

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5082 OF 2005

PRAHALAD RAI AGARWALA Appellant (s)

VERSUS

GOPI CHAND KUKREJA & ANR. Respondent(s)

(With office report)

Date: 18/11/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Saurabh Kirpal, Adv.
Mr. Navin Chawla, Adv.
Mr. Jyoti Taneja, Adv.
Ms. Ekta Sarin, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Mr. Gurmehar Sistani, Adv.
Mr. Vinoba Bhoopathy, Adv.
Mr. Tushar Singh, Adv.

For Respondent(s) Mr. Ajayveer Singh Jain, Adv.
Mr. Uday Ram Bakodia, Adv.
Ms. Mamta Jain, Adv.
Dr. (Mrs.) Vipin Gupta, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is disposed of.

(Rajesh Dham)
Court Master

(S.S.R Krishna)
Court Master

(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5082 OF 2005

Prahalad Rai Agarwala ...Appellant

Versus

Gopi Chand Kukreja & Anr. ...Respondents

O R D E R

Mr. Mukul Rohatgi, Senior Advocate, appearing for the appellant filed an application with additional documents. Let it be taken on record. The office is directed to assign it a proper number.

This appeal arises from an order dated October 25, 2004 passed in Transferred Appeal No.133/2003/TM/DEL(CM(M) No.47/97) by the Intellectual Property Appellate Board (the 'IPAB'). The IPAB dismissed the appellant's appeal and upheld the order of the Deputy Registrar of Trade Marks, Delhi, allowing the respondents' application for the registration of the trade mark word per se 'RUPA' in respect of brassieres and panties in class 25 of the Fourth Schedule of the rules framed under the Trade and Merchandise Marks Act, 1958.

Mr. Rohtagi, referring to the additional documents brought on record submitted that apart from the registrations of the trade mark 'RUPA' in favour of the appellant that were already before the IPAB, both before and after the passing of the impugned order, a large number of registrations were made in the appellant's favour with the same trade mark 'RUPA' with different sub titles in respect of a variety of goods, including ladies brassieres and panties.

These materials were, of course, not before the IPAB while disposing of the appeal against the order of the Deputy Registrar. It is, therefore, in the fitness of things that the matter should be considered by the IPAB in the light of the additional registrations of the same trade mark in favour of the appellant in respect of the very same goods. We, accordingly, set aside the order of the IPAB coming under challenge and remit the matter to it for a fresh consideration after hearing the parties in accordance with law.

It will be open to the parties to amend their memo of appeal and the rejoinder affidavits in the light of the fresh materials on record.

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The appeal is disposed of accordingly without any order as to costs.

.....J.
(AFTAB ALAM)

.....J.
(R.M. LODHA)

NEW Delhi;
November 18, 2010.