

Calcutta High Court

S.M. Chopra & Sons vs Rajendra Prosad Srivastava on 1 February, 1988

Equivalent citations: AIR 1988 Cal 326

Author: B C Basak

Bench: B C Basak, S Mitra

JUDGMENT Bimal Chandra Basak, J.

1. This appeal is directed against a judgment and order passed by the learned single Judge of this Court whereby the application made by the appellant herein in August 1981 under Under Section 56 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the Act) was rejected. The case of the appellants as made out before the trial Court was that the appellants were the proprietors of the duly registered trade mark being the mark 'RAJA' being Nos. 144, 388 as of July 11, 1950 in Class 7. According to the appellants long prior to the enactment of any legislation on Trade Marks in India, (he appellants had been manufacturing and marketing rice hullers and spare parts thereof under the trade mark 'RAJA' and the said goods under the said trade mark have acquired considerable popularity in the market. In November 1978 the appellants became aware of the manufacture and sale of rice hullers or parts thereof under the mark 'MAHRAJA'. It appears that the mark of the respondent was also registered in Class 7 in the year 1978.

2. The application was opposed and the respondent filed an affidavit-in-opposition to the said petition. The learned Judge dismissed the application on the ground that on an overall comparison of the competing marks it cannot be said that the mark of the respondent is deceptively similar to that of the petitioner. Further it has been pointed out that the said mark has been in simultaneous use with the mark of the petitioner for about 3 years. The said products are special products not intended to be used by the general public or to be purchased with casual frequency.

3. Against the same this appeal has been preferred. We have examined the two marks. We are of the opinion that the learned Judge was right in dismissing this rectification application. It is to be pointed out that according to the appellant-petitioner they have been manufacturing the said products under the said name long before any legislation was introduced. Therefore, they have been in the market for at least 20 years before making the said application and have acquired a reputation of their own. Consequently the name of MAHRAJA cannot in our opinion in any way affect such reputation. Further it is to be pointed out that on each of the machines not only the trade mark is embossed but also the registration number of the same. This is so in the cases of machines of both the parties. Accordingly, in our opinion, there is no question of any likelihood of deception. Having regard to the nature of the persons purchasing the property, nature of the products and the nature of display, we are of the opinion that the learned Judge was right in dismissing this application. However, in order to make the position further clear we propose certain further safeguards to which the learned Advocates appearing for the parties have no objection. The respondent shall make it clear in respect of all publication or advertisement or anything of that sort, that they have nothing to do with the products going under the trade mark 'RAJA'. Similarly the appellant shall in respect of their publication, advertisement etc. make it clear that they have nothing to do with the products selling under the trade mark 'MAHRAJA' Subject to this the lower Court's Order is confirmed.

4. Let a pamphlet showing the mark as produced by Mr. Gupta be kept in the records of this case which is marked as Ext. A.

5. The appeal is disposed of accordingly.

6. There will be no order as to costs.

Satybrata Mitra, J.

7. I agree.