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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 770/2022 & I.A. 7192/2023**

BIJENDER SINGH KHOKHAR

.....Plaintiff

Through: Plaintiff in person.
Mob: 9953200500

versus

OLA FOODS (PISCES ESERVICES PVT LTD) & ANR.

.....Defendants

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi and Ms. Sanya Kapoor,
Advocates
Mob: 9810907412
Email: sanya@scalegal.in

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% **23.10.2024**

I.A. 7192/2023 (seeking framing of issues regarding the invalidity of the plaintiff's mark)

1. The present application has been filed on behalf of the defendant under Section 124 of the Trade Marks Act, 1999, read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking that a preliminary issue be framed regarding the invalidity of the plaintiff's mark, on the ground of non-use of the said mark.
2. Learned counsel appearing for the defendant submits that the present application has been filed with prayer for stay of the present suit, with



opportunity to the defendant to file a rectification petition against the mark of the plaintiff, i.e., BOWLSOME, registered vide no. 3546089 and 3546090.

3. Learned counsel appearing for the defendant submits that there has been no *bona fide* use of the said trademark in relation to the goods and services for which it has been registered. Thus, he relies upon Section 47 of the Trade Marks Act, 1999, to submit that a registered trademark may be removed from the Register of Trade Marks, in the event there has been no *bona fide* use of the same.

4. Learned counsel appearing for the defendant submits that the plaintiff has failed to show continuous and/or substantial use of the mark 'BOWLSOME', in any manner whatsoever. He submits that the plaintiff has failed to file even a single piece of document evidencing use of the mark 'BOWLSOME' by the plaintiff.

5. Attention of this Court has been drawn to the additional reply filed on behalf of the plaintiff to submit that the plaintiff himself has admitted the fact that he has not been using the mark.

6. Learned counsel appearing for the defendant further submits that the plaintiff has not been using the mark since 2019. He draws the attention of this Court to the document filed by the plaintiff himself along with the plaint to show that it is shown as permanently closed.

7. Thus, he submits that the preliminary issue be framed with respect to invalidity of the trademark of the plaintiff and that the defendant herein be allowed to file a rectification petition.

8. Per contra, Mr. Bijender Singh, plaintiff in person, appears and vehemently denies the submissions made on behalf of the defendant.



9. Mr. Bijender Singh, submits that the plaintiff has been using the mark 'BOWLSOME' continuously. He draws the attention of this Court to the various Emails sent in the year 2018 and 2019 to submit that the plaintiff has written to various entities for expanding his business under the mark 'BOWLSOME'. He has also drawn the attention of this Court to a document of the year 2019, wherein, the plaintiff has ordered for bowls. Thus, he submits that the plaintiff has been continuously using the mark 'BOWLSOME'.

10. He also relies upon the entry in the cash register of the year 2018 and 2019, to show that the mark was being used in the aforesaid years.

11. I have heard learned counsel for the parties and have also perused the record.

12. At the outset, this Court notes that all the documents that have been relied upon by the plaintiff, pertain to the year 2018 and 2019 and that there is nothing on record to show that the plaintiff has used the mark 'BOWLSOME' after the year 2019.

13. There is no invoice or any other document that has been placed on record to show current use of the mark 'BOWLSOME'.

14. This Court also notes the document as relied upon by the plaintiff, which shows that the plaintiff had ordered for bowls in the year 2019 and the other documents shown to this Court, viz., the Emails dated 22nd June, 2019, 8th January, 2018, 3rd April, 2018 and 6th April, 2018.

15. The Emails, which have been pointed out by the plaintiff, are Emails, which have been written by the plaintiff to various entities, with respect to his business. The said documents are mere correspondence made by the plaintiff, which do not in any manner indicate the use of the mark in



question for the business of the plaintiff. Similarly, document regarding placing of order for bowls, again, does not in any manner indicate the use of the mark in question.

16. There is nothing on record before this Court to show the continuous and *bona fide* use of the trademark. No invoices, receipt, or proof of sale of its product under the mark in question, has been placed on record by the plaintiff.

17. Considering the aforesaid, this Court is satisfied that the defendant has established a case that the issue with respect to the invalidity of the mark of the plaintiff is *prima facie* tenable.

18. Accordingly, the following issue is framed:

I. Whether the trademark registrations of the word mark 'BOWLSOME', registered vide no. 3546089 and 3546090, are liable to be cancelled/ rectified under Section 47 of the Trade Marks Act, 1999, on account of invalidity and non-use of the said trademark.

19. Accordingly, the defendant is granted liberty to file a rectification petition within a period of three months.

20. With the aforesaid directions, the present application is allowed, and accordingly, disposed of.

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21. List before the Joint Registrar (Judicial) for further proceedings on 3rd February, 2025.

MINI PUSHKARNA, J

OCTOBER 23, 2024

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