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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 700/2017, I.A. 15635/2017, I.A. 9821/2020 & I.A.  
26008/2023

M/S GOPIKA INDUSTRIES

....Plaintiff

Through: Mr. Vikas Khera, Ms. Sneha Sethia &  
Mr. Yash Sharma, Advs.

versus

DAYAL INDUSTRIES PVT. LTD.

....Defendant

Through: Ms. Kruttika Vijay & Ms. Yashi  
Bajpai, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

% **26.09.2025**

I.A. 9821/2020 (U/S. 124 of the Trade Marks Act, 1999)

1. The Plaintiff has filed the present suit inter alia on the plea alleging that the Plaintiff's trademark DYAL, registered under TM No. 709502 in Class 31 on 04.04.1996, has been infringed by the Defendant.
2. The Plaintiff is engaged in the business of selling 'cattle feed', and uses its mark DYAL in both English and vernacular दयाल.
3. The Defendant holds registration for its trademark DAYAL under TM No. 923948 dated 10.05.2000 in Class 31. The Defendant is similarly engaged in the business of manufacturing and marketing 'cattle feed', and uses its mark both in English and vernacular दयाल.
4. The Defendant, by way of this application, seeks permission to file a rectification petition against the Plaintiff's registered trademark TM No. 709502.
5. In the written statement, the Defendant has raised the plea of invalidity in relation to the Plaintiff's registered trademark on primarily four (4) grounds:



- a. Defendant is the prior user of the mark, DAYAL. Defendant has used the mark in relation to cattle field since 2000, whereas Plaintiff's earliest invoice in relation to its trademark is dated of the year 2001. It is stated that none of the documents filed by the Plaintiff, prior to 2001, demonstrate use of the trademark within the meaning of the Trademarks Act, 1999 ('Act of 1999').
- b. Defendant additionally claims prior user rights through its flagship company, Dayal Fertilizers Pvt. Ltd., which began the use of the mark 'DAYAL' in an allied and cognate class of goods in 1979. It is stated that the Defendant herein, along with its flagship company Dayal Fertilizers Pvt. Ltd. and other companies, constitutes a single economic entity known as Dayal Group.
- c. The registered mark, DAYAL/दयाल of the Defendant, is phonetically identical and visually similar to the Plaintiff's mark DYAL/ दयाल.
- d. The Plaintiff is attempting to ride on the Defendant's goodwill and reputation subsisting within the DAYAL mark to confuse consumers that its products originate from the Defendant. In other words, the Plaintiff is trying to pass off its goods as those of the Defendant. The Defendant, along with Dayal Fertilizers Pvt. Ltd., has already filed a commercial suit being CS(COMM) 101/2017 against the Plaintiff for infringement and passing off its mark DAYAL.

#### **Submissions by the Defendant**

5.1. Learned counsel for the Defendant contends that Plaintiff's reliance on Section 34 of the Act of 1999 to oppose this application is misplaced. It



is stated that Section 34 only prevents a registered proprietor, i.e., Defendant herein, from interfering with the rights of a person, i.e., Plaintiff herein, if the latter has used the impugned mark from a date prior to the registration of Defendant's mark or a date prior to the use of the Defendant, whichever is earlier.

It is stated that the Defendant has been using the mark since 05.12.2000, as evidenced by a purchase order placed by a customer, whereas the Plaintiff's earliest retail invoice on record dates from 2001. Therefore, Section 34 of the Act cannot be used by the Plaintiff as a defence to this application merely on account of a prior date of registration.

5.2. It is stated that though the Plaintiff's registration for its TM No. 709502 is 04.04.1996, there is no demonstrable use of this mark until 2001. It is stated that prior registration without contemporaneous demonstrable use would disentitle the Plaintiff from invoking Section 34 of the Act.

#### **Submissions by the Plaintiff**

6. In reply, learned counsel for the Plaintiff states that the Plaintiff first adopted the mark 'DYAL' in relation to cattle feed and applied for its registration on 04.04.1996 in Class 31, which was subsequently registered.

6.1. It is stated that correspondence with the statutory departments in 1996, 1998, and 1999 shows the use of the trademark. The invoices bearing the trademark between 01.06.2001 to 16.10.2016 have been placed on record. It also relies upon other documents issued by third parties between 2001 and 2016 to the plaintiff, mentioning the trademark.

6.2. It is stated that the Defendant has failed to prove prior user of the mark. The relevant cut-off date for determining prior use is 04.04.1996, i.e., when the Plaintiff applied for registration. Reliance is being placed on



Section 34 of the Act of 1999 and judgment of the coordinate bench of this Court in '**Worknest Business Centre LLP and Another v. Worknests through SH Raesh Goyal**'<sup>1</sup>.

6.3. It is stated that, on the other hand, the Defendant was incorporated in August 1998; however, reliance is being incorrectly placed on the sales of its group company, Dayal Fertilizers Pvt. Ltd. No reliance can be placed on the sales of the said group company, and in any event, the said company has filed its own independent rectification petition, being CO (COMM IPD-TM) 224/2022.

Notwithstanding the same, however, the said group company was admittedly not selling cattle feed. The sales turnover of the group company does not demonstrate the use of the impugned mark 'DAYAL' in relation to cattle feed. Accordingly, the group company's use of the mark 'DAYAL' is irrelevant to the issue at hand.

6.4. The Defendant herein applied for its TM registration on 10.05.2000, claiming user since 06.05.2000, and therefore the contention now given to claim user since 1979 is incorrect.

6.5. It is further stated that Plaintiff is using its mark only for the sale of cattle feed, and it has placed on record its sales figures, whereas Defendant has placed on record its consolidated sales figures, which also include sales of monkey feed, etc.

#### **Court's Findings**

7. This Court has heard the learned counsel for the parties and perused the record.

8. The Plaintiff applied for TM No. 709502 in class 31 for cattle feed on

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<sup>1</sup> 2023 SCC OnLine Del 1678



04.04.1996 and was granted registration. The Plaintiff has broadly relied upon the following documents to show its use of the mark between 04.04.1996 and 2016 (i.e., until the institution of the suit).

9. The Plaintiff has also relied upon the judgment of the coordinate Bench in **Worknest Business Centre LLP and Another v. Worknests through SH Raesh Goyal** (*supra*), wherein the relevant paragraphs are '16', '17', '18', and '20' and read as under: -

"16. Thus, the key question is whether the rights of a registered proprietor, who acquired registration for a mark planned for future utilisation, can be nullified by someone who deployed a similar mark after the registration date, but prior to the date of actual use of the registered proprietor.

17. In accordance with Section 18(1) of the Act, trademark proprietors can apply for registration if they wish to protect their mark, regardless of whether the mark is presently in use or planned for future use. The trademark owner must demonstrate actual use to maintain the registration, however, that is not the case here as the Plaintiff's mark is concededly in use. Defendants have not challenged Plaintiffs' registration and therefore, no further discussion is required thereon.

18. Plaintiffs' mark is registered, which grants exclusive proprietary rights and establishes a legal presumption of validity and ownership in their favour. This also prompts the application of provisions under the Act concerning the impact of registration, as well as the remedies available for infringement. Section 27(1) of the Act provides that no person is entitled to institute any proceedings to prevent or recover damages for infringement of an unregistered trademark. Under Section 28, registered proprietor of the trademark is vested with exclusive right to use the trademark in relation to goods or services in respect of which the registration is granted, and to obtain relief in case of infringement. The registered proprietor can initiate legal proceedings for infringement, without actual use of the registered mark.

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20. The exception carved out by the above-noted section overrides the other provisions of the Act and prevents a user of a registered mark



from interfering with the prior use of an identical mark. It begins with a non obstante clause and provides for defeasance of rights of a registered proprietor/user of a trademark, if any person has been continuously using a trademark that is identical with or nearly resembles the registered proprietor's trademark, from a date prior to the use of the registered proprietor's mark in relation to those goods or services, or the date of registration of the registered proprietor's mark in respect of those goods or services, 'whichever is earlier'. The relevant date for the purpose of establishing prior use in the present case would be the 'date of registration' of the mark and not when the Plaintiff actually started using it. In terms of Section 23(1) of the Act, date of filing of registration application is deemed to be the date of registration. Thus, for proving prior use it is incumbent upon Defendants to satisfy usage before 16 June 2018 (Plaintiffs' registration date). On this count, they have failed as admittedly Defendants' use commenced from September 2018, and not anytime earlier."

10. The aforesaid judgment authoritatively settles that the relevant date for the purpose of establishing prior use by the Defendant herein would be the date of the registration of the mark of the Plaintiff herein, i.e., 04.04.1996, and not when the Plaintiff issued its first commercial invoice, i.e., 01.06.2001.

11. This judgment also holds that documents of the registered proprietor showing steps taken by it to commence commercial use of the registered mark are evidence that the proprietor was interested in commercially using its mark and have to be read in favour of the proprietor.

12. The Defendant herein does not dispute the use of the mark by the Plaintiff as demonstrated by the invoices placed on record w.e.f. 01.06.2001. The Defendant, however, contends that the earlier documents of the Plaintiff filed on record for the period 1996 to 1999 do not demonstrate the use of the trademark and therefore the date of user has to be considered as 01.06.2001 vis-à-vis the Plaintiff. However, this submission of the Defendant cannot be



accepted in view of the law settled in **Worknest Business Centre LLP and Another v. Worknests through SH Raesh Goyal** (*supra*) as noted above. Therefore, in these admitted facts, it is evident that the Plaintiff herein is the prior user of the mark 'DYAL' in class 31 for cattle feed vis-à-vis the Defendant herein.

13. The Defendant has contended that its flagship company, Dayal Fertilizers Pvt. Ltd., has been using the mark दयाल since 1979, and if that user is taken into consideration, the Defendant herein would be entitled to assert prior user. However, this submission of the Defendant fails to persuade the Court for the reasons explained by the Plaintiff, i.e., Defendant in its TM No. 923948 for class 31 claimed user since 06.05.2000. In addition, Dayal Fertilizers Pvt. Ltd. was admittedly not carrying on any sales under its mark दयाल for the product of cattle feed.

Moreover, Dayal Fertilizers Pvt. Ltd. has already filed a separate rectification petition, i.e., C.O. (COMM.IPD-TM) 224/2022, asserting its own rights against the Plaintiff herein. The merits of the pleas raised by Dayal Fertilizers Pvt. Ltd. will be decided in the said petition.

14. The Defendant has also contended that cattle feed is an allied and cognate product to fertilizers, which were being sold by the flagship company Dayal Fertilizers Pvt. Ltd. under its mark दयाल and Plaintiff herein, with a view to ride on the reputation and the goodwill of the flagship company, adopted the impugned mark DYAL/ दयाल.

This submission of the Defendant will be a plea available to Dayal Fertilizers Pvt. Ltd. in its rectification petition; however, it is not available to the Defendant herein in view of its assertion of the use of the mark since



06.05.2000.

15. Keeping in view the law settled by the Supreme Court in ‘Patel Field Marshal Agencies and Another v. P.M. Diesels Limited and Others’<sup>2</sup> and Division Bench of this Court in ‘Amrish Aggarwal Trading as M/s Mahalaxmi Product v. Venus Home Appliances Pvt. Ltd. and Another’<sup>3</sup>, this Court is of the considered opinion that the plea of invalidity raised by the Defendant is not tenable. It does not give rise to a triable issue and therefore the application is dismissed.

16. It is clarified that no observation made in this order shall have any bearing on the merits of C.O.(COMM IPD-TM) 224/2022 pending between the Plaintiff and Dayal Fertilizers Pvt. Ltd.

**CS(COMM) 700/2017**

17. It is noted that issues in this matter were framed on 26.02.2020; however, the trial has not proceeded due to the pendency of applications.

18. Appropriate directions for proceeding with the trial shall be considered on the next date of hearing.

19. List for pending applications along with CS(COMM) 101/2017 and C.O.(COMM.IPD-TM) 93/2022, as well as connected petitions on **12.12.2025**.

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 26, 2025/gm/aa**

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<sup>2</sup> (2018) 2 SCC 112, at paragraph nos. ‘29’ and ‘41’

<sup>3</sup> 2024 SCC OnLine Del 3652, at paragraph ‘46’.