

ITEM NO.6

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S).
31143-31144/2011
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 03/06/2011
IN RFA NO. 583/2004 AND RFA NO. 22/2005 PASSED BY THE HIGH COURT OF
DELHI AT N. DELHI)

BAKER HUGHES LTD.& ANR

PETITIONER(S)

VERSUS

HIROO KHUSHALANI & ANR RESPONDENT(S)
(WITH APPLN. (S) FOR PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD
AND INTERIM RELIEF AND OFFICE REPORT)
WITH
SLP(C) NO. 29839-29840/2011
(WITH INTERIM RELIEF AND OFFICE REPORT)

Date : 25/11/2014 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. T.R. Andhyarujina, Sr. Adv.
Mr. C.A. Brijesh, Adv.
Ms. V. Mohini, Adv.
Ms. Maidini, Adv.
Mr. Satya Mitra Garg, Adv.

For Respondent(s) Mr. P.P. Malhotra, Sr. Adv.
Mr. Mohit Paul, Adv.
Mr. Vineet Malhotra, Adv.
Mr. Yasir Rauf, Adv.

Mr. Debasis Misra, Adv.

Signature Not Verified

Digitally signed by
Vinod Lakhina
Date: 2014.11.28
17:28:05 IST
Reason:

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

Leave granted.

The appeals are allowed in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.10554-10555 OF 2014
[Arising out of Special Leave Petition
(Civil) Nos.31143-31144 of 2011]

BAKER HUGHES LTD.& ANR. ...APPELLANTS

VERSUS

HIROO KHUSHALANI & ANR. ...RESPONDENTS

WITH

CIVIL APPEAL NOS.10557-10558 OF 2014
[Arising out of Special Leave Petition
(Civil) Nos.29839-29840 of 2011]

ORDER

1. Leave granted.

2. In an appeal by the defendants challenging the judgment and decree dated 16th September, 2004 passed by the learned trial Court decreeing the suit for specific performance, permanent injunction and damages, the High Court of Delhi, by the impugned order, has held the suits, filed by the plaintiffs, to be not maintainable.

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3. The suit was filed specifically for the following reliefs:

"(i) A Decree of Permanent Injunction be issued to restrain the Defendants, jointly and severally, their directors, partners, distributors, representatives, servants and agents from using the word "BAKER" or any other word similar thereto as a corporate name or

trading style'

(ii) A Decree of Permanent Injunction be issued to restrain the Defendants, jointly and severally, their director, partners, distributors, representatives, servants and agents from passing off their business, services and goods as and for that of the Plaintiffs by use of the word "BEKER" or any other word deceptively similar thereto as a trade make or as a trading style;

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(iii) A Decree for the specific performance directing the Defendants, jointly and severally, to perform their contractual obligation, under Agreement dated December 21, 1984 and forthwith take necessary steps to change, or cause to be changed, the corporate name of the second Defendant, by deleting the word BAKER therefrom.

(iv) A Decree of direction to the Defendants, jointly and severally, to take appropriate steps before the Registrar of Companies and before all other appropriate authorities to effect the change of the corporate name of the second Defendant so as to delete at the name BAKER therefrom.

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(v) A Decree in the sum of Rs.5,05,000/- payable by the Defendants,

jointly and severally, to the Plaintiffs,
jointly and severally, by way of damages.

(vi) A Decree of delivery up of all
boards, barrels, letter heads, publicity
materials and all and every other object
or material, printed and/or other material
bearing the word BAKER or any other word
deceptively similar thereto.

(vii) Costs be awarded in favour of
the Plaintiffs.

(viii) Such other and/or further
reliefs be granted as the Hon'ble Court
may deem fit and proper in the
circumstances of the case."

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4. The High Court after holding the
suit to be not maintainable, however, has
remanded the same to the learned trial
Court so as to give a fresh opportunity to
the plaintiffs to cure the "technical
defect" of not placing before the Court a
duly valid Power of Attorney authorizing
the Attorney to sign the plaint and
institute the suit in question.

5. A reading of the order of the High
Court would go to show that on perusal of
the learned trial Court's record, a
conclusion was reached that the original
Power of Attorneys were not produced or
filed by the plaintiffs. Though there is

some amount of doubt on the aforesaid score in view of the categorical finding in this regard by the learned trial Court, even if we are to proceed on the basis of

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the High Court's order, what we find is that the photocopies of the Power of Attorneys were placed on record and marked as Exhibits PW-2/3 and PW-2/4. The High Court, on examination of the aforesaid Power of Attorneys, concluded that insofar as Exhibit PW-2/3 is concerned, "the same does not appear to be carrying a proper seal of the Notary Public although it does carry certification and authentication from the Notary Public". Insofar as the Power of Attorney marked Exhibit PW-2/4 is concerned, the High Court concluded that "the same does carry the seal of the Notary Public and a notarial certificate certifying the execution and authentication of the said attorney by the Notary Public."

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6. Notwithstanding the above findings, the High Court concluded that insofar as the Power of Attorney i.e. Exhibit PW-2/3 is concerned, as the same does not carry the seal of the Notary, the said document cannot be held to be authorizing the Attorney to file the suits in question. So far as Exhibit PW-2/4 is concerned, the finding of the High Court

is that the Resolution of the Board authorizing the execution of the Power of Attorney has not been filed and, therefore, the same, similarly, ought not to be held to be authorizing the filing of the suit.

7. Shri T.R. Andhyarujina, learned Senior Counsel appearing for the appellants, in the course of his arguments, has placed before this Court the photocopy of the Notarizations insofar

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as Exhibit PW-2/3 and Exhibit PW-2/4 is concerned along with the copies of the Power of Attorneys. A perusal of the said documents would clearly go to show that the execution of the Power of Attorney, Exhibit PW-2/3, has been duly notarized and the notarization does carry the seal of the Notary Public. Similar is the position with regard to Exhibit PW-2/4.

8. Having considered the notarizations which are duly sealed and certified, we are of the view that the High Court was not justified in coming to the conclusion that the said documents do not authorize the filing of the suits in question so as to render the said suits not maintainable in law. In fact, the High Court itself in Para 32 of its order has recorded that so far as the Power of Attorney Exhibit PW-2/3 is concerned, the

same does carry due certification and authentication from the Notary Public. Similarly, the High Court itself has held that so far as the Power of Attorney Exhibit PW-2/4 is concerned, the same does carry the seal of the Notary Public along with the notarial certificate. On the basis of the findings recorded by the High Court itself, the eventual conclusions reached does not appear to be tenable.

9. Shri P.P. Malhotra, learned Senior Counsel appearing for the respondents, has urged that the High Court has framed a question No.3 with regard to the issue of dual capacity of a Power of Attorney Holder, who was also a counsel, to file the suit. The finding on the said question of the High Court is against the present respondents. Shri Malhotra submits that the said finding is patently unacceptable.

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10. In the absence of any challenge to the aforesaid finding of the High Court, we are of the view that the aforesaid issue should not detain us any further. If the respondents were, in any way, aggrieved by any of the findings recorded in the High Court's order, the respondents ought to have challenged the same by filing a separate Petition for Special

Leave to Appeal against the said findings.

The same not having been done, we are not inclined to go into the above question as raised.

11. In the result, we allow the appeals; set aside the orders of the High Court; and remit the matter to the High Court for consideration of the appeal(s) on merits. Having regard to the long period of time that has elapsed, we request the High Court to expedite the

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hearing of the appeal(s) so that the same can be brought to an early conclusion which reasonably ought to be within a period of six months from the date of receipt of a copy of this order.

12. The appeals are allowed in the above terms with no order as to costs.

.....,J.
(RANJAN GOGOI)

.....,J.
(ROHINTON FALI NARIMAN)

NEW DELHI
NOVEMBER 25, 2014