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

+ **C.O.(COMM.IPD-CR) 792/2022**

M/S SHAKTI ZARDA FACTORY (INDIA)

PVT LTD

..... Petitioner

Through: Mr. S. K.Bansal & Mr. Ajay Amitabh
Suman, Advocates.

versus

SAGAR SALES CORPORATION AND ANR Respondents

Through: Mr Harish Vaidyanathan Shankar
CGSC with Mr Srish Kumar Mishra
Mr Sagar Mehlawat and Mr
Alexander Mathai Paikaday, and Mr
M Sriram, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 11.09.2023

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - M/s Shakti Zarda Factory (India) Pvt. Ltd. seeking cancellation/ rectification of the registered copyright of the Respondent No. 1 - Sagar Sales Corporation titled "NEW SAGHAR GOLD" bearing no. A-111778/2014.
3. Mr. Bansal, ld. Counsel for the Petitioner has handed over a copy of order dated 16th February, 2018 passed by the IPAB in *ORA/45/2016/TM/DEL* titled *M/S Shakthi Zarda Factory (India) Pvt. Ltd. v. Shri Rai Singh Pal & Anr.* The order passed by the IPAB is set out below:



“1. The present rectification application was filed on 02/03/2015. Admittedly, prior to filing of the rectification, the respondent filed the Civil Suit No.4/2015 relying upon the registration No.2334443 in class 34 which is subject matter of the present rectification. The said suit was filed before the Additional District Judge, Patiala House Court, Delhi filed by the applicant herein whereby order dated 05/02/2015, the respondent were restrain from using the trade mark “SAGHAR GOLD”. The said interim order was challenged before the Hon'ble Delhi High Court by the respondent in FAO 248/2015 in the said appeal on 07.01.2016 the following order was passed.

“2. (iii) The appellant/ defendant will withdraw the trademark registration under No.2334443 and copyright registration under No.A-1117778/2014.”

2. After the expiry of more than one and half years the respondent filed the application in same FAO 248/2015 for modification of order dated 26.07.2017. The main contention was that with regard to the undertaking given by the respondent is the same was only pertaining to the trade mark after the hearing of both the parties on 26.07.2017. The following order was passed.

“CM. App. No.37951/2016 (for modification of the order dated 7.1.2016 filed by the appellant)

1. By this application the appellant seeks modification of paragraph 2(iii) of the order passed by the order passed by a learned Single Judge of this Court on 7.1.2016 and it is stated that in paragraph 2(iii) the words with respect to withdrawal of trade mark registration is wrongly mentioned, in as much as, this paragraph 2(iii) should only contain withdrawal of copy right registration.

2. It is noted that the order dated 7.1.2016 passed by the learned Single Judge is signed not only by both the parties, but on the last page



thereof signatures of the Advocates of the respective parties, including the appellant, appears and who have identified the signatures of the respective parties. Clearly, therefore, there is consent of the appellant to all the terms and appellant is therefore now seeking to back out the agreed clause which is not permissible.

3. Also, another reason to dismiss the application is that the order dated 7.1.2016 would be in the knowledge of the appellant as also his Advocate, and who is the Advocate who appeared on 7.1.2016 and also today, and if really what is noted in paragraph 2(iii) of the order dated 7.1.2016 was wrongly recorded then besides not signing the order, the appellant would have within 2-3 days at the maximum moved an application pointing out the alleged mistake in paragraph 2(iii) of the order dated 7.1.2016 but first application seeking the modification was filed much later on 9.2.2016 (though dated 4.2.2016). Obviously, therefore, this is an afterthought by the appellant and which is not permissible once there are agreed terms.

4. Dismissed"

3. The learned counsel for the applicant states that the said order has not been challenged by the respondent rather the respondent set as an ex-parte in the suit pending filed by the applicant.

4. Despite of service, no one appears on behalf of the respondent. As per record, no counter statement or no application for extension of time is available. The right to file the counter statement is closed.

5. In view of the undertaking given by the respondent before the Hon'ble High Court of Delhi in FAO NO.248/2015 which is subsequently confirmed by the another bench vide order dated 26/07/2017. The trade mark in question No.2334443 in class 34 is



accordingly rectified. The copy of the order sent to the Trade Mark Registry to take necessary steps to remove/rectify the trademark from the register.”

4. The said order records that a civil suit being ***Civil Suit No. 4/2015*** was filed before the Additional District Judge, Patiala House Courts, New Delhi against the Petitioner wherein vide order dated 5th February, 2015 the Respondent No.1 was restrained from using the trade mark “SAGHAR GOLD”. The order dated 5th February, 2015 in ***Civil Suit No. 4/2015*** was challenged in ***FAO 248/2015*** titled ***Rai Singh v. M/S Shakthi Zarda Factory (India) Pvt. Ltd.*** In ***FAO 248/2015*** vide order dated 7th January, 2016, the Respondent No.1 had agreed to withdraw the present copyright registration. The relevant part of the same is as under:

“2. (iii) The appellant/ defendant will withdraw the trademark registration under No.2334443 and copyright registration under No.A-1117778/2014.”

5. Thereafter an application was moved in ***FAO 248/2015*** seeking modification of the order dated 7th January, 2016 on the ground that the undertaking was only pertaining to the trade mark and not the copyright registration. The said application was dismissed vide order dated 26th July, 2017.

6. In view of the above, the present copyright registration titled "NEW SAGHAR GOLD" bearing no. A-111778/2014 is liable to be expunged/cancelled from the Registrar of Copyright. Ordered accordingly.

7. Accordingly, this petition is disposed of. All pending applications are also disposed of.

8. Let the Registrar of Copyrights shall give effect to this order on the website within four weeks.



9. The Registry is directed to supply a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on the e- mail- llc-ipo@gov.in for compliance of this order.

PRATHIBA M. SINGH, J

SEPTEMBER 11, 2023

Rahul/kt