



2024 : DHC : 1717



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

% Reserved on : 23rd February, 2024
Pronounced on : 01st March, 2024

+ C.O.(COMM.IPD-CR) 20/2021

CINNI FOUNDATION THROUGH MANAGING TRUSTEE
DIPAK KUMAR SAH Petitioner

Through: Mr. Sudarshan Kumar Bansal and
Mr. Arpit Dudeja, Advs

versus

ANJAN NARAYAN SINGH & ANR. Respondents

Through:

Mr. Krishnan V., Advs.
Mr. Chandra Prakash, Advocate
and Mr. Abhinav Kumar,
Advocates. for Respondent No. 1
and
Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar
Mishra, Mr. Alexander Mathai
Paikaday for Respondent No. 2


CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This rectification petition has been filed by petitioner under Section 50 of the Copyright Act, 1957, (hereinafter referred to as “**the Act**”) seeking removal of the entry made in the register of copyright of the



artwork  (hereinafter referred to as “**impugned artwork**”) registered under No. A-117189/2017.

2. This petition has been filed by CINNI Foundation (hereinafter referred to as “**Trust**”) through Managing Trustee Dipak Kumar Sah.
3. The grievance is against the impugned artwork being registered as a copyright by Ravindra Kumar Sah and Anjan Narayan Singh, also acting as Chairman and Managing Trustees of the CINNI Foundation.
4. At the outset, counsel for petitioner as well as respondent no.1 (Anjan Narayan Singh) have apprised this Court that there are several litigations which are pending between Dipak Kumar Sah who was the son of Late Sh. Chandra Kumar Sah, one of the first trustees of the Trust (settled by Raj Kumar Sah and Ravindra Kumar Sah by deed of trust dated 05th November, 2000 in name of “*CINNI Foundation*”).
5. Dipak Kumar Sah relies on clause 5.5 (a) of the deed of trust which states as under:

“That Sri Chandra Kumar Sah shall be the first Managing Trustee and he shall continue to be the Managing Trustee for his lifetime. He shall be empowered to nominate any person as his successor to work as Managing Trustee after his lifetime.”

6. Dipak Kumar Sah claims that Chandra Kumar Sah (his father) executed a deed dated 25th September 2012, stating *inter alia* that basis the right to appoint successor Managing Trustee, he was exercising his



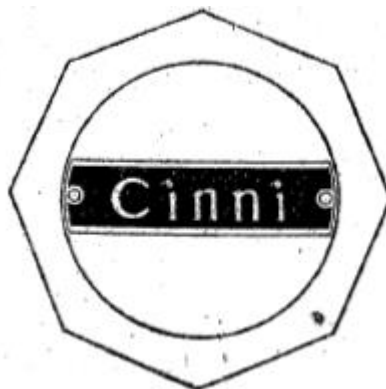
rights to appoint Dipak Kumar Sah, his son, as lifetime Managing Trustee of CINNI Foundation.

7. On this basis, Dipak Kumar Sah claims to be Managing Trustee of CINNI Foundation and therefore “*person aggrieved*” in respect of the registration of the impugned artwork by *inter alia* respondent no.1 and Late Shri Ravindra Kumar Sah (the other copyright applicant for the registration who has since passed away in 2019).

Submissions on behalf of the petitioner

8. Objections taken by petitioner’s counsel in relation to the impugned work are as under:

- 8.1. This impugned artwork was the exact replica of the device mark for ‘CINNI’ registered by No. 383591 on 27th November 1981 by the partnership, Raj Kumar Sah and Sons (having partners Raj Kumar Sah, Rajendra Kumar Sah and Ravindra Kumar Sah), with their offices in Varanasi (UP). The registered trademark as it appeared in trademark journal in class 11 appended by the petitioner is as under:





Class 11—Contd.

RAVINDRA KUMAR SAH, trading as RAJ KUMAR SAH AND SONS and also as NATIONAL WINDER, Pishachmochan Marg, Chetganj, Varanasi-220 001, Uttar Pradesh; Manufacturers and Merchants. Address for service is C/o D.P. Ahuja & Co., 8, Camac Street, Calcutta-700 017. User claimed since January, 1950. (CALCUTTA).

Electric fans and regulators of all types, electric stoves, electric lamps, including fluorescent lamps, lamp holders, and fittings, electric heaters, geysers, electric torches, air coolers, air conditioners, refrigeration compression units and their parts and fittings, installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply purpose, toasters, all being goods included in Class 11.

8.2. According to the petitioner, the said trademark was assigned by the partnership *vide* assignment deed dated 05th November, 2000, which was appended with the petition. Basis the deed of assignment, the partners of M/s Raj Kumar Sah and Sons assigned the registered trademark 'CINNI' along with other Intellectual Property to CINNI Foundation through its Managing Trustee Sh. Chandra Kumar Sah. It was thus claimed that CINNI Foundation acting through Managing Trustee (which Dipak Kumar Sah said he was) was the owner of the registered device mark 'CINNI'.

8.3. Being owner of the registered mark since 1981, the copyright in the artwork which was part of the trademark could not have been applied for in 2016 by Ravindra Kumar Sah and Anjan Narayan Singh (who according to Dipak Kumar Sah are wrongly masquerading as Managing Trustees of CINNI Foundation). Not only was the impugned artwork, an integral part of the registered trademark but also



authorship of the artwork could not be claimed by the copyright applicants therein.

8.4. Serial no. 9 of the statement of particulars of the impugned registration shows 1964 as the year of the first publication. Counsel for petitioner drew attention to the fact that respondent no.1 (Anjan Narayan Singh) as per his affidavit March 2022 claimed to be 51 years on that day and would be therefore born in 1971. Therefore, his claim for authorship of the said mark in 1964 cannot arise and is impossible to accept. Since, the application was jointly filed by respondent no.1 and Ravindra Kumar Sah, it was clearly a fraud played out on the Registrar of Copyright by claiming authorship of both the copyright applicants since 1964.

8.5. Petitioner's counsel contended that not only was fraud played out upon the Registrar of Copyright, but also the Registrar was amiss in not complying with statutory obligation under the Act: *firstly*, Section 45 (1) of the Act mandated that in respect of an artistic work capable of being used in relation to goods and services, the application should be accompanied by a certificate from the Registrar of Trademarks, to the effect that no trademark identical with or deceptively similar to such artistic work had been registered under the Trademark Act. Such a certificate had indeed been provided, however, it did not disclose the registration of the 'CINNI' trademark of 1981 (and other similar marks of 'CINNI' registered at various other points of time); *secondly*, as per Rule 70(9) mandate of the Copyright Rules 2013 (hereinafter referred to as "**the Rules**") the person applying for registration was mandated to give notice of his application to every person who claims



or has interest in the subject matter of the copyright or disputes the applicants rights; *thirdly*, as per Rules 70 (10) and 70 (11) the Registrar of Copyright was obliged to be satisfied about the correctness of the particulars given in the copyright application and was to hold an inquiry as deemed fit before endorsing a registration of a copyright. Petitioner's counsel stated that no such exercise was done, there was no application of mind and no inquiry was ever held, which would itself make the registration invalid.

8.6. It was argued that the phrase '*person aggrieved*' under Section 50 of the Act had to be liberally constituted including those persons against whom such copyright was being forced. In the circumstances that an FIR had been registered by respondent no.1 against Dipak Kumar Sah in respect of the infringement of copyright, Dipak Kumar Sah would end up being a "*person aggrieved*", as also the Foundation that he claims to be the Managing Trustee of.

8.7. Petitioner's counsel asserted, quite categorically, that even if there were disputes between the parties relating to the trusteeship (through civil suits filed in Varanasi and multifarious litigations), it could not take away from the fact that the impugned artwork could not exist or continue on the Register of Copyright, due process having not been followed as contended above.

8.8. Rights in *rem* could not have been created as asserted by respondent no.1 in respect of the impugned artwork, the rights to which they did not own in law.



Submissions on behalf of respondent no.1

9. In response counsel for respondent no. 1 laboured on certain facts to assert the position that an application for registration of the mark was made on behalf of CINNI Foundation of which Ravindra Kumar Sah and respondent no.1 were the Managing Trustees in 2016 (when the application was made).

10. Counsel for respondent no.1 categorically stated at the outset that Anjan Narayan Singh (respondent no.1) or anyone else acting on his behalf was not claiming copyright registration in his individual name and acknowledged that it was in the name of the Foundation/Trust.

11. Submissions in this regard were *inter alia* as under:

11.1. Most importantly, he stated that petitioners had suppressed the execution of the deed for amendment of the CINNI Foundation Trust, dated 30th December 2009. This deed, which was appended by respondent No. 1, bears out that it was executed by Ravindra Kumar Sah in the capacity of the settlor of the Trust (the co-settler late Raj Kumar Sah, father of Ravindra Kumar Sah, having passed away). Re-constitution of Board of Trustees was necessitated, as per circumstances stated in the deed of amendment.

11.2. In terms of clause 13 of the said deed, the new trustees of the Trust were delineated as Ravindra Kumar Sah as Trustee and Chairman, Anjan Narayan Singh as Managing Trustee, Sumit Agrawal and Smita Singh as Trustees. It was pursuant to this amendment, that Ravindra Kumar Sah and Anjan Narayan Singh, as Chairman and Managing



Trustee of CINNI Foundation, had filed an application for registration of copyright in 2016.

11.3. While admitting that Chandra Kumar Sah was the Trustee, in the original Trust Deed, it was stated that pursuant to the said amendment, he did not have any right to nominate Dipak Kumar Sah in 2012 as claimed by petitioner.

11.4. The amendment was challenged by Chandra Kumar Sah, and the suit filed in 2012 was still pending in District Court Varanasi, and no interim relief had been granted. Therefore, the claim of Dipak Kumar Sah to be the Managing Trustee of CINNI Foundation was untenable and the petitioner's locus was therefore questioned on that account. Both, in terms of legal status, as well as being "*person aggrieved*" under Section 50 of the Act. Notably, facts relating to the pending litigation proceedings, and there being no interim relief in favour of Dipak Kumar Sah, were not refuted by petitioner's counsel.

11.5. Counsel for respondent no. 1 pointed out the minutes of meeting dated 16th January, 2022 of the Trustees of CINNI Foundation which was attended by Smita Singh, Anjan Narayan Singh and Anvi Singh as Trustees, taking note of this matter being filed by Dipak Kumar Sah and authorising Anjan Narayan Singh to take all necessary action on behalf of the Trust.

11.6. The claim of Dipak Kumar Sah to be authorised by CINNI Foundation Trust was questioned on the basis that no resolution or authority had also been filed noting the endorsement by other trustees. Respondent's counsel submitted that he was an interloper who could



not assert a right on the basis of unilateral nomination by his late father to the post of Managing Trustee.

11.7. It was pointed out that on 22nd April 2009, due to the anti-trust activity of Chandra Kumar Sah, the other trustees, including his elder son Suraj Kumar Sah, passed a resolution by majority voting and removed Chandra Kumar Sah from the post of Managing Trustee. This was challenged by Chandra Kumar Sah by multiple legal proceedings, details of which may not be necessary and relevant.

11.8. Respondent no's 1 counsel pointed out that the subsequent development of the 2009 trust deed amendment was allowed to brought on record in 2010, in proceedings before the Delhi High Court. Also, an order dated 01st March, 2013, was passed by this Court noting that, Chandra Kumar Sah was no longer in the management of the Trust, and the Trust itself did not want to pursue the suit. Therefore, the suit was not proceeded ahead with and the matter was subject to the challenge of the amendment.

Analysis

12. Having heard counsel for parties and on an assessment of the documents on record and submissions filed, the following appears to this Court as relevant:

12.1. Aside from the heavily disputed issue of who is the Managing Trustee of the CINNI Foundation, certain basic facts have been clearly admitted by the counsel: *firstly*, that CINNI Foundation is a registered trust having been originally settled by Raj Kumar Sah and his son Ravindra Kumar Sah on 5th November, 2000; *secondly*, Chandra



Kumar Sah and Ravindra Kumar Sah were both amongst the first trustees of the said Trust; *thirdly*, that the registration of the trademark ‘CINNI’ was in favour of the CINNI Foundation in 1981; *fourthly*, that the registration of the impugned artwork as a copyright was also made on behalf of the CINNI Foundation (albeit by respondent no. 1 and Ravindra Kumar Sah, basis a claim that they were the new Chairman and Managing Trustee). It is therefore quite evident that no particular individual, in their own right, is claiming the impugned artwork and copyright therein.

12.2. Needless to say, since Ravindra Kumar Sah has passed away, the other applicant for copyright i.e. respondent no.1 (who is a party in this proceeding) will be bound by this statement and undertaking. It is established that the impugned artwork/copyright was therefore claimed only by the CINNI Foundation/Trust, and therefore will be an asset of the Trust which will be held by the Trustees of the Foundation in favour of the beneficiaries. The Trust being a private trust was made for the benefit of various family members which were originally named in the deed of trust, as also for various other activities including philanthropic work.

12.3. It is axiomatic that trustees hold assets of a trust not in their personal names, but in fiduciary capacity for the benefit of the named beneficiaries and for the objectives of the trust.

12.4. Section 3 of the Indian Trusts Act, 1882, itself defines a ‘beneficiary’, ‘trustee’ as well as ‘trust property’. In accordance with the Indian Trusts Act, a beneficiary of the trust has a beneficial interest in trust



property, which is the subject matter of the trust. A trustee is one holding property in trust for the benefit of the beneficiary and has specific duties and liabilities. The trustee owes a fiduciary duty to the beneficiary.

12.5. Therefore, both the registered trademark ‘CINNI’ of 1981 and the impugned registration of the artistic work ‘CINNI’ in 2016 was in the name of the CINNI Foundation/ Trust. Who claims to be the trustee of the Trust, is clearly a disputed issue as is evident from multifarious and hydra-headed litigation pending between Dipak Kumar Sah on one side (claiming through Chandra Kumar Sah, the first Managing Trustee), and Anjan Narayan Singh (claiming through the 2009 amendment when he was appointed as the Managing Trustee with late Ravindra Kumar Sah as the Chairman), on the other side.

12.6. It is not within the remit of this Court to enter into this thicket of disputes, which is legitimately before the Civil Courts of Varanasi and other courts where ancillary proceedings are pending.

12.7. In a rectification proceeding for an intellectual property right (in this case, registered copyright), it is only relevant for this Court to determine whether the copyright is wrongly registered or wrongly maintained on the Register and should be expunged. CINNI Foundation, acting through its Trustees, can claim the copyright in the artistic work of a trademark which is also registered in the name of the CINNI Foundation itself.

12.8. The contention of the petitioner’s counsel regarding the 1964 authorship claimed by Anjan Narayan Singh would not be therefore



relevant, in that Anjan Narayan Singh never claimed or claims that he, in his individual right, was the author of the artistic work. In fact, he applied for the registration of the mark as a Managing Trustee of the Trust and has no proprietary rights in his personal name.

12.9. Further submissions with regard to the non-compliance of Rule 70 of the Rules, and a fraud being played on the Register of Copyrights may also not be relevant for the reason that it was the Foundation itself, acting through its trustees which was applying for the registration.

12.10. Dispute as to who was the trustee of the Trust/CINNI Foundation, is a matter to be determined by the competent court. It is clear that the assets of intellectual property rights including this copyright would be retained in favour of the beneficiaries of the Trust by any trustee who claim to be the legitimate trustee of the CINNI Foundation, or one who is ultimately declared to be legitimate trustee. The right would therefore accrue in favour of the beneficiary to claim the benefit of the copyright, its value and its exploitation. The trustee would only owe a fiduciary duty to the beneficiary with regards to this trust property.

13. For these reasons, it would not be necessary to deal into disputes between Dipak Kumar Sah and Anjan Narayan Singh on the claim of who is Managing Trustee of the Trust/CINNI Foundation.

14. In light of the statement made by respondent no.1 that the application was made on behalf of the Trust/ CINNI Foundation and not in his personal capacity, the rectification petition is disposed of with a direction to the Registrar of Copyright under Section 50 (c) of the Act



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to rectify the Register in that the said registration shall be in the name of the Trust viz. “*CINNI Foundation*”.

15. Pending applications, if any, are rendered infructuous.
16. It is reiterated that this Court has not made any observations on the merits of the disputes between Dipak Kumar Sah and Anjan Narayan Singh or any other claim to the trusteeship of the Trust and has restricted itself to its remit under Section 50 of the Act.
17. Registry to supply a copy of the order to registrar.copyrights@gov.in for compliance.
18. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

MARCH 01, 2024/RK