



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 2198/2020

Rajani Products, through its Partner Kamal Rajani, G-300, IPIA,
Kota - Raj.

-----Appellant

Versus

1. Bhagwan Das Harwani S/o Unknown, Prop. Parwati Oil Manufacture And Merchants Through Parwati Oil Manufacture And Merchants, Parwati Oil Mill, Parav, Ajmer-Raj.
2. Karishma Trading Corporation, Through Prop. Sumit Jain, S/o Surendra Jain, 9-A New Dhaan Mandi Kota, Raj.

-----Respondents



For Appellant(s) : Mr. Shruvan Kumar Bansal for
Mr. Kapil Gupta
Mr. R.S. Sinsinwar

For Respondent(s) : None Present

**JUSTICE ANOOP KUMAR DHAND
Order**

19/03/2025

Reportable

1. The Bench having roster of "Intellectual Property Rights Matters" has marked this appeal as an exception, hence, the Honb'le the Chief Justice has assigned the instant matter to this Court vide notesheet dated 08.08.2023
2. The instant Civil Misc. Appeal has been preferred under Order 43 Rule 1(r) CPC against the impugned order dated 06.02.2020 passed by the Additional District Judge No.3, Kota in Civil Suit No.76/2019 by which the application filed by the petitioner under Order 39 Rule 1 and 2 CPC has been rejected.
3. Learned counsel for the petitioner submits that a suit under the Trade Marks Act, 1999 (hereinafter referred as 'Trade Marks Act') has been filed by the petitioner against the respondents



restraining them to use the word “Swastik” and its label upon their products. Counsel submits that along with suit an application under Order 39 Rule 1 and 2 CPC was submitted for passing interim orders till disposal of the suit, restraining the defendant-respondent from using the word “Swastik” and its label. Counsel submits that the aforesaid application submitted by the petitioner has been rejected by the Court below. Counsel submits that under the similar circumstances, another suit was filed by the petitioner against one proprietary firm-Shanker Oil Mill, who were also using the same trade mark and label for which the trade mark certificate was issued in favour of the petitioner.

4. Counsel submits during pendency of the said suit against Shanker Oil Mill, the temporary injunction application submitted by the petitioner was allowed by the same Court i.e. by the Additional District Judge No.2, Kota vide order dated 30.08.2022, who rejected the application filed by the petitioner under Order 39 and Rule 1 and 2 by the impugned order, in the present writ petition. Counsel submits that injunction was granted against the said firm-Shanker Oil Mill, restraining them to use the word Swastik and its label, as trade mark for the purpose of selling edible oil, till final disposal of the suit. Counsel submits that the aforesaid order passed by the Trial Court on 30.08.2022 was assailed by the said firm-Shanker Oil Mill before this Court by filing S.B. Civil Misc. Appeal No. 2925/2022, which was rejected by this Court vide order dated 06.11.2024. Counsel submits that the controversy involved in both the matters is similar and identical, and once an interim order was passed in identical matters then it was enjoined upon the Trial Court to take the similar view and



pass the same order in favour of the petitioner, till final disposal of the suit. But to the dismay of the petitioner two contradictory and conflicting orders have been passed by the Court below with regard to the same issue involved in both suits.

5. This Court issued notice to the respondents and inspite of service of notice, none has put in appearance on behalf of the respondents.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. The petitioner has been holding the registered trademark for the word "Swastik" and its associated label since 1983 and has been using it in connection with the business of edible oils. The petitioner claims that the respondents are using an identical trademark and label under the name 'Shree Parwati Swastik', which amounts to a violation of the Trade Marks Act and has caused significant losses to the petitioner's business. The case of the petitioner is that over the years, the petitioner-company has openly, continuously, and extensively used the trademark 'Swastik' along with the design/symbol '卐' and the company name Rajani Products on the packaging and labeling of oils and other products. The petitioner alleges that the respondents' use of a nearly identical and deceptively similar trademark constitutes an infringement of its registered trademark. The petitioner seeks to restrain the respondents from using the infringing trademark and label until the final disposal of the suit.

8. Perusal of the record indicates that the impugned trade mark of the respondent-company 'Shri Parwati Swastik' is visually, phonetically, structurally and deceptively similar to the petitioner's





registered trade mark with the similar symbol labeled as '卐' for which the petitioner has secured trade mark registration certificate and has been using the same since long.

Prima facie, this Court is of the opinion that the impugned artistic work by the respondents are a reproduction of the petitioners artistic work and/or substantial parts thereof, and the added matters on the respondent's labels do not make the impugned labels distinctive or dissimilar to the petitioner's labels. Hence, the respondent's use of the impugned trade mark and labels amounts to infringement of the petitioner's copyright and registered trade mark.

9. In these circumstances, a prima facie case for the grant of ad-interim relief is made out. Unless reliefs as prayed for are granted, the petitioner is likely to suffer irreparable injury. The balance of convenience to lies in favour of the petitioner.

It is the settled principle of law that in the matters of blatant violation of Intellectual Property Rights, a prompt order of injunction must be granted to protect not only the interest of the person aggrieved but also that of the public at large.

10. This Court is not going in the merits and demerits of the matter at this stage as the matter is required to be decided by the Trial Court in the main suit filed by the petitioner against the defendant.

11. In the considered opinion of this Court, when the same Court i.e. the Additional District Judge No.2, has entertained the identical and similar temporary injunction application, submitted by the petitioner against one firm-Shanker Oil Mill, who was also using the identical trade mark and the label, as that of the





petitioner's and injunction order has also been passed against him on 30.08.2022 restraining him not to use the same trade mark, till final disposal of the suit, there was no reason and occasion available with the Court below to take a different view in the instant matter. It is worthy to note here that the order dated 30.08.2022 passed in the case of the said firm-Shanker Oil Mill, has attained finality before this Court, after S.B. Civil Misc. Appeal No.2925/2022 submitted by the said firm-Shanker Oil Mill came to be rejected vide order dated 06.11.2024.

12. In view of the above, the instant writ petition stands allowed and the impugned order dated 06.02.2020 stands quashed and set aside and the respondents are restrained from using the trade mark "Swastik" and its label on their products, till final disposal of the suit.

13. Needless to observe, the findings recorded by this Court is only for the purpose of the disposal of the present appeal and the temporary injunction application submitted by the petitioner under Order 39 Rule (1) (2) CPC. It is made clear that by way of passing the order, this Court has not expressed any opinion on the merits of the matter. The Trial Court will decide the main suit on the basis of the evidence led by both the sides, without being influenced by the observations made by this Court. It is expected from the Trial Court to decide the suit, expeditiously, as early as possible.

14. Stay application as well as all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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