

Jagatjit Industries Ltd. and anr. Vs. Controller General of Patents Designs and Trade Marks and anr.

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Court : Delhi

Decided On : Sep-13-2005

Reported in : 127(2006)DLT59

Judge : Vikramajit Sen, J.

Acts : Trade Mark Act, 1999 - Sections 57(4); Code of Civil Procedure (CPC) - Sections 10 and 151 - Order 1, Rule 10 - Order 39, Rule 4

Appeal No. : W.P. (C) 10080/2005

Appellant : Jagatjit Industries Ltd. and anr.

Respondent : Controller General of Patents Designs and Trade Marks and anr.

Advocate for Def. : S.P. Kalra, Sr. Adv. and ; Manoj Ohri, Adv. for the Respondent Nos. 1, 2

Advocate for Pet/Ap. : V.P. Singh and; Satish Chandra, Sr. Advs.,; Anil Sharma

Judgement :

Vikramajit Sen, J.

CMs No. 8978/2005 and 8980/2005

1. These applications under Order I Rule 10 and Order XXXIX Rule 4 Section 151 of the CPC filed by Austin Nichols and Company Inc. are for impleadment in the Petition and for vacation of interim Orders dated 31.5.2005 passed in these proceedings. In brief, the contention of the Applicant is that it is the holder of the trademark/label 'Blenders Pride' in over fifty countries and it has been in use internationally since 1973 and in India since 1995 in relation to the alcoholic beverages. The submission is that the impugned Order, the operation of which has been stayed, is in favor of the Applicant and hence it was a necessary party.

2. Mr. V.P. Singh, learned Senior Counsel appearing on behalf of the Petitioner submits that the prayers in the Petition are directed against the Trademarks Registry and hence the Applicant is not a necessary party. He, however, very fairly concedes that the Petitioner would have no objection if the Applicant is imp leaded and is heard in the Petition. Ordered accordingly.

3. So far as the stay application is concerned it shall be deemed to have been disposed of in terms of the Writ Petition itself.

WP(C) No. 10080/2005

4. Austin Nichols had previously approached this Court in WP(C) No. 2712-13/2005 2712-13/2005 which Petition was disposed of with the observation that the Controller General shall proceed to decide the issues arising out of the Show Cause Notice dated 16.2.2005 as expeditiously as possible in accordance with law. This Show Cause Notice dated 16.2.2005 was issued by the Registry of Trademarks, Mumbai calling upon the Petitioner to show cause under Section 57(4) of the Trademark Act, 1999 as to why the registration under Application No. 618414 under Class 33 should not be cancelled. Reply was to be filed with the Registry of Trademarks within thirty days. However, by a Second Show Cause dated 26.5.2005, issued by the Trademark Registry, New Delhi which has been impugned in the Writ Petition, the following Order has been passed by Assistant Registrar of Trademarks:

(5) Meanwhile, in the light of the pendency of the above proceedings under Section 57(4) of the Trade Marks Act, 1999, you are directed to return the above

registration certificate to the undersigned forthwith. You are further directed not to use the said certificate of registration in respect of the abovementioned trade mark in any manner for any purpose and in any proceedings since this certificate has inadvertently been issued to you.

5. It is the above Order which has been stayed by this Court.

6. Mr. Kalra, learned Senior Counsel appearing on behalf of Respondents No. 1 and 2 prays for further time to file Counter affidavit. He, however, submits that there should be no difficulty in passing final orders by the Assistant Registrar of Trademarks or any other officer to whom the matter is entrusted, in a time-bound period.

7. Mr. Sudhir Chandra, learned Senior Counsel appearing on behalf of Austin Nichols has prayed for an urgent hearing of the Writ Petition and it is his submission that the impugned paragraph 5, reproduced above, is legally sound and ought not to be interfered with.

8. Having heard learned Counsel for the parties in some detail I am of the view that it would be idle for this Court to go into the legal propriety of the Communication dated 26.5.2005 since it is essentially in the nature of an interlocutory arrangement. The questions which have been advanced in these proceedings would also necessarily have to be addressed before the Assistant Registrar of Trademarks or any other officer. I consider it more expedient to direct Respondent No. 1 to dispose of the proceedings on or before 16.11.2005. Neither of the contesting parties shall be granted more than one adjournment.

9. It appears that the Petitioner has filed a Civil Suit in the District Court, Jalandhar and has received an injunction restraining Austin Nichols from selling Blenders Pride whisky in India. Austin Nichols has filed a civil action in the High Court of Delhi in which the Petitioner has filed an application for stay of the proceedings under Section 10 of the CPC. Arguments have been addressed and order is awaited. Mr. Chandra submits that till 16.11.2005 status quo should be maintained in respect of the proceedings filed by the Petitioner in Jalandhar. Mr. Singh contends that this should also apply to the proceedings pending on the Original

Side of this Court. In view of the pending litigation in this Court as well as in Jalandhar it is expected that the District Court at Jalandhar will consider the expediency of adjourning the proceedings to any date beyond 16.11.2005 even if the Petitioner does not join in this request. Since orders are reserved in the proceedings on the Original Side of this Court, it will be inappropriate to make any observations in that regard.

10. This Writ Petition is disposed of in the above terms. Needless to say that the disposal of this Writ Petition shall not affect the rights of the parties to assail the final orders passed under Section 57(4) of the Trade Marks Act, 1999 by the Assistant Registrar of Trademarks.

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