

Paramjit Singh Narula and anr. Vs. Sunil Anchalia and anr

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Court : Kolkata

Decided On : Jul-08-2011

Judge : Prasenjit Mandal, J.

Acts : Trade Marks Act.

Appeal No. : C.O. No. 1081 of 2011

Appellant : Paramjit Singh Narula and anr.

Respondent : Sunil Anchalia and anr

Advocate for Def. : Mr. Hanif Ashrafi. Adv

Advocate for Pet/Ap. : Mr. P.B. Mukherjee; Mr. Habibur Rahaman. Advs

Judgement :

1. Challenge is to the order dated March 10, 2011 passed by the learned Additional District Judge, Alipore in Misc. Appeal No.513 of 2010 thereby affirming the order dated August 30, 2010 passed by the learned Civil Judge (Junior Division), 3 rd Additional Court, Alipore in Title Suit No.227 of 2008.

2. The plaintiffs / opposite parties filed a suit being the Title Suit No.227 of 2008 for declaration, permanent injunction and other reliefs. The defendants / petitioners herein are contesting the said suit. The plaintiffs filed an application for temporary injunction and then, the learned Trial Judge disposed of the application restraining

the defendants / petitioners herein from dispossessing the plaintiffs from its registered office at 49/5/H/149, Karl Marx Sarani, Kolkata-700023 till the disposal of the suit.

3. Being aggrieved, the defendants preferred a misc. appeal being Misc. Appeal No.544 of 2008 and the misc. appeal was allowed on contest with liberty to dispose of the application for temporary injunction filed by the plaintiffs without being influenced by the observations made by the Lower Appellate Court by an order dated December 19, 2009.

4. Thereafter, a civil revision being C.O. No.165 of 2010 was preferred by the plaintiffs and thus, the revisional application is disposed of by this Bench supporting the order of the Lower Appellate Court.

5. Thereafter, the plaintiffs filed an application for mandatory injunction asking the defendants to restore possession to the plaintiffs, holding that the defendants in violation of the order of injunction took forcible possession of the premises in question. The defendants preferred a misc. appeal being the Misc. Appeal No.513 of 2010 and that misc. appeal was disposed of by the learned Additional District Judge, 11 th Court, Alipore on March 10, 2011 affirming the order of the learned Trial Judge dated August 30, 2010. Being aggrieved by such orders, this revisional application has been preferred.

6. Now, the question is whether the impugned order should be sustained.

7. Upon hearing the learned Counsel and on going through the materials on record, I am convinced that there is nothing to interfere with the impugned order. The learned Lower Appellate Court has passed a reasoned order thereby affirming the order dated August 30, 2010 passed by the learned Civil Judge (Junior Division), 3 rd Additional Court, Alipore in Title Suit No.227 of 2008.

8. It is the allegation of the plaintiffs that in spite of order of temporary injunction, the defendants took forcible possession of the premises in question and for the reason, the learned Trial Judge passed the order dated August 30, 2010 directing the defendants to restore possession. Upon analyzing the material on record in

details, the Lower Appellate Court has also come to the same finding. Therefore, I am of the view that the concurrent finding should not be disturbed.

9. During the argument, Mr. Mukherjee appearing on behalf of the petitioners submits that as per observation of this Hon'ble Bench in C.O. No.165 of 2010, this Court has observed that District Judge is the appropriate Forum for deciding any dispute relating to Trade Marks Act. This Bench has observed that amongst others, the plaintiffs prayed for order of injunction relating to Trade Marks. But at present, we are not concerned with the matters relating to Trade Marks Act. We are concerned with the mandatory injunction as granted by the learned Trial Judge. The learned Trial Court has found that the defendants have violated the order of temporary injunction. The learned Lower Appellate Court has affirmed the said findings by passing a reasoned order.

10. Therefore, I hold that there is no scope of interference with the impugned order. This revisional application is dismissed accordingly.

11. Considering the circumstances, there will be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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