

Paras Traders Vs. Rajasthan Copy Maufacturers Association

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Court : Delhi

Decided On : Sep-01-2005

Reported in : 125(2005)DLT712

Judge : Vijender Jain and; Rekha Sharma, JJ.

Appeal No. : FAO (OS) 71/96 and CM 674/96

Appellant : Paras Traders

Respondent : Rajasthan Copy Maufacturers Association

Advocate for Def. : None

Advocate for Pet/Ap. : Chetan Sharma, Sr. Adv., ; Rajeev Kumar and; A.K. Goel,

Judgement :

Vijender Jain, J.

1. Aggrieved by the order passed by the learned Single Judge of this Court, this appeal has been preferred.

The dispute is with relation to trademark CHETAK and label CHETAK which according to the appellant, he is the the registered owner of the trade mark CHETAK in respect of its office files, exercise books and mathematical instruments vide certificate granted on 27th July, 1976.

2. The Registrar of Copyrights has also registered the label CHETAK vide registration no. A-15872/76. However, in view of certain documents, the learned Single Judge came to the conclusion that the respondent or its predecessor were prior user of the trademark of word CHETAK and thus declined injunction. The impugned order is of 27th November, 1995.

This Court while sitting in appeal will not substitute the finding on fact as it has been contended before us by the learned counsel appearing for the appellant.

Mr. Sharma appearing for the appellant says that the finding arrived at by the learned Single Judge that the notice was issued by the dealer of the appellant and, therefore, there was delay in taking action by the appellant and appellant has accused to the trade mark having been used by the respondent. All these issues can only be decided on a trial, for which evidence is required to be led by the parties. therefore, without interfering with the impugned order, we would only say that the impugned judgment shall not give an expression of opinion on the merit of controversy between the parties. It will be open to the learned Single Judge to decide the controversy after recording the evidence, un-influenced by the observations made by the learned Single judge in the impugned order.

3. The appeal stands disposed of accordingly.

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