAHAI ENDLAW, J CHIEF JUSTICE JANUARY09 2015 gsr..

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