

# Khadi And Village Industries ... vs Roopika Rastogi And Anr on 25 March, 2021

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(COMM) 146/2021  
KHADI AND VILLAGE INDUSTRIES COMMISSION

Through: Ms. Shwetasree Majumda

versus

ROOPIKA RASTOGI AND ANR.  
Through: None.

CORAM:  
HON'BLE MR. JUSTICE SANJEEV NARULA  
ORDER

% 25.03.2021 I.A. No. 4557/2021(for exemption)

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

I.A. No. 4556/2021 (u/O 11 R 1(4) of the Commercial Courts Act, 2015 r/w Section 151 CPC for filing additional documents)

3. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

4. The Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act. The application is disposed of in the above terms.

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5. The plaint is registered as suit.

6. Upon filing of process fee, issue summons to the Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of

admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

7. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

8. List before the Joint Registrar (Judicial) for marking of exhibits on 31st May, 2021. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

9. List before Court for framing of issues thereafter.

I.A. No. 4555/2021 (u/O XXXIX Rule 1&2)

10. The case of the plaintiff is that it is a statutory body established by an Act of Parliament, being the Khadi and Village Industries Commission Act, 1956. It is the registered proprietor of the word mark 'KHADI', the device marks and , and which are the subject matter trademarks for the present suit [hereinafter referred to as "the KHADI trademarks"]. Apart from common law rights, the Plaintiff is also the registered proprietor of the KHADI trademarks in several classes in India.

11. Plaintiff asserts that since its formation in the year 1957, it has been carrying on the work related to implementation of programmes for the development of khadi and other village industries in the rural areas in-coordination with other agencies. The Plaintiff adopted the trademark 'KHADI' on 25th September, 1956 and the same has been in use continuously till date. By virtue of its adoption more than sixty years ago and extensive use thereof, the trademark 'Khadi' is the sole and exclusive intellectual property of the Plaintiff. The Khadi trademarks not only act as source identifiers but also as symbols of purity and authenticity. It is the most essential and prominent feature of Plaintiff's trademark and its tradename/corporate names and the plaintiff has been using the same and label 'Khadi' on a wide range of products.

12. In 2013, Plaintiff brought into force the 'Khadi' Mark Regulations, 2013 which apply to persons who are engaged in production, sale or trading of 'Khadi' and Khadi products and who are desirous of producing, selling or trading of 'Khadi' and Khadi products and to certify Khadi Institutions. The said Regulations provide guidelines for using khadi trademarks such as affixing khadi mark, tag or label or both as decided by the Commission.

13. Ms Shwetaree Majumdar, counsel for the Plaintiff asserts that in the year 2020, the Plaintiff came across Defendant's website under the domain name <https://iwearkhadi.in> which subsumed the Plaintiff's registered trademark Khadi and therefore amounts to trademark infringement and passing off. She submits that the Defendants were using the logo on their website and the logo as its favicon.

Both the logos wholly incorporate the Plaintiff's registered trademark 'Khadi'. The Defendants were also using the aforesaid logos and the word mark IWEARKHADI on their Facebook, Instagram, Twitter and YouTube pages. The Plaintiff has filed a complaint under the .IN Domain Name Dispute Resolution Policy against the Defendants. In the said proceedings, on 30th July, 2020, on an order passed by an Arbitrator, the domain name was directed to be transferred to the Plaintiff. Then sometime in February, 2021, Plaintiff discovered that the Defendants had transitioned to a new website [www.iloveloomb.com](http://www.iloveloomb.com). The said website was a mirror of the Defendants' erstwhile website under the domain [www.iwearkhadi.in](http://www.iwearkhadi.in), The website under [www.iloveloomb.com](http://www.iloveloomb.com) is currently inactive, however the snippets of the screenshots captured, clearly show that the Defendants have infringed the Plaintiff's trademark. Further, Plaintiff also discovered that Defendants have been using yet another domain name [www.charkhatales.com](http://www.charkhatales.com) and have substantially rebranded the website. The said website still unauthorizedly uses the logo as its favicon. The website also uses the logo which is deceptively similar to the Plaintiff's Charkha logos. She further submits that the Defendants are in fact misleading the public by using a false third-party certificate on their website, giving an impression that the products of the Defendants are in fact Khadi products. The Defendants' adoption of the mark Khadi as part of their trademark, tradename and domain name are solely with the intention of deriving benefits on account of popularity of Plaintiffs' KHADI trademarks and is intent to get its products manufactured by a third party which has a commercial nexus to the Plaintiff.

14. In view of the above, the Plaintiff has made out a prima facie case in its favour. The balance of convenience also lies in favour of the Plaintiff and irreparable loss will be caused in case an ex-parte injunction is not granted.

15. Accordingly, till the next date of hearing Defendants, their partners, servants, representatives, agents and all others acting for and on their behalf are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly providing any kind of goods or services under the trademark/ tradename 'IWEARKHADI', either as a word or as part of a logo, the logo and/or any mark identical or deceptively similar to the Plaintiff's registered 'Khadi' trademarks and Charkha logos, amounting to infringement or passing of the Plaintiff's trademarks.

Compliance under Order XXXIX Rule 3 be done within a period of five days.

16. List this matter before Hon'ble Court on 5th August, 2021.

SANJEEV NARULA, J MARCH 25, 2021/as