

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7191 OF 2014
(Arising out of SLP(C)No.9942 of 2013)

Precious Jewels & Anr. ... Appellants

Versus

Varun Gems

..Respondent

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.
2. Being aggrieved by an interim order passed in a civil suit, the appellants-original defendants have approached this Court by way of this appeal.
3. The matter has arisen under the provisions of the Trade Marks Act, 1999. It is an admitted

fact that the partners of the plaintiff as well as the defendant firms belong to the same family sharing a common surname - "Rakyan".

4. The defendants are dealing in jewellery, which is admittedly a family business of the plaintiff as well as the defendants. The defendants are doing business in the name and style of "NEENA AND RAVI RAKYAN", whereas the plaintiff firm is also dealing in jewellery and doing the business in the name and style of "Rakyan's Fine Jewellery". Both are doing business in Delhi and their shops are abutting each other.

JUDGMENT

5. The plaintiff claiming trade mark of their surname "RAKYAN" filed a suit praying, *inter alia*, that the defendants be restrained from doing their business in the name and style of "NEENA AND RAVI RAKYAN". In the said suit, an application seeking interim relief was filed whereby it was prayed that the defendants be

restrained from doing the business in the name and style of "NEENA AND RAVI RAKYAN". By virtue of the impugned order, the defendants i.e. the present appellants have been restrained from doing their business in the concerned name and therefore, the appellants have approached this Court.

6. It is an admitted fact, as stated hereinabove, that the partners of the plaintiff as well as defendant firm being to one family and they are in the business of jewellery and they have got a large family and there are not less than 15 business units belonging to the family members, which are dealing in jewellery in different names and styles.

7. It had been submitted by the learned counsel appearing for the appellants that they could not have been restrained from doing their business in the name and style of "NEENA AND RAVI RAKYAN" for the reason that the partners in

the said firm are Smt. Neena Rakyan and Shri Ravi Rakyan and they cannot be restrained from doing their business in their own name. The learned counsel had referred to some of the judgments and had mainly relied upon Section 35 of the Trade Marks Act, 1999 (hereinafter referred to as "the Act"). It had been further submitted that the interim order whereby they have been restrained from doing their business is absolutely unjust and improper in view of provisions of Section 35 of the Act, which read as under :-

"35. Saving for use of name, address or description of goods or services. - Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods or services."

8. On the other hand, the learned counsel appearing for the respondent-plaintiff had vehemently submitted that the defendants had no right to do their business in the shop which is next to the shop of the plaintiff and they have no right to use the word "RAKYAN" in the name of their shop. The learned counsel appearing for the respondent/plaintiff had also relied upon some of the judgments to substantiate his case and to submit that the appeal deserved dismissal.

9. As the suit is pending for its final disposal and we are merely concerned with an interlocutory order, without expressing any opinion, we are of the view that the interlocutory order passed by the Court below is not just and proper in view of the provisions of Section 35 of the Act.

10. As stated hereinabove, Section 35 of the Act permits anyone to do his business in his own

name in a *bona fide* manner. In the instant case, it is not in dispute that the defendants are doing their business in their own name and their *bona fides* have not been disputed. It is also not in dispute that the plaintiff and defendants are related to each other and practically all the family members are in the business of jewellery.

11. We have perused the hoardings of the shops where they are doing the business and upon perusal of the hoardings we do not find any similarity between them.

12. In our opinion, looking at the provisions of Section 35 of the Act, there is no *prima facie* case in favour of the plaintiff and therefore, the defendants could not have been restrained from doing their business. We, therefore, quash and set aside the impugned order granting interim relief in favour of the

plaintiff and the appeal is allowed with no order as to costs.

13. We clarify that we have only expressed our *prima facie* view and the observations, if any, made in this judgment shall not be treated as final and the trial Court shall decide the case on the basis of the evidence which might be adduced before it and on the facts of the case.

.....J.
(ANIL R. DAVE)

.....J.
JUDGMENT (VIKRAMAJIT SEN)

NEW DELHI
AUGUST 4, 2014.