

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5029 OF 1999

T.T.K.PRESTIGE LTD. & ORS.
...APPELLANTS

...

VERSUS

HAR PRASAD GUPTA AND ORS.
SPONDENTS

.....RE

O R D E R

The appellant claims to be the registered proprietor of the Trade Mark 'PRESTIGE' in respect of non-electrical cooking and kitchen utensils including pressure cookers . The case of the appellant is that in the year 1986, it learnt about the sale of pressure cookers under the mark 'PRE/STAGE'. A criminal complaint under Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 was filed before the Chief Metropolitan Magistrate, Delhi. Warrants were issued on several occasions against the respondents in the said criminal complaint and raids were conducted in which pressure cookers bearing the Trade Mark 'PRE/STAGE' were seized from the premises of the respondents. The appellant submits that the respondents stopped

manufacturing pressure cookers under the said name thereafter. However, in

2

November, 1989, the appellant claims to have come across an advertisement of

the respondents' application for registration of Trade Mark in the Trade Mark

Journal No.970 dt. 01.11.1989. The appellant filed opposition objecting to the

registration in favour of respondents of the Trade Mark 'PRE/STAGE'. In

July, it is stated that the respondents had started re-selling the pressure

cookers under the Trade Mark 'PRE/STAGE'. A suit was filed in January,

1991 by the appellant in the High Court of Delhi against the respondents

seeking an injunction to restrain them from manufacturing and marketing

pressure cookers under the Trade Mark 'PRE/STAGE'. An ex-parte interim

injunction was granted in the said suit in favour of the appellant. The suit was

transferred to the District Court in view of the amendment regarding the

jurisdictional value of the High Court of Delhi. On transfer, the suit was

numbered as Suit No.973/94. It was pending before an Additional District

Judge, Delhi who vide his order dt. 05.12.1995 vacated the ex-parte interim

injunction earlier granted in favour of the plaintiff (the appellant herein). An

appeal was filed against the said judgment of the Additional District Judge in

the High Court of Delhi which was registered as F.A.O. No.26/96. The said

appeal was disposed of by the learned Single Judge by the impugned order

dt.13.10.1998.

At this stage, it will be worthwhile to note about the fate of the proceedings regarding the respondents' application for registration of the

3

Trade Mark 'PRE/STAGE' in their favour before the Registrar, Trade Marks.

The appellant had filed objections in the Registry against the same. The

Registrar rejected the objections of the appellant and granted registration in

favour of the respondents. Against that order the appellant had filed an

appeal in the Delhi High Court which was registered as C.M. (M) No. 125/95.

This appeal was transferred to the Intellectual Property Appellate Board in

view of the amendment in the statute. The learned Judge of the High Court

while disposing F.A.O.No.26/96 has observed in the concluding part of para 21

of the impugned judgment as under :-

"iv) In case of cancellation of registration of the Trade Mark PRESTIGE in favour of the respondent, the respondent shall stand restrained from manufacturing or marketing pressure cookers under the trade name PRESTIGE."

This needs to be mentioned here that the word 'PRESTIGE' mentioned in the above-quoted para of the impugned judgment appears to be a mistake because the respondents had sought registration of Trade Mark 'PRE/STAGE' and not 'PRESTIGE'. 'PRESTIGE' is the registered Trade

Mark of the appellant. In the earlier part of the judgment, the learned Judge of the High Court has correctly mentioned the word 'PRE/STAGE' so far as it is claimed by the respondents. The learned counsel for the appellant informs

4

that the Intellectual Property Appellate Board has in the meanwhile decided the appeal in his favour and the registration granted in favour of the respondents regarding Trade Mark 'PRE/STAGE' by the Registrar, Trade Marks has been cancelled. Therefore, in terms of the operative part of the impugned judgment quoted above, the appellant is entitled to the injunction he had prayed for in the suit and the respondents are liable to be restrained from manufacturing or marketing pressure cookers under the Trade Mark 'PRE/STAGE'. At this stage, we may further note that while entertaining this appeal this Court had passed an interim Order on 12.01.1999 as under :-

"In the meantime, the respondents are restrained either by themselves or through their agents, servants or otherwise, from selling or offering for sale pressure cookers under the trade mark of "PRE/STAGE" or any other trade mark or mark deceptively similar to the trade mark "PRESTIGE" of the petitioners."

This order continues to be in force.

We are further informed that the main suit is still pending in the District Court and is now fixed for evidence of the parties. Keeping these

aspects in view, we direct that during the pendency of the suit, the interim

injunction granted by this Court in favour of the appellant on 12.01.1999 will

continue in force. The same will however abide the final decision of the suit.

Learned counsel for the appellant has drawn our attention to certain

observations made in para 19 of the impugned judgment which according to

5

him are not correct. The counsel for the respondents disputes this. Without

entering into this controversy, we make it clear that the observations will not

come in the way of the trial court in deciding the case on merits. This appeal is

disposed of accordingly.

No order as to costs.

.....J.

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N KUMAR)

(ARU

.....J.

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RAVEENDRAN)

(R.V.

NEW DELHI;

MARCH 9, 2006.

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). 5029 OF 1999

T.T.K.PRESTIGE LTD. & ORS

Appellant (s)

VERSUS

HAR PRASAD GUPTA AND ORS

Respondent(s)

Date: 09/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr.Hemant Singh, Adv.

Mr.B.V.Niren, Adv.

Mr. K.R. Sasiprabhu,Adv.

Mr.Ashish Verma, Adv.

For Respondent(s)

Mr. H.K. Puri,Adv.

O R D E R

The appeal is disposed of in terms of the signed order.

No order as to costs.

(Satish K. Yadav)

(Phoolan Wati Arora)

Court Master

Court Master

(Signed order is placed on the file)