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

% *Date of Decision: 11.11.2024*

+ **W.P.(C) 773/2019**

PANCHHI PETHA STORE

.....Petitioner

Through:

Mr. Rajshekhar Rao, Sr. Adv. with  
Mr. Surya Prakash Nigam, Ms. Meeta  
Nigam and Mr. Zahid Laiq Ahmad,  
Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through:

Mr. Vivek Goyal, CGSPC and Mr.  
Gokul Sharma, Adv. for R-1.  
Mr. Sahilen Bhatia and Mr. Varun  
Kajla, Advs. for R-4.

**CORAM:**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed *inter-alia* seeking the following prayers:

*“A. Issue a writ of certiorari or any other appropriate writ, direction, order in the nature thereof quashing/setting aside the order dated 27th August 2018 passed in proceedings titled as REF: 16/UP/16/2015/6438 passed by Respondent No.2;*

*B. Direct Respondent No.2 to hear the parties on merits of the case as pleadings in the case are complete;*

*C. Rectify the name of the Respondent No.4 company by deleting the mark "PANCHHI" which is identical and similar to petitioner's registered and prior used trademark "PANCHHI";”*

2. The issue in the present case obtains from an order dated 27.08.2018

passed by Respondent No.2 [hereinafter referred to as “Impugned Order”]. By the Impugned Order, the Respondent No.2 has rejected the Application filed by Petitioner for rectification/change in the name of the Respondent No.4 Company, and to be cancelled/removed from the Register under Section 16(1)(b) of the Companies Act, 2013.

3. A Coordinate Bench of this Court had observed in its order dated 25.01.2019 that the Petitioner is particularly aggrieved with the observations in the Impugned Order which state that the Petitioner/Applicant is not the owner of the trademark. The relevant extract of the Impugned Order is below:

“8...

(a)...

(b)...*From the submission made by both applicant and respondent it is observed that the applicant is not the owner of the trademark in his name and the actual owner of the trademark is in the name of “Subhash Chander”.*

9. *Therefore, by considering the above facts and submissions and in terms of provisions under sub-section (1)(b) of Section 16 of the Companies Act, 2013 read with Government of India, Ministry of Corporate Affairs Notification no. S.O.4090 (E) dated 19.12.2016, the application filed by applicant could not be entertained and no directions can be issued to the respondent. Accordingly, the application filed for rectification/change of name by Applicant Company is hereby rejected/closed and disposed off with no order to cost and liberty to file a fresh if so desire.”*

3.1 This Court had on 28.10.2024 observed as under:

*“9. Prima facie, the dispute between the parties, of which the Impugned Order arises, appears to be a trademark dispute between the Petitioner and Respondent No.4.”*

4. Learned Senior Counsel for the Petitioner has drawn the attention of the Court to Section 16 of the Companies Act, 2013 [hereinafter referred to

as “Companies Act”] to submit that the powers of the Office of the Regional Director are limited to what has been set out therein and that the directions may be passed directing a change in the name of the company on the basis of an Application filed by a registered proprietor of the trademark. It is however contended that the directions passed by the Impugned Order, more specifically as set out in paragraph 8, has also decided ownership of the trademark which is beyond the powers as are set out under Section 16 of the Companies Act.

4.1 Learned Senior Counsel for the Petitioner, in addition, contends that both sub-Sections (a) and (b) of Section 16(1) of the Companies Act, are applicable to him. He further submits that in the first instance, so far as concerns Section 16(1) (a) of the Companies Act, the Central Government acting through Regional Director can *suo moto* ask for a change of name of a company if in its opinion the name of the company on its first registration or on its registration by a new name nearly resembles the name of the company which had been previously registered. Secondly, it is contended that so far as Section 16(1)(b) is concerned, an Application can be made by a registered proprietor of the trade mark, which has been done in the present case.

4.2 It is further contended that the Regional Director has given a finding in the Impugned Order that the Applicant/Petitioner could not produce any evidence despite the fact that the registrations were in the name of the Petitioner Firm.

4.3 Learned Senior Counsel for the Petitioner thus contends that either way, the finding of ownership as has been set out in the Impugned Order cannot be sustained.

5. Learned Counsel for the Respondents, on the other hand, submits that the jurisdiction has been correctly exercised by the Regional Director under Section 16(1)(b) of the Companies Act. He seeks to rely upon Section 16(1)(b) to submit that the Petitioner is not a registered proprietor of the trademark.

5.1 In addition, it is contended by the learned Counsel for the Respondents that all registrations for the mark “*Panchhi Petha Store*” are not in the name of Mr. Amit Goyal or the partnership firm but in the name of one Mr. Subhash Chandra Goyal, the sole proprietor of Panchhi Petha Store.

6. As stated above, an Application under Section 16(1)(b) of the Companies Act was filed by the Petitioner before the RD seeking removal of the name of Respondent No.4 from the Register as maintained by the Registrar of Companies with the following prayer:

*“a. For the reason and grounds mentioned above in accompanying statement of case, it is in the interest of justice, equity and good consequences that the present application be allowed with cost and the impugned company name “PANCCHI PETHA PRIVATE LIMITED” under CIN::U15122UP2012PTC051161 may kindly be pleased to cancel/remove/rectify/expunged forthwith from the register as offending the provisions of the Act with heavy and exemplary cost; and/or”*

6.1 The Respondent filed its objections/submissions to the Application. Both parties set out their respective contentions which included the fact that there are trademark registrations available with both, the Petitioner, and the Respondent. The Impugned Order evidences both parties have filed extensive litigations against each other before the Trade Mark Registry as well as before the Court, which include the Oppositions and Rectification Petitions which are sub-judice including before Intellectual Property

division of this Court.

7. Section 16 of the Companies Act gives the power to the Central Government through the Office of the concerned Regional Director [hereinafter referred to as “RD”] to rectify the name of a company. Sub-Section (1) of Section 16 of the Companies Act contemplates two circumstances under which the name of a company can be rectified. If such name resembles the name of an existing company or is identical to the name of an existing company, the RD may *suo moto* under the provisions of Section 16(1)(a) of the Companies Act issue directions to a company to change its name, which directions require compliance within three months.

7.1 Section 16(1) (b) of the Companies Act, provides that an Application can be made by an owner of the registered trademark to the RD to effect that the name of a company is as identical or ‘*too nearly resembles*’ their registered trade mark provided that an Application under Section 16 (1) (b) is made within three years of incorporation or registration of change in name of the company involved. The relevant extract of Section 16 of the Companies Act is below:

*“16. Rectification of name of company.— (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—*

*(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;*

*(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a*

*registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.”*

8. This Section gets triggered when either through inadvertence or otherwise a company registers itself with a name which is identical or which nearly resembles another company or a registered trademark.

9. A Coordinate Bench of this Court in a case titled *CGMP Pharmaplan (P) Ltd. v. Regional Director, Ministry of Corporate Affairs*<sup>1</sup> has while explaining this provision, relied on a Judgment of the Division Bench in *Montari Overseas Ltd. v. Montari Industries Ltd.*<sup>2</sup> to explain that the powers of a Civil Court while examining and determining in a passing off action, if one name is confusingly deceptive or similar to another name, is independent of the jurisdiction of the Regional Director in respect of registering of a company's name. It was however held that the Regional Director cannot approach the case, as it would in a trademark dispute. The relevant extract of the *CGMP* case is below:

*"17. The decision in Montari Overseas Limited makes it clear that a civil court exercising its powers in terms of the CPC and determining in a passing-off action if one name is confusingly deceptive or similar to another name, is exercising a jurisdiction independent of the jurisdiction of Respondent No. 1 in respect of the registering of a company's name. The latter is a power vested in the central government in terms of Sections 20 and 22 of the Act. **While it is true that the Respondent No. 1 cannot approach the case as it would in a***

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<sup>1</sup> 2010 SCC OnLine Del 2387

<sup>2</sup> 1995 SCC OnLine Del 864 (DHC, DB, (Before M.J. Rao, C.J. and A.D. Singh, J.)

**trade mark dispute, it is nevertheless required to come to the conclusion whether the name of which the registration is sought or has been granted too nearly resembles the name of another company. Mr. Chandra is right in his contention that the powers of the central government under Section 22 of the Act are wider inasmuch as there is no need to examine whether there is a likelihood of deception or confusion. It is enough to examine if the name registered too nearly resembles another registered name. The Respondent No. 2 has been able to show that both names too nearly resemble each other.**

[Emphasis supplied]

10. In the facts of the present case, both the parties have claimed ownership and rights over the mark ‘Panchhi’ and have disputed each other's submissions. Admittedly, both Petitioner and Respondent No.4 form part of the same extended family. Both are also engaged in legal proceedings in various fora including against each other in relation to the impugned trademark and other intellectual property related rights. The Impugned Order refers to these disputes, however, it goes on to give a finding of ownership on the mark ‘Panchhi’, which cannot be sustained.

11. As stated above, the jurisdiction of the office of the Regional Director under the Companies Act is with respect to change of name/rectification of the name of a company in the event that there are two similar or identical names. The object of the Section 16 of the Companies Act is that the consumers, customers, and general public should not be confused that a company is similar to another company.

12. In the present case, the parties are two entities which are from the same lineage, which are embroiled in disputes over the intellectual property of a brand. The Regional Director while deciding an Application under Section 16 of the Companies Act cannot undertake an examination of the

marks as the Intellectual Property Division of a Court would. It cannot also decide the ownership of a mark while deciding such an Application under Section 16 of Companies Act, where these are disputed contentions. The same is not the subject matter of jurisdiction of the Regional Director under the Companies Act.

13. For the reasons as stated above, the Impugned Order is set aside. Both the parties are however at liberty to approach the office of the Regional Director to file appropriate proceedings in accordance with law, if necessary. All rights and contentions of the parties are left open in this regard.

14. This Petition is disposed off in the foregoing terms.

15. Parties will act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**NOVEMBER 11, 2024/r**

*Click here to check corrigendum, if any*