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

\+ C.O. (COMM.IPD-TM) 150/2021

M/S SITA RAM IRON FOUNDRY AND ENGINEERING WORKS .....Petitioner

Through: Mr. Ajay Amitabh Suman, Mr. Shravan Kumar Bansal, Mr. Rishi Bansal, Mr. Rishabh Gupta, Mr. Pankaj Kumar and Mr. Deepak Srivastava, Advocates.
Mob: 9990389539
Email: amitabh@unitedandunited.com

versus

HINDUSTAN TECHNOCAST (P) LTD. AND ANR. .....Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC along with Mr. Vivek Sharma, Advocate for Registrar of Trademarks.
Mob: 9810982923
Email: radhika.arora21@gmail.com
Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap and Mr. Varun Pratap Singh, Advocates for UOI.
Mob: 9355665877

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% 09.07.2025

MINI PUSHKARNA, J:

1. The present petition has been filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 **("the Trade Marks Act")**, seeking

cancellation/removal from the Register of Trade Marks, the trademark "BADAL" **("impugned mark")** registered on 15th February, 2000, under application no. 554483 in Class 07 in favour of the respondent no. 1, i.e., Hindustan Technocast (P) Ltd., with the date of application being 15th July, 1991, and a user detail of 01st January, 1945.

2. As recorded in the order dated 18th January, 2022, the present petition has been received from the Intellectual Property Appellate Board **("IPAB")**, consequent to its abolition and upon promulgation of the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021.

3. This Court notes that the counsel for respondent no. 1 had last appeared before this Court on 29th May, 2023, and despite repeated opportunities provided to the respondents, no reply was filed on behalf of the respondents. Therefore, *vide* order dated 15th September, 2023, the right of the respondents to file their reply, was closed.

4. Subsequently, as recorded in the order dated 09th July, 2024, counsel for respondent no. 2, i.e., Trade Marks Registry, submitted that the respondent no. 2, being a proforma party, was not required to file any reply to the present petition.

5. This Court *vide* order dated 12th November, 2024 had also issued a Default Notice to the respondents, however, a perusal of the office noting shows that the respondent no. 1 was un-served with the noting *"unserved as not under jurisdiction"*. Upon insistence of learned counsel appearing for the petitioner that respondent no.1 had earlier been appearing before this Court, and was aware of the present proceedings, and that there was no need

for issuance of any further notice to respondent no.1, this Court proceeded to hear the present matter.

6. The present rectification petition has been filed consequent to an application under Section 124 of the Trade Marks Act, filed by the petitioner herein which was allowed *vide* order dated 24th May, 2019, in a Civil Suit filed on behalf of respondent no. 1 herein. The said suit, bearing no. *CS/10/2015* has been filed by respondent no. 1 herein, before the District Court, Jind, Haryana, with a claim of infringement and passing off of its registered mark, 'BADAL'. The said suit has been filed by respondent no. 1 against five defendants, with the petitioner herein, being defendant no. 2.

7. Further, it is noted that the other defendants in the said suit, i.e., defendant nos. 1 and 3, i.e., M/s. B.K. Steel Industries and M/s. Dewan Engineering Works, have filed two other rectification petitions before this Court bearing nos. *C.O. (COMM.IPD-TM) 74/2021* and *C.O. (COMM.IPD-TM) 164/2021*, for the rectification of the impugned trademark "BADAL", against the respondent no. 1 herein. A perusal of the order sheets in the said matters show that the pleadings therein are at an advanced stage.

8. The case, as set up in the present petition by the petitioner, is as follows:

8.1 The petitioner company is a partnership firm which has been carrying on business under the name of M/s. Sita Ram Iron Foundry and Engineering Works, presently engaged in the business of manufacturing and marketing of Toka machines, which are used to cut and shred fodder.

8.2 The petitioner herein is the proprietor of the trademark "GHANGHOR BADAL" registered on 13th January, 2017, bearing

registration no. 2611791, having the date of application as 14th October, 2013, in relation to the goods under Class 07 pertaining to 'TOKA' and has been continuously using the said trademark since 15th April, 2002.

8.3 The petitioner has been extensively carrying on the business under the aforesaid registered trademark and the goods of the petitioner are distributed in major parts of the country.

8.4 The said goods and business bearing the trademark "GHANGHOR BADAL" are highly demanded in the market on account of their standard quality and precision. Therefore, business and goods under the said mark are identified by the consumers at large as originating exclusively from the petitioner's source and has ultimately become *distinctive indicium*.

8.5 The petitioner's goods under the mark "GHANGHOR BADAL" due to its continuous use, has acquired tremendous goodwill, sale and reputation in the market.

8.6 On account of satisfaction of the petitioner's proprietary rights in the aforesaid trademark, the Registry of Trade Marks, on 08th August, 2016, had advertised the same in the Trade Marks Journal no. 1757-0. Although, the Examination Report as issued by the Registry of the Trade Marks had cited the impugned registered mark "BADAL" bearing application no. 554483 of the respondent no. 1 as an objection, however, the said objection was subsequently overruled by the Registry of Trade Marks, upon receipt of the reply to the said Examination Report by the petitioner.

8.7 Respondent no. 1, in the present case, is the registered proprietor of the impugned trademark "BADAL" bearing application no. 554483 filed on

15th July, 1991 in Class 07, which pertains to chaff cutter machines, wheat threshers, centrifugal pumps, etc.

8.8 Respondent no. 1 has filed the Civil Suit, bearing no. *CS/10/2015* before the District Court, Jind, Haryana, alleging infringement of its trademark "BADAL", and other formative trademarks by five different entities. Respondent no. 1 herein, in the said suit, has pleaded that the mark "GHANGHOR BADAL" of the petitioner herein is deceptively similar to its alleged trademark "BADAL".

8.9 In the aforesaid suit filed by it, respondent no. 1 herein claims to be the owner of the registered mark "BADAL", bearing application no. 554483, by way of the alleged Assignment Deed dated 12th April, 2011. However, respondent no. 1 received the impugned registration in its favour by playing fraud upon the Registrar of Trade Marks.

8.10 Defendant nos. 1 and 3 in the said Civil Suit bearing no. *CS/10/2015* pending before the District Court, Jind, Haryana, i.e., M/s. B.K. Steel Industries and M/s. Dewan Engineering Works, have also filed two rectification applications before the erstwhile IPAB (now pending before this Court) seeking cancellation of the impugned trademark "BADAL", bearing application no. 554483.

8.11 In view of the said rectification applications, the petitioner herein, along with the other defendants in the suit, filed an application under Section 124 of the Trade Marks Act, praying for stay of the suit proceedings. The said application was duly considered and allowed by the District Court, Jind, Haryana, *vide* its order dated 24th May, 2019, thereby, staying the proceedings in the Civil Suit bearing no. *CS/10/2015*, to await the outcome

of the rectification proceedings pending before the IPAB, and now, before this Court.

8.12 Petitioner, in the last week of July, 2019, came across the fact that one, Mr. Anil Kumar, who has been carrying on his business from the same address as that of the respondent no. 1 had filed a cancellation petition for cancelling the registration of the trademark "GHANGHOR BADAL" on the basis of the registration of the impugned mark "BADAL".

8.13 However, neither Anil Kumar nor the respondent no. 1, have any locus to initiate any proceedings against the petitioner's registered mark "GHANGHOR BADAL". Further, in the aforesaid cancellation petition, Anil Kumar has nowhere stated nor filed any documents to substantiate as to how he is the owner and proprietor of the registered trademark "BADAL".

8.14 As per the records available on the Trade Marks Registry website, the impugned trademark "BADAL" is registered in favour of respondent no. 1. However, respondent no. 1, itself, has wrongly and illegally been entered as registered proprietor of the mark "BADAL" in the records of the Registry of the Trade Marks.

8.15 The impugned trademark "BADAL" was originally applied for registration on 15th July, 1991 by Mr. Iqbal Singh Sehmbey, Mr. Sukhminder Singh Sehmbey, and Mr. Tejinder Singh Sehmbey, carrying on business as partners of the partnership firm, i.e., M/s. Jodh Singh Sehmbey and Sons at G.T. Road, Goraya, Punjab.

8.16 Further, M/s. Jodh Singh Sehmbey and Sons filed a Form TM-16 dated 16th June, 2006 before the Registrar of Trade Marks for amendment of the TM-1, i.e., application for registration of trademark "BADAL", stating

that the applicant partnership firm was owned by the Hindu Undivided Family **("HUF")** of S. Gurmeet Singh Sehmbey, whose Karta is Mr. Iqbal Singh Sehmbey, and by error three partners of the said HUF were shown as the partners in the TM-1 application. However, no order was passed by the Registry of the Trade Marks in this regard.

8.17 On the same date, i.e., 16th June, 2006, Mr. Iqbal Singh Sehmbey, claiming to be the sole proprietor of M/s. Gurmeet Singh Sehmbey and Sons, filed a Form TM-24, seeking to record the alleged assignment of the impugned trademark in his favour on the basis of Assignment Deed dated 25th May, 2006, thereby, assigning the mark from M/s. Jodh Singh Sehmbey and Sons to himself, as Mr. Iqbal Singh Sehmbey was the sole proprietor of M/s. Gurmeet Singh Sehmbey and Sons.

8.18 Therefore, the said Assignment Deed dated 25th May, 2006 has been executed by Mr. Iqbal Singh Sehmbey, both as the assignor and assignee, without executing the signatures of other partners of the aforesaid partnership firm, i.e., M/s. Jodh Singh Sehmbey and Sons.

8.19 Subsequently, respondent no. 1 got the alleged assignment from Mr. Iqbal Singh Sehmbey, who claimed to be sole proprietor of M/s. Gurmeet Singh Sehmbey and Sons. However, at the time of the assignment, Mr. Iqbal Singh Sehmbey was not the registered proprietor of the impugned mark "BADAL".

8.20 Respondent no. 1 claims ownership/proprietorship of the impugned mark "BADAL" by virtue of the Assignment Deed dated 12th April, 2011. However, the assignor of the said Deed, i.e., Mr. Iqbal Singh Sehmbey trading as M/s. Gurmeet Singh Sehmbey and Sons, had never come on

record as the registered proprietor of the impugned mark, but had merely claimed to be the lawful owner of the impugned trademark "BADAL".

8.21 In the suit against the petitioner, i.e., Civil Suit bearing no. *CS/10/2015* before the District Court, Jind, Haryana, respondent no. 1 claimed ownership of the impugned registered mark "BADAL" by way of the Assignment Deed dated 12th April, 2011, however, before the Registry of the Trade Marks, an entirely different Assignment Deed dated 12th April, 2011 was filed.

8.22 Thus, respondent no. 1's ownership over the impugned trademark "BADAL" is on the basis of the Assignment Deed dated 12th April, 2011, however, the said Assignment Deed itself is invalid and has no force in law.

8.23 One Mr. Dewan Bal Krishan also claims assignment from the same assignor, i.e., M/s. Jodh Singh Sehmbey and Sons through another Assignment Deed dated 14th August, 2006 for the mark "BADAL", which is prior to Assignment Deed in favour of the respondent no. 1, i.e., Hindustan Technocast (P) Limited.

8.24 Thus, the petitioner, in the present case, is aggrieved by the impugned registration of the trademark "BADAL". It is the case of the petitioner that on the basis of false claim of ownership/proprietorship over the impugned mark, respondent no. 1 has filed a suit, i.e., Civil Suit bearing no. *CS/10/2015*, in the District Court, Jind, Haryana, seeking permanent injunction for restraining use of the mark "GHANGHOR BADAL" by the petitioner, alleging that the said use amounts to infringement and passing off.

8.25 Hence, the present rectification has been filed.

9. I have heard the learned counsel for the petitioner and have perused the documents and evidence placed on record.

10. The petitioner herein is aggrieved by the impugned registration in favor of respondent no. 1 for the trademark "BADAL", bearing registration no. 554483, for rectification of which, the present petition has been filed.

11. It is further noted that respondent no. 1 has filed a Civil Suit bearing no. *CS/10/2015*, seeking injunction to restrain the petitioner from using the trademark "GHANGHOR BADAL", on the grounds of alleged infringement and passing off. On the basis of an order passed by the Court in the said civil suit under Section 124 of the Trade Marks Act, the present petition has come to be filed.

12. This Court notes that petitioner herein is the proprietor of the trademark "GHANGHOR BADAL" (word mark) in Class 07, registered on 13th January, 2017 and bearing registration no. 2611791, with date of application being 14th October, 2013.

13. The claim of the petitioner herein is that the impugned mark "BADAL" was fraudulently obtained by respondent no. 1 through an Assignment Deed dated 12th April, 2011, executed by one Mr. Iqbal Singh Sehmbey, who purportedly assigned the mark to respondent no. 1, claiming to be the sole proprietor of the proprietorship, M/s. Gurmeet Singh Sehmbey and Sons. However, it is alleged that at the time of assignment, Mr. Iqbal Singh Sehmbey was not the registered proprietor of the impugned mark "BADAL".

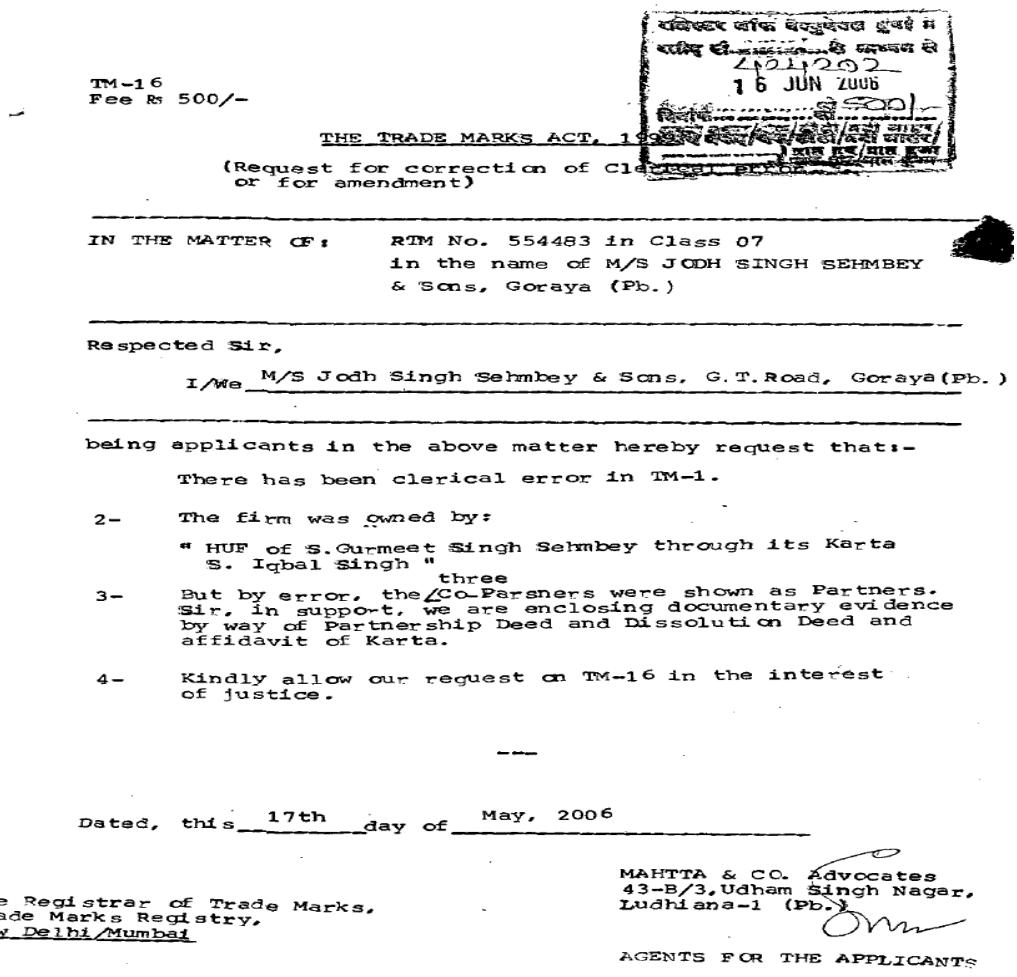
14. It is to be noted that the proprietorship of Mr. Iqbal Singh Sehmbey in the impugned mark "BADAL" has not been challenged by the other

members of the HUF or the partnership, of which Mr. Iqbal Singh Sehmbey was a part. The effect of the Assignment Deed dated 25th May, 2006 in favour of Mr. Iqbal Singh Sehmbey, wherein, it is alleged by the petitioner that he was both the assignor and the assignee, would have to be tested by leading evidence in that regard. There is no document before this Court that the ownership of Mr. Iqbal Singh Sehmbey has been disputed by any party in any manner. In the absence of any such fact or document before this Court, no *prima facie* view can be formed by this Court merely on the basis of documents before this Court or on the basis of averments made by the petitioner before this Court.

15. A perusal of the documents placed on record shows that the registration of the impugned mark, i.e., "BADAL" was initially obtained from the Registrar of Trade Marks by virtue of an application dated 15th July, 1991 filed by the partnership firm, i.e., M/s. Jodh Singh Sehmbey and Sons, which consisted of three partners, i.e., Mr. Iqbal Singh Sehmbey, Mr. Sukhminder Singh Sehmbey, and Mr. Tejinder Singh Sehmbey.

16. Subsequently, M/s. Jodh Singh Sehmbey and Sons had filed a Form TM-16 on 17th May, 2006 which was taken on record by the Registry on 16th June, 2006, before the Registrar of Trade Marks seeking correction of a clerical error in the initial Form TM-1, i.e., the application for registration of trademark "BADAL", stating that the partnership firm was, in fact, owned by the HUF of S. Gurmeet Singh Sehmbey, acting through its Karta, i.e., Mr. Iqbal Singh Sehmbey, and that due to an error the three partners of the said HUF were mistakenly shown as the partners in the said application. Thus, they filed Form TM-16 seeking to rectify the name of the proprietor of the

trademark, to be solely recorded as Mr. Iqbal Singh Sehmbey, without inclusion of the other partners or the partnership firm, as he was the Karta of the HUF. Further, it was submitted in Form TM-16 that the partnership had dissolved, and a deed of dissolution was attached to substantiate the same. The said Form TM-16, as extracted from the website of Trade Marks Registry, is reproduced as under:



TM-16
Fee Rs 500/-

16 JUN 2006

THE TRADE MARKS ACT, 1

(Request for correction of Cl
or for amendment)

IN THE MATTER OF: RTM No. 554483 in Class 07
in the name of M/S JODH SINGH SEHMBEY
& Sons, Goraya (Pb.)

Respected Sir,

I/We M/S Jodh Singh Sehmbey & Sons, G.T.Road, Goraya(Pb.)

being applicants in the above matter hereby request that:-

There has been clerical error in TM-1.

2- The firm was owned by:

" HUF of S.Gurmeet Singh Sehmbey through its Karta
S. Iqbal Singh "

3- But by error, the three Co-Parsners were shown as Partners. Sir, in suppo-rt, we are enclosing documentary evidence by way of Partnership Deed and Dissolution Deed and affidavit of Karta.

4- Kindly allow our request on TM-16 in the interest of justice.

Dated, this 17th day of May, 2006

The Registrar of Trade Marks,
Trade Marks Registry,
New Delhi/Mumbai

MAHTTA & CO. Advocates
43-B/3,Udham Singh Nagar,
Ludhiana-1 (Pb.)

AGENTS FOR THE APPLICANTS

17. Consequently, Mr. Iqbal Singh Sehmbey assigned the mark "BADAL" by way of Assignment Deed dated 25th May, 2006, from the partnership firm to the proprietorship firm, i.e., M/s. Gurmeet Singh

Sehmbey and Sons, wherein, Mr. Iqbal Singh Sehmbey was the sole proprietor. Thereafter, he had also initiated steps for entering his name in the Register of Trade Marks and accordingly, filed a Form TM-24 dated 16th June, 2006, requesting that his name be entered in the Register of Trade Marks as a proprietor of the trademark "BADAL" by virtue of the said Assignment Deed dated 25th May, 2006, assigning the said mark to M/s. Gurmeet Singh Sehmbey and Sons through its proprietor, i.e., Mr. Iqbal Singh Sehmbey. The said TM-24 Application is reproduced as under:

Agent Code (253)

Rs 5000/-

TM-24

THE TRADE MARKS ACT, 1999

(Request to enter a subsequent proprietor of a Trade Mark)

IN THE MATTER OF: Request on TM-24
RTM No. 166789 and 554483
in Class 07

I/We Iqbal Singh Sehmbey
trading as M/S Gurmeet Singh Sehmbey & Sons, G.T.Road, Goraya (Pb.)
hereby request that my/our name may be entered in the Register of Trade Marks as proprietor of Trade Mark No. 166789 & 554483 in Class 07 as from the 1-4-2003.

I am/we are entitled to the Trade Mark by virtue of Assignment Deed dated 25-5-2006
(of which attested copies are attached herewith).

I/We declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.

Dated, this 25th day of May, 2006, 2005

Signatures of the Transferee or his Agents

The Registrar of Trade Marks,
Trade Marks Registry,
MUMBAI

18. Perusal of the aforesaid documents filed on behalf of Mr. Iqbal Singh Sehmbey, does not *prima facie* cast any doubt on the ownership of the mark

"BADAL" by the said Mr. Iqbal Singh Sehmbey. Merely because no final order was passed by the Trade Mark Registry on the application of the said Mr. Iqbal Singh Sehmbey for registration of the name solely in his favour, does not in any manner detract from the fact that the said Iqbal Singh Sehmbey, being karta of HUF and partnership, was the owner of the mark in question. As noted above, there is no document before this Court and no factual assertion has been made before this Court that the other members of the partnership firm or the HUF, have disputed the ownership of Mr. Iqbal Singh Sehmbey to the mark "BADAL", in any manner. Therefore, assertions of fraud made on behalf of the petitioner, cannot be accepted by this Court on the face of it.

19. This Court further takes note of the Assignment Deed dated 12th April, 2011, executed by Mr. Iqbal Singh Sehmbey in favour of respondent no. 1, for a consideration of Rs. 20,000/-. The said Assignment Deed was duly filed before the Trade Marks Registry by respondent no. 1, and on the basis thereof, the impugned trademark "BADAL" came to be transferred in favour of the respondent no. 1. The petitioner has placed on record two Assignment Deeds of the same date, i.e., 12th April, 2011, in favour of respondent no.1 by Mr. Iqbal Singh Sehmbey. The fact as to how two different Assignment Deeds of the same date came to be filed by respondent no.1 before the Trade Mark Registry and in the suit proceedings, is again a fact which would have be adjudicated after trial and leading evidence in regard thereto. Further, the effect of filing of such two separate Assignment Deeds by respondent no. 1, would again have to be determined after trial, by taking into account the evidence led on that behalf.

20. It is to be noted that the website of Trade Marks Registry records respondent no. 1, i.e., Hindustan Technocast (P) Ltd., as the proprietor of the impugned mark, "BADAL". Further, respondent no. 1 applied for renewal of the trademark in question, by filing Form TM-R dated 06th May, 2025, which was subsequently allowed, and the impugned mark is now valid/ renewed till 15th July, 2035 in favor of respondent no. 1. The document showing particulars of renewal in favor of respondent no. 1, is reproduced as under:

06/06/2025, 12:31 E-Register - Main Page

(NOT FOR LEGAL USE)

As on Date : 06/06/2025 View Registration Certificate

Status : Registered View TM Application | View Additional Representation Sheet

TM Application No.	554483
Class	7
Date of Application	15/07/1991
Appropriate Office	DELHI
State	PUNJAB
Country	India
Filing Mode	Branch Office
TM Applied For	BADAL
TM Category	TRADE MARK
Trade Mark Type	WORD
User Detail	01/01/1945
Certificate Detail	Certificate No. 224249 Dated : 15/02/2000
Valid upto/ Renewed upto	15/07/2035
Proprietor name	(1) HINDUSTAN TECHNOCAST (P) LTD. Body Incorporate
Proprietor Address	20- AGGARSEN MARKET, RAILWAY ROAD, KABUTAR CHOWK, P.O. KAITHAL-136027
Email Id	
Agent name	MAHTTA & CO.[252]
Agent Address	43 - B/3, MAHTTA HOUSE,UDHAM SINGH NAGAR, LUDHIANA - 141 001, (PUNJAB).
Goods & Service Details	[CLASS : 7] CHAFF CUTTER MACHINES, BALDES FOR CHAFF CUTTER MACHINES, WHEAT THESHERS, PADDY THRESERS, CENTRIFUGAL PUMPS, BENDS, REFLEX VALVES BALL BEARINGS PARTS THEREOF INCLUDED IN CLASS 7.
Associated Trademarks	166789
Publication Details	Published in Journal No. : 1191-0 Dated : 16/01/1999

PRINT

PR Details | Reminders | Correspondence & Notices | Uploaded Documents | EXIT

WARNING/DISCLAIMER: THE DATA OF TRADE MARKS REGISTRY IS UNDER THE PROCESS OF DIGITISATION, IF ANY DISCREPANCY IS OBSERVED IN THE DATA PLEASE CONTACT OR SUBMIT AT APPROPRIATE TRADE MARKS REGISTRY ALONGWITH SUPPORTING DOCUMENTS. THIS WILL HELP IN UPDATION OF ELECTRONIC RECORDS.

21. The petitioner has made two-fold contentions towards challenging the Assignment Deeds in question which form the basis of the present rectification petition. Firstly, the Assignment Deed dated 25th May, 2006 is not valid on account of Mr. Iqbal Singh Sehmbey being the assignor and assignee for the same. Secondly, Assignment Deed dated 12th April, 2011 in favor of respondent no. 1 is not valid as two different Deeds have been placed to show the same transfer and the genuiness of the signature in the Assignment Deeds is also disputed, including, the number of Clauses in each Assignment Deed which are filed before the Trade Marks Registry and the Trial Court.

22. As noted hereinabove, the questions raised before this Court in the present petition are substantial questions of law and facts that require evidence to be led on part of the parties. The documents that form basis of the challenge, i.e., Assignment Deeds, have been challenged *qua* their genuineness and authenticity. However, adjudication of the said issues raised by the petitioner herein would require trial, and such questions are required to be raised before an appropriate forum.

23. It is well settled that allegations of fraud are serious allegations and whenever a party pleads to an allegation of fraud, that party himself has to set forth and substantiate the particulars of fraud. Further, the degree of proof that is required to prove such allegations is almost akin to the proof of *"beyond reasonable doubt"*, and merely making averments in the pleadings, without placing sufficient evidence to substantiate that allegation, will not be adequate enough for the Court to take notice of the same. Thus, the Division Bench of this Court in the case of ***Safari International & Another Versus***

Subhash Gupta and Others, 2008 SCC OnLine Del 1767, while dealing with allegations centered around fraud played by the respondents therein on the Registrar of Trade Marks, has held as follows:

> *"xxx xxx xxx*
>
> *8. The respondent had been using the trade mark 'SAFARI' since 1974 for the cycles manufactured under his sole proprietorship concern M/s. Shagun Udyog. In the year 1979 he applied for registration of the said mark and registration certificate was issued in the year 1988. During the pendency of the said application, in 1981 respondent No. 1 incorporated a private limited company with his brother as the Director having equal share, under the name 'Safari Cycles Private Limited'. There is no dispute to the fact that the said company did not function till 1984. It is also a fact that respondent No. 1 continued the business in his individual capacity. Later, in the year 1984, on resignation of the respondent No. 1's brother them Safari Cycles Private Limited by transferring his shares in the name of respondent No. 1 and his wife, the respondent No. 1 alongwith his wife became shareholders of the said company with 70.30 shareholding. Therefore for all practical purposes, the respondent No. 1 was running the aforesaid company being the major shareholder whereas the remaining 30% shares were owned by none other than his wife, making the company a family concern. From January, 1985 the business activities of manufacture and sale of goods under the trade mark 'SAFARI' were taken over by the said private limited company. When the respondent No. 1 made the statement before the Registrar in 1986, he alongwith his wife was the owner of the company which was using the trademark. It can be safely assumed that he being the managing force of the company, he might have stated that he is the proprietor of the trade mark, without any intention to deceive anybody as none others were using the said trade mark.* ***In fact the Appellate Board found that the appellant herein did not put forth any plea to the effect that the respondent had any intention to deceive anybody when he stated so. The Appellate Board also recorded that it was also not the case of the appellant herein that the respondent No. 1 herein is using the trade mark which belongs to any other third party and played fraud in claiming the ownership of such trade mark to the detriment of the real owner. We also agree with the conclusion recorded by the Appellate Board that in the absence of any details to establish the allegation of fraud, the said contention was liable to be rejected. In this context we may also refer to the Judgment of the Supreme Court in the case of A.C. Ananthaswamy v. Boraiah (Dead) by LRs, (2004) 8 SCC 588 wherein the Supreme Court has held that fraud pleaded has to be proved.*** *The Court in para-5 of the said judgment observed:*

> *"……..* ***Fraud is to be pleaded and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such case is extremely higher. An ambiguous statement cannot per se make the representator guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation.*** *(See : Pollock & Mulla : Indian Contract & Specific Relief Acts (2001) 12th Edn. p. 489)".*
>
> *9.* ***In the present case, except for stating in the statement of the case that the impugned registration was obtained by playing fraud on the Registrar of Trade Mark as well as the honest members of the trade and business, no material was placed on record to support the said claim. It is also pertinent to mention that the respondent No. 1 did not derive any advantage on the assumption of the trade mark 'SAFARI' from the proprietorship concern to the private limited company as the private limited company was again a family concern of respondent No. 1. For establishing the allegation of fraud the appellant should have placed on record sufficient and cogent evidence. In the present case there are no details given as to how the fraud of the nature alleged was committed. In our considered opinion no fraud could be deduced on the part of respondent No. 1 on the basis of the pleadings available on record.*** *Pleadings that have been advanced to establish fraud are mere surmises and conjectures. Thus, the findings recorded by the Registrar that there was fraud committed, therefore, was rightly not accepted by the Appellate Board as also by the learned Single Judge.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. The contention raised by the petitioner that the pleadings in the present petition are deemed to be admitted as the same have remained uncontested, and consequently, admitted by respondent no. 1, nonetheless requires the petitioner to prove its case and substantiate the claim of fraud committed by respondent no. 1, if any.

25. In the present case, despite the respondent no. 1 not putting forth a reply and the pleadings of the petitioner being un-rebutted and

uncontroverted, the same does not discharge the burden upon the petitioner to prove the veracity of their claims. This Court is enjoined to nevertheless test the *bona fide* of the claims put forth by the petitioner, and upon consideration towards the correctness of the same, pass a judgment.

26. Holding that a plaintiff must succeed on the basis and on the strength of his own case, and not on the strength of deficiencies in defendant's case, this Court in the case of ***Sunil Sood Versus Shri Krishna Builders and Others, 2018 SCC OnLine Del 11204***, has observed as follows:

> *"xxx xxx xxx*
>
> *16. ...*
>
> *(ii) This argument has also been rejected by the trial court as meaningless in terms of the detailed discussion in para 26 of the impugned judgment holding that the provision of Section 346 of Delhi Municipal Corporation Act, 1957 does not bar transfer of a property/execution of the Sale Deed without there being a completion certificate. Also, this argument is only a ruse because I asked the counsel for the appellant/plaintiff as to what is the illegality in the construction because if the construction is illegal then a notice would have been issued by the MCD for demolition of the property and in response to this, counsel for the appellant/plaintiff agreed that compounding charges were paid and construction was regularized. Once that is, merely because there is no completion certificate, it would not mean that respondent no. 1/defendant no. 1/builder has committed breach of the Agreement to Sell and that the appellant/plaintiff was not bound to be ready and willing to perform his part of the Agreement to Sell. The relevant para 25**(already reproduced above)** and para 26 of the impugned judgment of the trial court read as under:—*
>
> > *"26. Plaintiff pointed out that clause - 1 of MOU (Ex. PW1/2) stipulated that construction would be done after obtaining the plan sanctioned from the MCD/concerned department. Basing this argument on this clause, he urged that defendants no. 1 and 2 could possibly not have transferred 1st floor portion to him without the requisite 'completion certificate' as contemplated in section 346, Delhi Municipal Corporation Act (for short 'DMC Act'). This argument too is meritless. There was no clause*

regarding completion certificate in the agreement to sell Ex. PW1/1 or MOU Ex. PW1/2. Even proceeding from the premise that completion certificate was a statutory requirement, yet the plaintiff has no case to make out. It has been observed hereinabove that plaintiff was neither ready nor willing to perform his part of the contract. Therefore, when the plaintiff himself was not ready and willing, he cannot then shift the blame to the other side for the ultimate failure of the deal. Had the plaintiff in the very first place proved his readiness and willingness, then the question of compliance or otherwise of section 346, DMC Act would have come into the picture. Plaintiff being himself at fault cannot therefore point fingers at defendants no. 1 and 2 for their alleged non-compliance of section 346, Delhi Municipal Corporation Act. In other words, question of compliance or non-compliance of this provision and its effect on the outcome of the present suit would come into the picture only when the plaintiff proves in the first place that he was ready and willing to perform his part of the contract. Even assuming that there was non-compliance of this provision, yet the plaintiff cannot be held entitled to the relief of specific performance as sought for. It is the plaintiff's suit that would face an adverse outcome if he does not prove the existence of facts, which he asserts (section 101, Evidence Act). Plaintiff avers readiness and willingness on his part and therefore it is he who must prove it in terms of section 101, Evidence Act. ***Plaintiff cannot seek to prove his case in an indirect manner by urging that defendants' case has a certain deficiency or that there has been non-compliance of a certain legal provision on their part. Plaintiff cannot succeed on the basis of failure, if any, on the part of a defendant to prove his case and plaintiff must stand on its own legs. To put it in other words, a plaintiff must succeed on the basis and on the strength of his own case and not on the strength of deficiencies, if any, in defendant's case. He cannot raise the edifice of his case by highlighting the deficiencies/loopholes in defendants' case. In this regard, the following decisions can be referred to: Sankar Kumar v. Mohanlal Sharma, AIR 1998 Ori 117; Shiv Nandan Sachdeva (Sh.) v. Smt. Ruby, 2009 V (Delhi) 55; Umesh Bondre v. Wilfred Fernandes, AIR 2007 Bom 29; M.P. Narayan v. Sm. Sudhadevi, AIR 1986 Cal 256; State of West Bengal v. Subimal Kumar Mondal, AIR 1982 Cal***

251 and Sayed Muhammed Mashur Kunhi Koya Thangal v. Badagara Jumayath Palli Dharas Committee, (2004) 7 SCC 708 : JT (2004) 6 SC 556. *…….*

xxx xxx xxx"

(Emphasis Supplied)

27. Similarly, in the case of ***Devender Bhati Versus Chander Kanta, 2015 SCC OnLine Del 14224***, it has been held as follows:

"xxx xxx xxx

37. ***In Harish Mansukhani (supra), the Division Bench noticed that the plaintiff has to prove his case and had to stand on his own legs. Similarly, in Ganpatlal (supra), the Madhya Pradesh High Court took note of the elementary rule of civil litigation in this country that the plaintiff must stand or fall on the strength of his own case****. Thus, the failure of the defendant to establish that the market monthly rent of the suit property was not Rs. 5,000/- p.m., by itself, would not amount to a proof of the plaintiffs claim of damages of Rs. 5,000/- p.m.*

xxx xxx xxx"

(Emphasis Supplied)

28. The doctrine that a plaint/petition must stand on its own legs is a fundamental principle of law, which emphasizes that a plaintiff/petitioner must substantiate its claims with credible evidence, irrespective of the weakness in the case of the defendant/respondent.

29. Thus, the Supreme Court in the case of ***Asma Lateef and Another Versus Shabbir Ahmad and Others, (2024) 4 SCC 696***, held that mere failure on the part of the defendants therein to file a written statement would not be *ipso facto* sufficient to pronounce the judgment against the defendants, therein. It was observed that, before passing a judgment against the defendants, it must be seen that even if the facts set out in the plaint are treated to have been admitted, whether a judgment could possibly be passed in favour of the plaintiff, without requiring him to prove any fact mentioned

in the plaint. Therefore, in such a case the plaintiffs therein were under an obligation to substantiate and prove their case. The relevant paragraphs of the said judgment are reproduced herein below:

> *"xxx xxx xxx*
>
> *27.* ***At this stage, we consider it apposite to take a quick look at Balraj Taneja (supra) to examine the scope of Rule 10 of Order VIII. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII, CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement****. The relevant paragraphs of the judgment are reproduced below for convenience:(SCC p. 410, para 29)*
>
> > *"29.* ***As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression 'the court may, in its discretion, require any such fact to be proved' used in sub-rule (2) of Rule 5 of Order 8, or the expression 'may make such order in relation to the suit as it thinks fit' used in Rule 10 Order 8****."*
>
> *No doubt this decision was rendered considering that the verb used in the provision is "may", but nothing substantial turns on it.*

28. ***What emerges from a reading of Balraj Taneja (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja (supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.***

xxx xxx xxx

34. We find close resemblance of the facts and circumstances under consideration in Swaran Lata Ghosh v. H.K. Banerjee [Swaran Lata Ghosh v. H.K. Banerjee, (1969) 1 SCC 709]. A money suit instituted by the respondent before this Court was tried by the High Court of Calcutta and after taking evidence the learned Single Judge on 17-8-1962, passed the following order:

> *"There will be a decree for Rs 15,000 with interest on judgment on Rs 15,000 at 6% p.a. and costs. No interim interest allowed."*

Pursuant to that order a decree was drawn up. An appeal carried from the decree before the Division Bench failed. The Division Bench assigned sketchy reasons for the conclusion that the trial court "rightly decreed the suit" and disposed of the appeal with certain modification of the decree. While allowing the appeal and setting aside the decree passed by the High Court and remanding the suit to the court of first instance for trial according to law, this Court noted that Rules 1 to 8 Order 20CPC are, by the express provision contained in Order 49 Rule 3(5)CPC inapplicable to a Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction and hence, a Judge of a Chartered High Court was not obliged to record reasons in a judgment strictly according to the provisions contained in Order 20 Rules 4(2) and 5CPC. Notwithstanding such a provision, this Court proceeded to record in para 6 as follows : (Swaran Lata Ghosh case [Swaran Lata Ghosh v. H.K. Banerjee, (1969) 1 SCC 709], SCC pp. 711-12)

> *"6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of*

evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. ***In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law.*** *A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.* ***It is unfortunate that the learned trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.****"*

xxx xxx xxx"

(Emphasis Supplied)

30. In the present case, the Court would be all the more cautious in adjudicating the various submissions raised before this Court, as the impugned trademark in the present case is shown to have a user since the year 1945. Thus, the veracity, sanctity and the user of the impugned trademark since the year 1945, cannot merely be dissolved or set aside, only on the submissions of the petitioner that the said mark was assigned to respondent no. 1, in a fraudulent and fabricated manner, when the said issues themselves would have to be established during the course of trial.

31. This Court notes that the petitioner has neither contended the non-user of the impugned mark nor has it claimed any similarity between competing registered trademarks. Rather, it is the case of the petitioner that both the trademarks are different and distinct, which has been accepted by the Registrar of the Trade Marks, while granting the registration to the petitioner for its mark, 'GHANGHOR BADAL', *whilst* citing the mark of respondent no. 1, 'BADAL' as an objection in the Examination Report.

32. The impugned mark "BADAL" under Class 07 has been in use since the year 1945, which is much prior to the mark of the petitioner, i.e., "GHANGHOR BADAL", which has a user detail of 15th April, 2002. A mark with a prior use dating back to 1945, and which has been in use for such a substantial period of time, requires a higher degree of caution and proof on part of the party alleging fraud, and cannot solely be cancelled/rectified on the basis of the documents filed before this Court and the submissions of the petitioner, which do not *prima facie* establish the facts as raised by the petitioner.

33. At this stage, this Court also takes note of the order passed by the Copyright Board at Mumbai in ***Devico (India) Iron Foundry and Engineering Works Versus Iqbal Singh, 2007 SCC OnLine CB 2***, wherein, an application for rectification on the same ground as made in the present petition was filed by the applicant therein, against Mr. Iqbal Singh Sehmbey for rectification of Register of Copyrights, wherein, the Copyright Board refused to enter into disputed questions and observed as follows:

> *"xxx xxx xxx*
>
> *6. We are strictly concerned with the issues relating to the registration of mark BADAL TOKA as an artistic work under registration number A-*

61170/2002. ***Registration of the copyright stands in the joint names of the assignor and the assignee referred to above wherein Shri Jodh Singh is the karta of the assignor HUF and the same Shri Jodh Singh is the sole proprietor of the assignee firm. Copy of the Trade Mark Journal dated 1st March, 1955 submitted by the petitioner refers to M/s Jodh Singh Sehmbey and Sons having made trade mark registration application number 166789 dated 25th November, 1954. Undisputedly the petitioner has conceded that the respondent are in the Toka business since 1954 when they had made initial application for trade mark registration with the word mark BADAL TOKA.*** *The artistic work in question is in oval shape with the name of the firm, M/s Jodh Singh Sehmbey & Sons, G.T. Road, Goraya, Distt. Jalandhar (Pb) in the ring with the words BADAL TOKA in Urdu in the centre. The mark PARKASH BADAL as inscribed on the photos of the machines submitted by the petitioner is in plain words written either in Hindi or English. Further, counsel for the petitioner has not assailed the originality of the artistic work of the respondent. Rather, the petitioner has submitted that in any case the artistic works of the petitioner and the respondent are different from each other. Learned counsel for the petitioner has questioned the certificate given by the Trade Marks Registrar under section 45 of the Copyright Act, 1970 wherein the Registrar has certified as to the resemblance of the impugned artistic work with the trade mark standing registered in the name of the respondent and none else. Any grievance against the decision of the Registrar of Trade Marks has to be addressed to the appropriate forum under the Trade Mark law, that is, before 15th September,2003 to the concerned High Court and as from 15th September, 2003 to the Intellectual Property Appellate Board. This Board cannot call into question the appropriateness of the decision of the Registrar of Trade Marks.*

7. In conclusion, we find no merit in the application of the petitioner for rectification and the same stands dismissed. No orders as costs."

(Emphasis Supplied)

34. Learned counsel appearing for petitioner during his oral arguments has relied upon the judgment passed by this Court in ***Anshul Vaish, Partner Rohit Wrapers Versus Hari Om and Co. and Another, 2025 SCC OnLine Del 664*** to state that this Court has the jurisdiction to deal with the issues and allegations pertaining to fraud while dealing with a rectification petition. More specifically, learned counsel of the petitioner to buttress his arguments

has relied upon paragraph nos. 6 to 8 of the said judgment dated 07th February, 2025, which are reproduced as under:

> *"xxx xxx xxx*
>
> *6.* ***Having heard learned counsels for the parties and having perused the record, this Court at the outset notes that the documents filed by respondent no. 1 to prove its user, have prima facie and glaring anomalies, as indicated by the addition of a Taxpayer Identification Number ("TIN No.") to the invoices of the years 2005 and 2006, when the same was granted only in the year 2007.***
>
> *7. On a pointed query by this Court to the counsel for respondent no. 1 as to how the Sales Invoice show the TIN Number from the year 2005, when it was granted only in the year 2007, the counsel for the respondent no. 1 did not have any explanation for the same.*
>
> *8.* ***Thus, this Court is in agreement with the submission made by the petitioner that the documents adduced by respondent no. 1 to prove the user of the impugned mark from the year 2005, are apparently forged and fabricated****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

35. It is to be noted that in the aforesaid judgment passed by this Court, the documents filed by the respondent therein had glaring anomalies as regards the date of user of the said mark, which made it manifestly clear that the documents filed by the respondents therein, were forged and fabricated. However, in the present case, the contentions of fraud in obtaining the registration of the impugned trademark, as raised by the petitioner does not, on the face of it, establish and substantiate the veracity of its claims.

36. The petitioner has also relied upon the judgment dated 13th April, 2009 passed in ***Gandhi Scientific Company Versus Gulshan Kumar, 2009 SCC OnLine Del 820*** and the judgment dated 21st January, 2019 in ***Khushi Ram Behari Lal Versus Jaswant Singh Balwant Singh, 2019 SCC OnLine***

Del 6702. However, the said cases, as relied upon by the petitioner, are clearly distinguishable and do not apply to the facts and circumstances of the present case. In the said cases, the Court had observed that a clear case of *res ipsa loquitor* was made out as the documents clearly showcased the manipulations done by the defendants therein and the documents on the face of it, were found to be false and fabricated. However, no such finding can be given in favor of the petitioner with regard to the genuineness and the authenticity of documents in question in the present case, considering the detailed discussion hereinabove.

37. In view of the detailed discussion hereinabove, this Court is of the view that the impugned trademark "BADAL", bearing registration no. 554483, with prior use dating back to 01st January, 1945, cannot be cancelled on the grounds of fraud and fabrication of documents, without testing the authenticity and genuineness of the same, on the basis of evidence before the Trial Court.

38. Accordingly, the present petition is dismissed.

(MINI PUSHKARNA)
JUDGE

JULY 9, 2025/KR