

IN THE COURT OF DISTRICT & SESSIONS JUDGE, BANKURA

Present : Sri Manojyoti Bhattacharyya (WB00392),
District & Sessions Judge, Bankura

Reg. no. Title Suit 03/2015

T.S. 01/2015

CNR no. WBBK01-000954-2015

Filing No. 672/2015

Order no. 76

22.12.2023

Today is fixed for order.

The record is taken up for passing order in respect of temporary injunction petition dated 03.08.2015 under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure and Section 135 Trade Marks Act, filed by the plaintiff Chandan Kumar Khan.

Heard the Ld. Advocates for both sides.

The contention of the petition for temporary injunction is that the plaintiff carries on business as the manufacturer and dealer of Bidi under the trade name "Beautiful Bishnupur Mukh Pora Bidi" having its office and business at Satyapirtola at the holding no. 392 of Ward no. 9 within the Bishnupur Municipality, Dist Bankura. The plaintiff has been carrying on the said business for a long time in the name and style of "Beautiful Bishnupur Mukh Pora Bidi" under his proprietorship. The plaintiff uses his trade mark on all its product, and the sale of plaintiff 's product is quite substantial both in Bishnupur town and Bankura town and also in other places of Bankura District. It is also the case of the plaintiff that the trade mark of his business under the name and style of "Beautiful Bishnupur Mukh Pora Bidi" is a registered business under the Trade Marks Registry, Government of India having Trade Mark no. 1281358 in Class 38 dated 28.04.2004. The alleged business of principal defendant no. 1,2 and 3 are unregistered and the alleged register no. 315323 as given in the label has been cancelled in the year 2004. The said registration number belonged to Chaitanya Charan Khan, since deceased and was canceled after the expiry of the validity period. The plaintiff's father, Late Chaitanya Charan Khan, during his life time had a long standing reputed business of manufacturing and selling of Bidi under name and style of "Beautiful Bishnupur Mukh Pora Bidi". After the death of the plaintiff 's father on 05.11.2005, the plaintiff continued to do the same business with the same trade license under his proprietorship in the same name and style. The plaintiff has advertised its products under the said trade mark extensively since last two years and spent a minimum sum of Rs. 3 lakhs on account thereon. By the reason of such extensive advertisement and sale of the products, the public accustomed with the said trade mark of the plaintiff. As such the plaintiff enjoyed good reputation and popularity in the different places of Bankura District. There are numerous customers of the plaintiff in the different places of Bankura District who preferred the branded Bidi to any other branded Bidi.

According to the plaintiff, sometime past the principal defendant no. 1 along with the principal defendant no. 2 and 3 being the businessmen of the Gujrat Community have been continuing illegally the same business of Bidi under the same name and style of "Beautiful Bishnupur Mukh Pora Bidi" with a photo of a man but showing V. Patel as seller on the label and with another label bounded with the bundle of 25 Bidis showing the alleged registered number as 315323 having been canceled in the year 2004 after the expiry of its validity period. The said registration number belonged to the plaintiff's father, Chaitanya Charan Khan, since deceased which is being used by the principal defendant no. 1, 2 and 3 with the same logo and trade name and the said principal

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defendants have been deliberately committing infringement of the registered trade mark relating to the right and violating the same in respect of the registered trade mark and as such the business of the principal defendants is also tainted with passing off as the principal defendants used the relevant trade mark which is identical with or deceptively similar to the plaintiff's trade mark. The alleged brand name with photo is similar to the plaintiff 's registered brand name i.e. "Beautiful Bishnupur Mukh Pora Bidi" with the photo of Chaitanya Charan Khan, the plaintiff 's father. The principal defendant no. 1, 2 and 3 have no right to continue their Bidi business using the trade name and logo of the plaintiff which is deceptively similar to that of the plaintiff. As such the principal defendant nos. 1, 2 and 3 should be restrained by an order of temporary injunction from using the plaintiff 's trade mark and logo and trade name "Beautiful Bishnupur Mukh Pora Bidi" and display the same in their bundle of their Bidi for sale and/or disposing of or dealing with assets which is deceptively similar to that of the plaintiff by using the trade mark, brand and logo of plaintiff etc.

The defendants/opposite party nos. 2 and 3 have entered appearance in this suit and submitted written objection against the petition for temporary injunction denying all the material allegations labeled against them.

According to the defence case, the plaintiff has not come in clean hands as he has concealed the actual state of affairs. It is not true that the plaintiff now carries the business of manufacturing of Bidi under the trade name "Beautiful Bishnupur Mukh Pora Bidi". He is not associated with that company for a long time and all his statements to the contrary are baseless and false. After the death of father, the plaintiff and defendant no. 1 could not run the business of manufacturing of Bidi due to different reason. They approached these defendants to take up the business and to run the business. These defendants were reluctant to take the charge of the company as the company has huge liability in the market. Thereafter, some reputed and responsible persons of Bishnupur requested these defendants to take charge of the business so that a good number of Bidi labours do not loss their jobs. Many sitings were held and ultimately these defendants became agreed to take charge of the business. Written documents were also prepared and there is clear declaration of the plaintiff in this regard. No force nor any threat nor any undue influence was made/exercised on the part of the defendants in the matter of handing over the business. In fact, these defendants were repeatedly persuaded by the plaintiff, defendant no. 1 and some other reputed gentlemen of the society for taking charge of the company. A huge amount was invested by these defendants and as the business has become steady, the plaintiff is now trying to grab the business out of grudge.

Perused the petition, W.O. and other relevant document.

Considered the argument of both sides.

It appears from the record that several documents have been submitted on behalf of the principal defendant nos. 2 and 3 by filing firisti. The said documents include the memorandum of settlement dated 27.05.2004, declaration of Chandan Khan and also the letter dated 24.09.2004 addressed to Assistant Labour Commissioner, Bishnupur, Bankura by Sri Chandan Khan. The said documents show that there was a serious dispute between the concerned employees and their employer i.e. Chandan Kumar Khan,

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the plaintiff of this suit. The Assistant Labour Commissioner, Bishnupur, Bankura had to intervene for solving the problem between the disputants and ultimately memorandum of settlement between Sri Chandan Kumar Khan and the representatives of the labours was executed on 27.05.2004. The letter dated 24.09.2004 by plaintiff Chandan Kumar Khan addressed to the Assistant Labour Commissioner, Bishnupur, Bankura shows that Chandan Khan has admitted in the said letter that though the memorandum of settlement was executed on 27.05.2004 in presence of the Assistant Labour Commissioner, Bishnupur, Bankura, the representatives of the Labour Unions (CITU and INTUC) and also in presence of the representatives of the Owners/employers, but he was unable to implement any of the decisions taken in the said memorandum of settlement. He has further stated in the said letter that in spite of his best efforts for running the business smoothly and peacefully, he was unable to do the same and accordingly he had relinquished his share in the said business in favour of his employees as per his Ownership Agreement and he gave permission to his employees/labours to use the label of "Beautiful Bishnupur Mukh Pora Bidi" and its market. He has also stated in the said letter that since 24.09.2004 that he has no responsibility in connection with the said products of Beautiful Bidi brought and propounded by Sri Chaitanya Charan Khan and sons.

Another declaration dated 26.09.2004 executed by Amarnath Khan (defendant no. 1) has also shown that as he and his brother were unable to manage the business in right direction they relinquished all their rights in favour of the labours so that the labours can continue the said business on their own.

It reveals from the record that on basis of those aforesaid documents this court vide order dated 21.09.2019 has observed that plaintiff and defendant no. 1 have already relinquished their right and dismissed the petition for temporary injunction filed by the plaintiff. Against the order dated 21.02.2019 plaintiff has moved before Hon'ble High Court, Calcutta. Hon'ble High Court, Calcutta pleased to pass order on 18.04.2022 in FMA 1184 of 21 and observe that the documents which relied by this court submitted by defendant no. 2 and 3, the authenticity of those documents are in dispute to show that the plaintiff and defendant no. 1 already relinquished their right in respect of labours of the said company including logo and label. Hon'ble High Court was pleased to set aside the order dated 21.02.2019 passed by this court and directed this court to re-hear the injunction petition on merit and required the defendant no. 2 and 3 to produce the said documents to ascertain whether there has been an abandonment or relinquishment of right or there has been any registered user agreement in favour of defendant no. 2 and 3 to use the said trade mark.

At the time of re-hearing of the petition defendant no. 2 and 3 failed to produce the original documents. Defendants have added two documents which are copies of letter in the pad of CITU of Bankura Bidi Karikori Union and another copy of letter in the pad of INTTUC. Both the letters don't carry any date of issue. Original letters were not produced.

It is not disputed by any side that the business originally belongs to Chaitanya Charan Khan, the predecessors i.e. plaintiff and defendant no. 1 and thereafter his legal heir took over the business. There might have some dispute for which some documents

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were executed. Not a single original document was produced from the side of defendants. On 16.08.2021 this court has rejected the prayer for temporary injunction filed by defendant no. 2 and 3 against the plaintiff. There is no clear document that the present plaintiff or legal heirs of Chaitanya Charan Khan have handed over the business and trade mark to defendant no. 2 and 3.

The registration of a trade mark gives certain statutory right to registered owner of the trade mark u/s 28 of Trade Marks Act, 1999. The said right cannot be defeated unless there has been a clear case of acquiescence, abandonment or assignment. The trade mark Act, 1999 also elaborately lays down the procedure of assignment of trade mark. Defendant has not filed any clear document to ascertain that the business of the company "Beautiful Bishnupur Mukhpora Bidi" with trade mark was relinquished, abandoned in favour of defendant by the plaintiff or other legal heirs of Chaitanya Kumar Khan. There was no registered user agreement in favour of defendant. I think plaintiff has prima facie case in his favour. Until there is any relinquishment or abandonment or user documents defendant should not use the trade mark. If defendant will continue to use trade mark for the same item plaintiff and other legal heirs of Chaitanya Kumar Khan shall suffer irreparable injury. Considered the balance of convenience and inconvenience, I think defendant no. 1 to 3 should be restrained from using trade mark till disposal of the suit.

Hence, it is

Ordered

that the petition for temporary injunction dated 03.08.2015 is allowed on contest but without any cost.

Defendant no. 1, 2 and 3 are hereby restrained by order of temporary injunction from using the trade mark logo and trade name "Beautiful Bishnupur Mukhpora Bidi" as mentioned in A schedule of the petition and displaying the same in their bundle of 'Bidi' at the market for sale till disposal of the suit.

According to this order the petition for temporary injunction dated 03.08.2015 are hereby disposed off.

Fix **12.02.2024** for P. hearing.

Dictated and corrected by me

Sd/- Manojyoti Bhattacharyya

District & Sessions Judge, Bankura

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