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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**Date of Decision: 03<sup>rd</sup> May, 2023**

+ **C.O. (COMM.IPD-TM) 142/2023 & I.As. 7528-7530/2023**

RSPL LIMITED

..... Petitioner

Through: Mr. S. K. Bansal, Mr. Pankaj Kumar  
and Mr. Ajay Amitabh Suman,  
Advocates.

versus

AGARWAL HOME PRODUCTS & ANR.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC  
with Mr. Gokul Sharma, Advocate  
with Mr. Kushagra Kumar, G.P. for  
R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**J U D G M E N T**

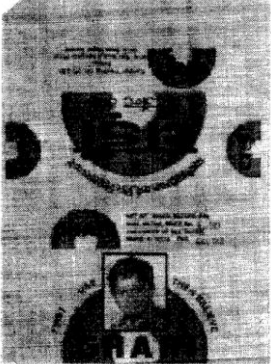


**SANJEEV NARULA, J. (Oral):**



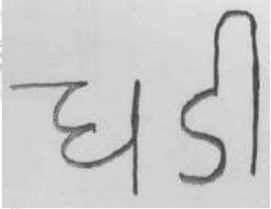

**BRIEF FACTS**


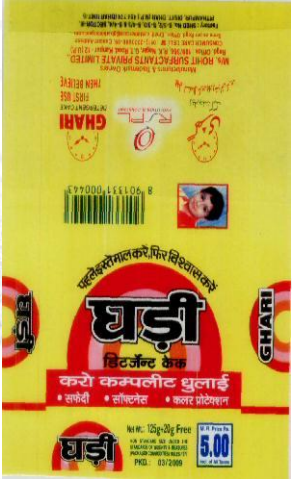

1. RSPL Ltd., formerly known as Rohit Surfactants Pvt. Ltd., is a diversified conglomerate in the Fast-Moving Consumer Goods (FMCG) industry. The company specializes in manufacturing detergent powders and cakes, which are marketed under the brand names 'GHARI' and 'GHADI'. RSPL Ltd. was incorporated in 1988 and reconstituted as a public limited company in August 2011. They hold several device and label mark registrations, which are detailed in paragraphs No. 11 (vii) and (viii) of the

petition [hereinafter collectively “*Petitioner's marks*”].

2. In paragraph No. 11 (vii) of the petition, Petitioner has presented label mark registrations that they assert are pertinent to the present proceedings. These registrations, which exclusively consist of label marks, are extracted hereinbelow:

TRADE MARK NO. & PROPRIETOR	CLASS	LABEL/ DEVICE (AS APPEARING ON THE PORTAL OF TRADE MARKS REGISTRY)
588196  KANPUR TRADING COMPANY PVT. LTD.	03	
588197  KANPUR TRADING COMPANY PVT. LTD.	03	
926631  KANPUR TRADING COMPANY PVT. LTD.	03	

<p>958863 RSPL LTD.</p>	<p>03</p>	
<p>1108631 KANPUR TRADING COMPANY PVT. LTD.</p>	<p>03</p>	
<p>1234989 KTC PVT. LTD.</p>	<p>03</p>	
<p>1315919 KTC PVT. LTD.</p>	<p>03</p>	

<p>1603736</p> <p>ROHIT SURFACTANTS PRIVATE LIMITED</p>	<p>03</p>	<p>GHARI STRONG</p>
<p>1675248</p> <p>ROHIT SURFACTANTS PRIVATE LIMITED</p>	<p>03</p>	
<p>1808195</p> <p>RSPL LTD.</p>	<p>03</p>	
<p>1952478</p> <p>RSPL LTD.</p>	<p>03</p>	

<p>2122762 RSPL LTD.</p>	<p>03</p>	
<p>2235099 RSPL LTD.</p>	<p>03</p>	
<p>3387809 RSPL LTD.</p>	<p>03</p>	
<p>3431995 RSPL LTD.</p>	<p>03</p>	
<p>3431996 RSPL LTD.</p>	<p>03</p>	

3. Petitioner is aggrieved with the registration of word mark ‘AGRAGHADIYAL’ (Trade Mark No. 4398088 under Class-03) for “*DETERGENT POWDER & DETERGENT CAKE, LIQUID TOILET*


*CLEANER, CLEANING, POLISHING, SCOURING AND ABRASIVE PREPARATIONS AND SOAPS INCLUDED IN CLASS 3*” [hereinafter “*impugned mark*”].

#### **PETITIONER’S CONTENTIONS**

4. Mr. S.K. Bansal, counsel for Petitioner, argues that registration of the impugned mark is liable to be cancelled on the following grounds:

4.1 The impugned mark is deceptively and confusingly similar to



Petitioner’s mark ‘’ (Trade Mark No. 809474), which has been declared to be a ‘well-known trademark’ within the meaning of Section 2(1)(zg) r/w Section 11(6) of the Trade Marks Act, 1999 [hereinafter “*the Act*”].<sup>1</sup>

4.2. The impugned mark resembles Petitioner’s mark ‘GHADI’ and in absence of cancellation, having both such marks, for the same class of goods/ in the same market, is likely to deceive or cause confusion to public at large.

4.3. The mark ‘AGRAGHADIYAL’ in question bears structural, visual, and phonetic similarities to the mark ‘GHADI’, which can potentially mislead unsuspecting consumers into believing that they are purchasing products from Petitioner or that there is some form of association or endorsement between Respondent No. 1 and Petitioner’s well-known brand.


4.4. Meaning of ‘GHADIYAL’, which forms part of the impugned mark, is same as ‘GHADI’.

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<sup>1</sup> A notification, to that effect, has been published in Trade Marks Journal No. 1942 dated 24<sup>th</sup> February,

4.5. Adoption of the impugned mark is solely with the intent to come close to Petitioner's marks and create unauthorized association with Petitioner's brand name and cachet.

4.6. Respondent No. 1, in addition to registering the impugned mark, has

also applied for the registration of a device mark– ‘’ (Trade Mark No. 5554653 under Class-03) on a ‘*proposed to be used*’ basis. Petitioner has opposed this registration. Notably, the application for the device mark identifies the impugned (word) mark as an Associated Trademark.

4.7. The impugned mark and the afore-extracted *proposed to be used* label mark in relation to goods and business is identical with and deceptively similar to Petitioner's marks in each and every respect including phonetically, visually, structurally and its basic idea and its features. Side-by-side comparison of competing marks is culled down below:

<b>WORD MARKS</b> (IN THE INSTANT PETITION)	GHADI	AGRAGHADIYAL
<b>DEVICE MARKS</b>		


4.8. Respondent No. 1 was well-aware of Petitioner's registered trademarks/ label, which are unique and arbitrary, along with their prior use and established reputation. Despite this knowledge, Respondent No. 1 has knowingly adopted and intends to use the impugned mark in a fraudulent

manner, with the intention of unjustly benefitting from and trading on the reputation built by Petitioner.

4.9. Registration of the impugned mark is violative of Sections 9, 11, 12 and 18 and other provisions of the Act. Reliance is placed on the decision of the Supreme Court in *K.R. Chinna Krishna Chettiar v. Shri Ambal and Co., Madras and Anr.*,<sup>2</sup> this Court in *M/s Hitachi Ltd. v. Ajay Kumar Aggarwal*,<sup>3</sup> *Shree Nath Heritage Liquor Pvt. Ltd. v. M/s Allied Blenders & Distillers Pvt. Ltd.*,<sup>4</sup> *Sunil Mittal and Anr. v. Darzi On Call*,<sup>5</sup> *Cadbury India Ltd. and Ors. v. Neeraj Food Products*,<sup>6</sup> and High Court of Judicature at Bombay in *Centron Industrial Alliance Ltd. v. Gillette U.K. Ltd.*<sup>7</sup>

### ANALYSIS

5. The Court has patiently heard Mr. Bansal and also examined the case laws cited by him, but remains unconvinced. First and foremost, it is important to clarify that the subject matter of present petition does not

pertain to device mark, namely ‘’, which has been presently “Accepted and Advertised” by the Trade Marks Registry and has been opposed by Petitioner. Therefore, no opinion is expressed regarding the aforementioned device mark, and our focus solely lies on the impugned word mark - 'AGRAGHADIYAL'.

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<sup>2</sup> (1969) 2 SCC 131.

<sup>3</sup> 1995 SCC OnLine Del 268.

<sup>4</sup> 2015 SCC OnLine Del 10164.

<sup>5</sup> 2017 SCC OnLine Del 7934.

<sup>6</sup> 2007 SCC OnLine Del 841.

<sup>7</sup> 1986 SCC OnLine Bom 350.



6. As noted above, Petitioner's device mark 'घड़ी' has been declared to be a 'well-known trademark'. This device contains the word 'घड़ी' (In english: GHADI), which is the most prominent feature. However, upon careful comparison of Petitioner's marks (labels/ device marks) with the impugned mark 'AGRAGHADIYAL', the Court does not identify any similarities. The Petitioner's claim for cancellation/ rectification, based on deceptive similarity under Section 11 of the Act, is unfounded. The word 'GHADI', commonly used in the Hindi language, means 'clock'. But, the impugned mark is a combination of two words: 'AGRA', referring to a city in Uttar Pradesh, India, and 'GHADIYAL', which translates to 'crocodile' in Hindi. When comparing the two marks: 'GHADI' and 'AGRAGHADIYAL', it is evident that the word 'GHADI' appears in both marks, and they are used for identical goods. However, the similarity ends there. In the impugned mark, 'GHADI' is part of the word 'GHADIYAL'. Under trademark law, the comparison has to be on the basis of the overall impression created by marks, including visual, phonetic, and conceptual aspects. In terms of visual and phonetic similarity, the two marks are completely dissimilar. They have distinct spellings and pronunciations. Conceptually, again, the similarity is not there as 'GHADI' refers to 'clock' and 'GHADIYAL' refers to 'crocodile'. Further, the addition of the prefix 'AGRA' in 'AGRAGHADIYAL' changes the meaning and overall impression of the impugned mark. Thus, the Court is unable to perceive that the impugned mark is likely to cause confusion amongst the consumers regarding the origin of the goods or services. Although, Mr. Bansal has

argued that the word ‘GHADIYAL’ also refers to ‘clock’ in Hindi dictionary, however, that also does not bring any similarity conceptually. There is a direct association between ‘GHADIYAL’ and ‘AGRA’ – National Chambal Sanctuary (*also known as* National Chambal Ghadiyal Wildlife Sanctuary) is located on the Chambal River and spread near Agra and Etawah district and tripoint of Rajasthan, Madhya Pradesh, and Uttar Pradesh. This long, narrow tri-state protected eco-reserve is co-administered by the above three states for protection of the critically endangered ‘gharial’/ ‘ghadiyal’. Thus, the two words together (‘AGRA’ and ‘GHADIYAL’) can only draw reference to ‘ghadiyal’ which symbolizes/ means ‘crocodile’.

7. Section 11 of the Act provides for grounds of refusal of registration of a trademark. One of the grounds includes the ground of the trademark being identical or deceptively similar to an existing trademark for the same or similar goods or services. Here, Petitioner may argue that the two marks are being used for similar goods, however, as mentioned earlier, the marks are distinct in their overall impression, sound and meaning and there is no likelihood of confusion between the two. The addition of the word ‘AGRA’ and the letters ‘YAL’ after the word ‘GHADI’, change the overall impression for the impugned mark. It must also be noted that Respondent No. 1 has associated the impugned mark with its label/ device mark –



‘**AGRA GHADI YAL**’, which is the subject matter of the Trade Mark No. 5554653 under Class-03. In the said device mark, though the manner in which the word ‘GHADIYAL’ is broken-down into two (‘GHADI’ and ‘YAL’). If the Petitioner finds the said label/ device mark objectionable, the remedy lies in impugning the said device mark and not the impugned (word)

mark.

8. Principles of law cited in the case laws noted above, cannot be disputed, however, none of them come to the aid of Petitioner. The marks which were subject matter in each of the case, are different and therefore, there is no basis for Petitioner to apply the same to the facts of the present case. The factual matrix of the said decisions relied on by Mr. Bansal are discussed hereinbelow:

8.1. In *Centron Industrial* (supra), the impugned marks '7-Up' and '7 BAJE' were found to be infringing Plaintiff's mark '7 O'CLOCK' on the ground that they conveyed the same idea as Plaintiff's mark *i.e.*, "to get up at 7 in the morning and shave with the blade". In the instant case, the impugned mark 'AGRAGHADIYAL' does not convey the same meaning or idea as Petitioner's mark 'GHADI', and thus, the said judgment is distinguishable.

8.2. In the *Hitachi Ltd.* (supra) case, the court held that although Plaintiff's mark ('HITACHI') and the Defendant's mark ('HITAISHI') were represented in different scripts, they exhibited a noticeable phonetic similarity. By applying the "consumer imperfect recollection" test, Court determined that the pronounced phonetic similarity would make it challenging for ordinary consumers to discern the finer differences between the two trademarks, despite their distinct meanings and concepts. In contrast, the impugned mark in the present case does not possess a similar level of phonetic similarity to Petitioner's 'GHADI' marks, making the judgment inapplicable.

8.3. In the *Shree Nath Heritage* (supra) case, the court examined the impugned marks ('COLLECTOR'S CHOICE' and 'OFFICER'S SPECIAL')

and observed that they conveyed a similar meaning, which pertained to an official position or persons holding office. Although the terms “Collector” and “Officer” had phonetic differences, the underlying ideas they conveyed indicated a potential likelihood of confusion. Similarly, the words “Choice” and “Special” refer to something that is ‘specially selected’ or ‘held in particular value’ respectively, denoting comparable meanings. However, in the present dispute between ‘GHADI’ and ‘AGRAGHADIYAL’, there is no similarity in terms of meaning or relationship as hypernyms or hyponyms. Therefore, the decision in the *Shree Nath Heritage* case cannot be considered a binding precedent in the present matter.

8.4. In the *Cadbury India* (supra) case, the Court analyzed the disputed marks (‘JAMES’ or ‘JAMES BOND’) and determined that they were phonetically similar to the crucial element of the Plaintiff’s trademark (‘GEMS’ in ‘CADBURY GEMS’). Additionally, the court noted that the Defendant had replicated every essential aspect of the Plaintiff’s unique packaging and label. Consequently, the Court concluded that the combination of phonetic and physical similarities between the products could lead to confusion and deception among unsuspecting consumers. In contrast, in the present matter, the Petitioner’s mark ‘GHADI’ is phonetically distinct from Respondent No. 1’s trademark ‘AGRAGHADIYAL’.

8.5. In the *Sunil Mittal* (supra) case, the Defendant’s trademark (‘DARZI ON CALL’) shared the word ‘DARZI’ with the Plaintiff’s mark (‘THE DARZI’), and both were used in the same category of goods and services. Nevertheless, this case is not applicable to the present dispute since the subject marks under consideration are distinct from each other and carry

different meanings.

8.6. In *K. R. Chinna Krishna* (supra), Respondent's (Plaintiff) mark was a label containing the device of a goddess Sri Ambal seated on a globe floating on water with the words 'SRI AMBAL PARIMALA SNUFF' in Class 34 and the impugned mark was a label containing the device of a goddess Sri Andal (distinct goddess) with the words 'SRI ANDAL MADRAS SNUFF'. The Court held that the key portions of the trademarks of Plaintiff and Defendant therein *i.e.*, 'AMBAL' and 'ANDAL' had striking similarity and affinity of sound, while also being derivatives of the same concept *i.e.*, a benign goddess. The Court therefore, held that there is a likelihood of confusion due to imperfect recollection by an average consumer. In contrast here, Petitioner's mark does not have striking similarity with that of Respondent No. 1. Therefore, this judgment due to the distinctions highlighted above, would not have any relevance.

9. For the foregoing reasons, the Court finds no merit in the present petition.

10. Dismissed, along with other pending applications.<sup>i</sup>

भारतमेव जयते

**SANJEEV NARULA, J**

**MAY 3, 2023**

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(Corrected and released on: 23<sup>rd</sup> May, 2023)

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<sup>i</sup> Operative portion of this order was dictated in open court and reasoning has been subsequently added in-chamber.