



2026:DHC:8713



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

% Judgment reserved on: **25.04.2026**
Judgment delivered on: **05.10.2026**

+ C.O.(COMM.IPD-CR) 814/2022
JAPAN TOBACCO INC AND ANRPetitioners

versus

THE CENTRAL WEARHOUSE AND ANRRespondents

Advocates who appeared in this case:

For the Petitioner : Mr. Peeyoosh Kalra, Mr. Gaurav Mukerjee, Ms. Saumya Tripathi, Ms. Meghana Nair and Mr. Rohan Kapoor, Advocates.

For the Respondents : Mr. Navroop Singh and Mr. H.P. Singh, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present petition has been filed under Section 50 of the Copyright Act, 1957 (hereinafter referred to as '*the Act*') seeking rectification of the entry in the Register of Copyrights with respect to the impugned copyright



registration for the Artistic Work '*Camel Collection*' bearing Copyright Registration No. A-54242/97 dated 22.10.1997 (hereinafter referred to as the '*impugned copyrighted work*').

BRIEF FACTS:-

2. The petitioner no.1 i.e. Japan Tobacco Inc. claims to be a company under the laws of Japan, located at 2-2-1, Toronomon, Minkato-Ku, Tokyo,



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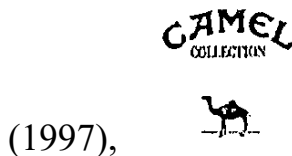
Japan. The petitioner no.1 states that it owns the rights, title and interest in various 'CAMEL' artworks/trademarks in India as well as in many other countries which have been used extensively in relation to a wide variety of tobacco products and other allied and cognate goods. The petitioner no.1 asserts that it is one of the largest tobacco companies in the world and its 'CAMEL' cigarettes are one of the largest selling tobacco brands in the world.

3. The petitioner no.2 i.e., Worldwide Brands Inc. is stated to be a corporation organized and existing under the laws of the State of Delaware, United States of America, located at 1209 Orange Street, Wilmington, Delaware, United States of America. It is further stated that the petitioner no.2 is an affiliate of petitioner no.1 and owns the rights, title and interest in

various 'CAMEL' artworks / trademarks including



(1988),



(1997),



(1988),



(1989), and (1989) which have been used in respect of a wide variety of goods such as readymade garments, bags, belts, footwear and headgear.

4. It is asserted by the petitioners that impugned copyrighted work is purportedly authored by one Mrs. Veena R. Hinduja in the year 1992 and that the so-called author and/or owner have blatantly copied petitioners'



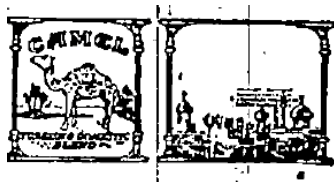
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significantly prior artworks / trademarks i.e. (declaration of ownership of trademark 'CAMEL' before the Registrar of Assurances on



12.07.1916 in India), (declaration of ownership of trademark 'CAMEL' before the Registrar of Assurances on 15.11.1926 in



India), (trademark registration no.119568 for



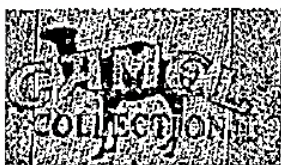
'CAMEL' in Class 34 dated 27.02.1946 in India), (trademark registration no.814600743 for CAMEL COLLECTION dated



14.11.1988 in Brazil), (trademark registration no.814600751 for



'CAMEL COLLECTION' dated 14.11.1988 in Brazil), (trademark registration no.141505 dated 23.01.1989 in Norway) and



(trademark registration no.1015780 dated 28.05.1997 in Japan).



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5. It is claimed that the history of 'CAMEL' is nearly a century old. In the year 1913, R.J. Reynolds Tobacco Company, Winston-Salem, North Carolina, USA (hereinafter referred to as 'RJR'), the predecessor-in-interest of the



petitioners, conceived and adopted

and

for blended cigarettes. It is also asserted that while the business in the USA was managed by RJR, business in countries other than the USA came to be managed by a subsidiary of RJR, namely, R.J. Reynolds International Inc. (hereinafter referred to as 'RJRI').

6. It is further claimed that in the late 1970s, RJR diversified into readymade garments using the 'CAMEL' marks/artworks. It has been stated that the petitioner no.2, a subsidiary of RJRI, was incorporated for this business and assumed ownership of RJR's 'CAMEL' registrations for non-tobacco products worldwide, e.g. registration no.1104212 (UK, 1978) and no. 179713 (Sweden, 1982).

7. It is claimed that effective 11.05.1999, RJRI and its subsidiary petitioner no.2 were acquired by petitioner no.1, transferring all non-USA tobacco business and RJR's non-tobacco business under the 'CAMEL' marks/artworks to petitioner no.1 and that both petitioners belong to the same group. It is further claimed that *vide* letter no.PR/8319 dated 26.12.2006 recording assignment in favour of petitioner no1 in respect of trademark no.119568 and others.

8. It is claimed that petitioner no.2 diversified into garments, bags, belts, footwear, headgear etc., under marks like CAMEL, CAMEL TROPHY, CAMEL COLLECTION, CAMEL BOOTS, CAMEL BAGS, etc and that



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‘CAMEL’ has been continuously used since 1913 for tobacco and since late 1970s for non-tobacco goods.

9. The petitioners claim that respondent no.1/Mrs. Veena R Hinduja have



merely lifted

and

from the artworks of



petitioners and superimposed

over

to arrive at

the impugned artwork.

10. Hence, the petitioners state that they are ‘person aggrieved’ within the meaning of Section 50 of the Act and submit that Copyright Registration No. A-54242/97 is an entry wrongly made in, or remaining on the Register of Copyrights and liable to be expunged.

CONTENTIONS OF THE PETITIONERS:-

11. Appearing for the petitioners Mr. Peeyoosh Kalra, learned counsel submitted as under:-

11.1. Adumbrating the background facts Mr. Kalra, learned counsel stated that in 1988, the petitioner no.2 granted a license to M/s.Dornbusch GmbH and Co. GmbH and Seidensticker Group of Companies, Germany, to manufacture and sell clothing articles under various ‘CAMEL’ artwork/trademarks. He stated that the said license granted the licensee a right to outsource manufacturing without any territorial restriction in pursuance whereof M/s. Dornbusch GmbH and Co. GmbH outsourced manufacturing of garments to M/s. Gokaldas Exports/Gokaldas Exports Limited, which is a sister concern of respondent no.1 in 1992. He would submit that respondent no.1



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commenced manufacturing and selling garments under ‘CAMEL’ artwork/trademarks by copying the trademark of petitioner identically without any authorisation.

11.2. He further stated that the respondent no.1 falsely and maliciously and without any legal right or lawful authorisation got the ‘CAMEL’ artworks/trademarks registered as a copyright. It is this registration as a copyright that has been challenged by the petitioner in these proceedings.

11.3. At the outset, in order to support and substantiate the right of the petitioner to challenge and assail the registration of the copyright in the ‘CAMEL’ artwork by the respondent no.1, learned counsel relied upon the International Copyright Order 1991 as also 1999. He would contend that by virtue of the aforesaid Copyright Order, to which India too is a ratifying party, the publication of the artwork in any other convention country is sufficient to enforce copyrights in India.

11.4. He further contended that provisions of Section 40 of the Act has to be necessarily read in conjunction with and construed to be in consonance with the International Copyright Order iterations since 1958 including the future amendments. The proviso to Section 40 of the Act and the International Copyright Order 1999 stipulate that the Act applies to artworks made or published in any of the Berne Convention countries like Brazil, Norway and China, as if they were made or published in India. He would contend that predicated on the aforesaid International Copyright Orders read with Section 40 of the Act, entitles the petitioners to seek rectification/removal of the registration of the impugned copyrighted work, wrongly registered in the name of respondent no.1.



11.5. While arguing on merits, learned counsel handed over the Bench a comparison table establishing a clear imitations of the registered trademarks of the petitioner in India as well as other foreign jurisdictions, which have been illegally and unauthorisedly copied by the respondent no.1 and got the same registered as a copyright. From the comparison table, learned counsel sought to demonstrate the identical artworks of the registered trademarks of the petitioner in India as also in other foreign jurisdiction and that of the registered copyright of the respondent no.1.

11.6. In the aforesaid context, learned counsel contended that respondent no.1 demonstrably is not an 'Author' as defined under Section 2(d)(iii) of the Act as the impugned artwork lacks originality. By placing on record the comparison table handed over the Bench, learned counsel urged that the impugned registration is a mere superimposition of the various 'CAMEL' artworks/trademarks of the petitioner. According to him, this amply demonstrates that the impugned registration lacks originality under Section 13 of the Act.

11.7. Learned counsel further contended that respondent no.1 did not follow Rule 16(3) of the Copyright Rules, 1958. That apart, he contended that the mandatory Clearance Certificate under Section 45(1) of the Act was neither issued by respondent no.2 nor obtained by respondent no.1.

11.8. Mr. Kalra would contend that the alleged date of first publication of the impugned copyright in the year 1992 as claimed in Form-9 actually enures to the benefit of the petitioner for the reason that M/s. Gokaldas Exports/Gokaldas Exports Limited commenced manufacture of garments for export under agreement with M/s. Dornbusch GmbH



and Co. GmbH in the same year under the trademark 'CAMEL'. Thus, according to him, the unauthorised claim of alleged first publication of the artwork 'CAMEL' as purported by respondent no.1 corresponding with the commencement of exports under the same trademark, is too much of coincidence to be true.

11.9. On law, Mr. Kalra would urge that the lack of originality in the artistic work sought to be registered is the touchstone in a rectification petition. In other words, he argued that if the artwork sought to be registered has already been registered as a trademark prior to the date of first publication as purported, it can be construed that the said artwork lacks originality. He relied on the judgement of this Court *Marico Ltd. vs. Mrs. Jagit Kaur*, reported in *2018 SCC OnLine Del 8488*.

11.10. Referring to para (xv) of the petition, Mr. Kalra contends that to the allegations made therein by the petitioner disclosing that M/s. Gokaldas Exports/Gokaldas Exports Limited were clearly in the knowledge of the said registered trademarks of the petitioner in India as well as foreign jurisdictions as also regarding the existence of M/s. Dornbusch GmbH and Co. GmbH which had outsourced manufacturing to the said M/s. Gokaldas Exports/Gokaldas Exports Limited under the 'CAMEL' trademark, the same work was admitted by the respondent in the counter affidavit filed by respondent no.1. He would contend that this admission itself would be sufficient to rectify the copyright register and remove the registration granted to the respondent no.1.

11.11. In order to reiterate and reaffirm the aforesaid contention, learned counsel also referred to the written statement filed by respondent no.1 in CS(COMM) 644/2018 titled '*Japan Tobacco vs. D. Jhamnadas*', particularly the contents of para 13 and para 29 thereof,



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containing categorical admission by respondent no.1. In order to substantiate that the false claim of first publication of the artistic work 'CAMEL' in the year 1992 by respondent no.1, learned counsel referred to a number of documents annexed like Letter dated 26.03.2003, the Memorandum of Association of M/s. Gokaldas Exports/Gokaldas Exports Limited, the Article of Association of the said firm, the Trademark License Agreement executed between Worldwide Brands Inc. which is the owner of 'CAMEL' trademark and M/s. Dornbusch GmbH and Co. GmbH. These documents, according to learned counsel, would clearly indicate that the respondent no.1 had complete knowledge that the copyright sought to be registered by it was not an original artistic work.

11.12. Referring to the application for registration of the copyright by respondent no.1, he would submit that the said application though was dated 22.10.1997, however, claimed the first publication of the alleged artistic work in the year 1992. He brought attention particularly to the applicant i.e. Ms. Veena R. Hinduja. Placing reliance on the Memorandum of Association and Association of Articles of M/s. Gokaldas Exports/Gokaldas Exports Limited, learned counsel demonstrated that Ms. Veena R. Hinduja was also a Director/Partner and shareholder to the extent of ten lakhs shares in the said company. He contended that once it is admitted that M/s. Gokaldas Exports Limited/Gokaldas Exports, which is a sister concern of respondent no.1, was already manufacturing garments under the trademark 'CAMEL' for M/s. Dornbusch GmbH and Co. GmbH, it cannot be said that Ms. Veena R. Hinduja did not have the knowledge of the CAMEL trademark of the petitioner. Once such knowledge is attributable to Ms.



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Veena R. Hinduja, the question of the registered copyright being an original artistic work sought to be registered in the year 1997, does not arise.

11.13. That apart, learned counsel would contend that, alongwith the reply, respondent no.1 has failed to file any document or proof to indicate or establish who, how, where and when the artistic work was conceived and executed. According to him, establishing such a fact is a *sine qua non* for demonstrating originality in the artistic work for it to be registered under the Copyright Act. There being none, the impugned registration has to be revoked and the Register of Copyrights be rectified.

11.14. Learned counsel stoutly contended that nothing has been placed on record to demonstrate that the provisions of Section 45(1) of the Act have ever been complied with. In the absence of such compliance, the registration of copyright granted to respondent no.1 cannot be sustained. He referred to Rule 70(a) of the Copyright Rules, 2013, which are *pari materia* to Rule 16(3) of the erstwhile Copyright Rules, 1958, to submit that no notice as required under the said Rule was ever issued or received by the petitioner rendering such copyright registrations unsustainable. In view thereof, he would contend that the copyright registration of the alleged artistic work wrongly remains on the Register of Copyrights.

11.15. Learned counsel relied on the following judgements to substantiate his contentions:

(a) ***Manju Singal Proprietor Singla Food Products vs. Deepak Kumar and Anr., 2023 SCC OnLineDel 5503;***

(b) ***Hugo Boss Trademark Management Gmbh and Co. Kg vs.***



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Sandeep Arora Trading As Arras The Boss and Ors., 2023 SCC OnLine Del 79;

(c) Triloki Nath Gupta vs Durga Prasad Gupta (2004) 29 PTC 759.

CONTENTIONS OF THE RESPONDENT NO.1:-

12. Mr. Navroop Singh, learned counsel submit as under:-

12.1. At the outset, Mr. Singh, learned counsel for the respondent no.1 refutes the submissions of the petitioner. He would submit that respondent no.1 is a rightful proprietor of the copyright in the 'CAMEL COLLECTION' label registered under the Act in the year 1997 however was first published in 1992. That apart, it is stated that respondent no.1 is also the proprietor of various registered trademarks of CAMEL, device of 'CAMEL' and 'CAMEL COLLECTION'. It is further stated that the trademark registrations have been in use since 01.01.1992. It is stated that all the registrations have been annexed with the reply which would demonstrate that the original artistic work in the impugned copyrighted work belongs to the respondent no.1.

12.2. In order to substantiate that not only did the respondent no.1 have various registrations including 'CAMEL COLLECTION' from the year 1992 onwards but also had got the copyright registration of the original artistic work in the copyright. Learned counsel also referred to sale invoices, advertisements of its products in the newspapers and journals across India from last many years. Learned counsel submitted that the respondent no.1 supplied readymade garments outside India through its sister concerns M/s. Gokaldas Exports/Gokaldas Exports Limited under the trademark 'CAMEL'. Learned counsel submitted that the petitioner's mark 'CAMEL' was registered in Class 34 for



cigarettes and tobacco, and that too as 'proposed to be used'. In that context, he referred to application no.1107218 dated 27.05.2002, indicating the user claim as 'proposed to be used'. He contended that the said application in any case was withdrawn by the petitioner. While the registration obtained by the respondent no.1 for the mark 'CAMEL COLLECTION' is registered in Class 24. Besides, the respondent no.1 has other registrations for word/device marks like 'CAMEL COLLECTION', 'CAMEL', 'CAMEL Trophy' that too in Class 24 for readymade garments, footwear and headgear claiming user since 01.01.1992.

12.3. So far as the letter dated 26.03.2003, upon which reliance is placed by the petitioner to demonstrate admission on the part of respondent no.1, he would contend that the said letter is only a fair disclosure by M/s. Gokaldas Exports/Gokaldas Exports Limited. However, this was issued long after the interim injunction order was passed. Thus, according to him, the contents of the said letter cannot be construed to be an admission of facts by the respondent no.1.

12.4. Relying on the sales invoices and the advertisements which commenced on and from the year 1996, learned counsel would submit that the respondent no.1, after registration of the trademarks, had openly used the same for the purpose of manufacture and sale of garments throughout India uninterruptedly. In fact, according to learned counsel, the respondent no.1 was exporting garments manufactured by it under the same trademark 'CAMEL COLLECTION'. He also would submit that the respondent no.1 on account of sale in manufacture of high quality garments under the trademark 'CAMEL COLLECTION' had garnered substantial reputation and goodwill over the years.



12.5. Learned counsel next argued that the petitioner has concealed material facts from this Court. In that the trademark registration of the petitioner bearing no.1170218 in Class 34 was filed on a ‘proposed to be used’ basis as on the date of application i.e. 27.05.2002. This claim was subsequently withdrawn by the petitioner pursuant to an opposition filed by a third party claiming prior user. He would also assert that petitioner’s mark ‘CAMEL’ bearing No. 119568 in Class 34 is presently under rectification.

12.6. Mr. Singh, learned counsel had also vehemently contended that the petitioner has relied upon international registrations which purely pertained to tobacco goods like cigarettes in Class 34, while not placing on record any proof to demonstrate that it has made any sale of a readymade garment in India under its alleged trademark ‘CAMEL’ or ‘CAMEL COLLECTION’. In such a situation, he would contend that the petitioner cannot rely on the trademark registrations as there is no transborder territoriality principle available in the context of trademarks. Thus, the substratum of the petitioner’s case, based on such principle, ought to fail.

12.7. So far as the reliance of the petitioner on a purported Licence Deed of M/s. Dornbusch GmbH and Co., conferring international rights in its favour for the purposes of outsourcing manufacture of goods being in the knowledge of respondent no.1 is concerned, it was contended that the said licence placed on record does not show any licence for manufacture of readymade garments in India.

12.8. Learned counsel contended that the adoption and use of the label ‘CAMEL COLLECTION’ in the year 1992, was honest and *bona fide*, and the priority had been upheld by Judicial Authorities.



12.9. Another relevant aspect according to the learned counsel was that the petitioner had exited the Indian market even in respect of tobacco as early as in the month of November, 2011, which was much before the present petition was filed. In support of the said contention, learned counsel relied upon the Newspaper publications filed alongwith the list of documents annexed alongwith the counter affidavit filed on behalf of respondent no.1. In other words, learned counsel would argue that having regard to the fact that the petitioner has not done any sale of garments under the mark 'CAMEL COLLECTION' in India; coupled with the fact that the trademark registrations were on 'proposed to be used' basis, however, withdrawn on account of opposition; read with the fact that the petitioner had exited Indian market in the year 2011 and before the present petition was filed, the present petition itself is unsustainable in law and ought to be dismissed.

12.10. So far as the conception of the original artistic work in the label/design by M/s. Gokaldas Exports/Gokaldas Exports Limited is concerned, there is no documentary proof available with the respondent no.1. However, according to learned counsel, what is relevant to be considered by this Court is as to whether petitioner is a 'person aggrieved' within the meaning contained in Section 50 of the Act. As per Mr. Singh, learned counsel, having regard to the aforesaid factual matrix, the petitioner has no locus to maintain the present petition seeking rectification of Register under Section 50 as the necessary ingredients for the petitioner to qualify as a 'person aggrieved' are completely missing. In that, the petitioner is neither a proprietor of any trademark 'CAMEL' or 'CAMEL COLLECTION' in India nor has any copyright registration of any device or label of 'CAMEL' or 'CAMEL



COLLECTION’ in India. Thus, according to learned counsel, the petitioner appears to be a stranger who cannot have any entitlement to file or pursue the present petition, which ought to be dismissed.

12.11. Learned counsel had laboriously referred to cross-examination of petitioner’s witnesses in the suit bearing **CS(COMM) 644/2018** titled *‘Japan Tobacco vs. D. Jhamnadas’* which was tagged with the present petition to submit that the petitioners, who are plaintiffs therein, were unable to satisfactorily answer the questions put to them on behalf of the respondent no.1. According to learned counsel, the responses elicited demonstrate that the witnesses were either evasive or did not have any knowledge with respect to relevant facts with which they were confronted. As an example learned counsel stated that in a question as to whether plaintiffs were manufacturing and marketing readymade garments in India under the trademark ‘CAMEL’, the response of the witness was that he would need to check for any authorised manufacture but did confirm that the plaintiffs were not manufacturing goods bearing the ‘CAMEL’ mark in respect of clothing at present. The witness also answered in the negative on the question as to whether the petitioner was importing any readymade garments. Similar was the negative response in respect of the question relating whether the petitioner had ever advertised readymade garments under the trademark ‘CAMEL’ in India. So much so, that the witness confirmed that there were no sales of readymade garments bearing the trademark ‘CAMEL’ in duty free shops in India.

12.12. From the aforesaid small portion of the cross-examination, learned counsel stated that admittedly the petitioners never manufactured any readymade garments in India, nor did they import



any such goods in India nor did they sell such goods in duty free shops and lastly never carried out any advertisement in respect of the mark 'CAMEL' in India. Additionally, learned counsel submitted that the licence placed on record of M/s. Dornbusch GmbH and Co was not for manufacture of readymade garments for sale in India under the trademark 'CAMEL' nor any such document has been filed by the petitioner. In such circumstances, learned counsel contended that there is neither basis nor any documentary evidence in favour of the petitioner to seek rectification of the Register of Copyrights of the impugned mark and as such the petition ought to be dismissed with heavy costs.

12.13. So far as the evidence of the respondent no.1's witnesses appearing as defendant witnesses in the accompanying suit is concerned, learned counsel invited attention to particular questions relating to the conception of original artistic work involved in the impugned copyright to submit that, the witnesses did give an explanation which was sustainable in law having regard to the lapse of time from the time the original artistic work was conceived in the year 1992 to the time when the petition was filed in the year 2012. Referring to such responses of the witnesses, learned counsel would emphasise that the witnesses had indeed explained that the Company M/s. Gokaldas Exports/Gokaldas Exports Limited had its own designing department where a few designers and artists were employed and the said original artistic work was designed in the internal department of M/s. Gokaldas Exports/Gokaldas Exports Limited. Learned counsel contended that it is now judicially accepted that on account of long lapse of time the witnesses cannot be expected to remember or recollect



smaller or finer details and as long as they are able to sustain and satisfactorily respond, the same ought to be taken to be true and correct. So far as questions relating to documents with respondent no.1 are concerned, learned counsel emphasised that since the business was sold to an entity called Blackstone of US in the year 2008 itself, it was but obvious that the witness would be unable to produce any such document.

12.14. Thus, in the aforesaid context of the evidence of the witnesses of both parties, learned counsel would emphasise that the petitioners have not been able to establish any proof of the respondent having imitated their trademark registration under the mark CAMEL or CAMEL COLLECTION and on the contrary the witnesses of the respondent no.1 have been able to satisfactorily sustain not only the conception of the original artistic work in the impugned copyright but were also able to sustain the fact that such conception was in the internal department of the M/s. Gokaldas Exports/Gokaldas Exports Limited. This part of the evidence is unimpeachable inasmuch as nothing to the contrary has been placed on record or proved by the petitioner as a plaintiff in rebuttal. In view of the aforesaid overwhelming and unimpeachable evidence, the present petition has no legs to stand and ought to be dismissed with costs.

12.15. Learned counsel for the respondent would also submit that the order dated 28.01.2005 passed by the Registrar of Trade Marks, Chennai, *inter se*, the parties, was affirmed by the Intellectual Property Appellate Board (IPAB) *vide* its order dated 15.03.2006 and further affirmed by the Madras High Court *vide* its order dated 10.12.2008. It was submitted that the petitioner's appeal before the Supreme Court is



pending adjudication and no stay has been granted till date. Learned counsel relied on the following judgements:

(a) '*Toyota Jidosha Kabushiki Kaisha vs. Tech Square Engineering Pvt. Ltd. & Anr.*', in C.O. (COMM.IPD-TM) 298/2022, by this Court, decided on 03.02.2023;

(b) '*Toyota Jidosha Kabushiki Kaisha vs Prius Auto Industries Ltd. & Ors.*', in Civil Appeal Nos.5375-5377 of 2017, by Supreme Court of India, decided on 14.12.2012.

REJOINDER ON BEHALF OF THE PETITIONER.

13. In rejoinder, Mr Kalra, learned counsel would submit as under:

13.1. Mr.Kalra, learned counsel for the petitioner states that the arguments in the context of limitation of transborder territoriality principle is applicable only in the contexts of trademarks and not violation of the copyrights. Reiterating his submissions, learned counsel would submit that so far as copyrights are concerned, the International Copyright Order 1999 is clearly applicable as India is a convention country to the Berne Convention. He would submit that in any case the respondent has categorically admitted to having knowledge of the licence Deed executed by World Wide Brands Inc. in favour of M/s. Dornbusch GmbH and Co. GmbH. and the fact that M/s. Gokaldas Exports/Gokaldas Exports Limited/Gokaldas Exports Limited were manufacturing and exporting under permission of M/s.Dornbusch GmbH and Co. GmbH readymade garments under the mark 'CAMEL'. In such circumstances, according to learned counsel, the respondent no.1 to whom M/s. Gokaldas Exports/Gokaldas Exports Limited was admittedly a sister concern, cannot contend to the contrary.

13.2. So far as the conception and creation of the original artistic work



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in the mark 'CAMEL' is concerned, learned counsel stated that the said mark 'CAMEL' represented in a distinctive stylised manner alongwith CAMEL as a device mark for blended cigarettes falling in Class 34 was conceived as far back in the year 1913 by RJR. He would submit that on 12.07.1916, RJ.R filed a declaration of ownership



trademark of 'CAMEL', with the Registrar of Assurances in India. Thereafter, a further declaration that the said trademark has been in use in British India since 1921 was submitted on 15.11.1926 by RJR. On 27.02.1946, R.J.R applied for registration of the trademark of 'CAMEL' as a label in Class 34 in India and is stated to be renewed from time to time. He submitted that sometime in late 1970s, World Wide Brands/petitioner no.2 was incorporated as a subsidiary of RJR. He stated that subsequently by transfer/assignment, RJRI assigned to the World Wide Brands/petitioner no.2 its registrations in respect of non-tobacco products in Class 25 for the trademark 'CAMEL' and its variants. It is in this context that learned counsel would contend that the alleged conception of the impugned copyright in the year 1992 is false and cannot be sustained in law.

13.3. Learned counsel for the petitioner further vehemently asserted that the reliance placed by respondent no.1 on sales invoices, advertisements, alleged goodwill and reputation is wholly irrelevant and extraneous to the present proceedings, which are confined to rectification of the impugned copyrighted work from the Register of Copyrights. It is contended that copyright and trademark operate in distinct and independent statutory domains, and the parameters



applicable to trademark law, including goodwill, reputation and market presence, have no bearing on determination of copyright ownership and originality. It is further contended that the petitioner's exit from the Indian market, *arguendo*, does not and cannot efface, extinguish or affect its subsisting, valid and enforceable copyright in the original artistic work, which continues to enjoy protection under the Act. It is also contended that the trademark opposition proceedings pending adjudication before the Supreme Court are wholly irrelevant and immaterial for the adjudication of the present copyright rectification petition, which is founded on the salutary principle of safeguarding and protecting original creative works from piracy and unauthorized reproduction.

ANALYSIS AND CONCLUSIONS:-

14. This Court has heard the arguments of learned counsel for the parties and perused the records of the case and examined the judgements relied on. Since the learned counsel referred to certain portions of the **CS(COMM) 644/2018** titled '*Japan Tobacco vs. D. Jhamnadas*', this Court also noted the references.

15. Principally, the essential or core issue in deciding copyright issues is the establishment of 'Original Artistic Work'. The said expression is statutorily defined and has acquired a well settled judicial meaning. Section 2(c) describes 'Artistic Work' as under:

"Section 2(c) in The Copyright Act, 1957

(c) 'artistic work' means,—

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) a work of architecture; and

(iii) any other work of artistic craftsmanship;"



16. Sub Section (d)(iii) of section 2 of the Act defines ‘Author’, in relation to an artistic work other than a photograph, as the artist. The Act also defines ‘Work’ as a literary, dramatic, musical or artistic work. In the present case, we are concerned with artistic work. ‘Publication’ has been defined in Section 3 of the Act as making a work available to the public by issue of copies or by communicating the work to the public. Section 13 of the Act postulates subsistence of copyrights in, amongst others, artistic works. Section 14 of the Act defines ‘copyright’ to mean, exclusive right to do or authorise the doing of the acts described in sub-sections (a) to (e), subject to the provisions of the Act. Section 17 of the Act crucially settles as to who would be the ‘First Owner’ of copyright. The provisions of Section 17 of the Act are crucial to the *lis* and is reproduced hereunder:

“Section 17 in The Copyright Act, 1957

17. First owner of copyright.— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author’s employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;



(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

Explanation.—

For the purposes of this clause and section 28A, 'public undertaking' means—

- (i) an undertaking owned or controlled by Government; or*
- (ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or*
- (iii) a body corporate established by or under any Central, Provincial or State Act;*

(e) in the case of a work to which the provisions of section 41 apply, the international organisation concerned shall be the first owner of the copyright therein:

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13."

17. It is manifest that in case of an artistic work made by the author in the course of his employment under a contract of service, in the absence of any agreement to the contrary, the proprietor shall be the owner. So far as the case of photograph or a painting or a portrait drawn or an engraving or a cinematograph film is made for valuable consideration at the instance of any person, then such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein, subject to the provisions of sub-section (a) of Section 17 of the Act. Sub-Section (c) of Section 17 of



the Act relates to cases where a work is made in the course of the author's employment under a contract of service to which clauses (a) and (b) of Section 17 of the Act do not apply, the employer, in the absence of any agreement to the contrary, be the first owner of the copyright therein. The remaining sub sections are not applicable to this case and are not adverted to.

18. Thus, it is unambiguous that an individual or an entity claiming copyrights in an 'Original Artistic Work' has to necessarily establish the fact of being the 'First Owner' in such copyright. Mere registration of a mark under the Trade Marks Act, 1999, while may lend some credibility, yet, that by itself would not be sufficient to establish the owner of the trademark as the 'First Owner' of the copyrights in the artistic work embodied therein. Section 17 of the Act, does not postulate any deeming fiction. Meaning thereby, the assertion has to be established as a fact.

19. That apart the provisions of Section 40 of the Act was relied upon by the petitioner read with International Copyright Order, 1999, to substantiate its case. It would, in such premises, be relevant to examine the provisions of Section 40 of the Act which is extracted hereunder:

"Section 40 in The Copyright Act, 1957

40. Power to extend copyright to foreign works.— The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act shall apply—

(a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or



time;

and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that—

(i) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that the foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Central Government expedient to require for the protection in that country of works entitled to copyright under the provisions of this Act;

(ii) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;

(iii) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates but such a term of copyright shall not exceed the term of copyright provided under this Act;

(iv) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(v) in applying the provisions of this Act as to ownership of copyright, the order may make such exceptions and modifications as appear necessary, having regard to the law of the foreign country;

(vi) the order may provide that this Act or any part thereof shall not apply to works made before the commencement of the order or that this Act or any part thereof shall not apply to works first published before the commencement of the order.”

20. It may be of some relevance to note that the International Copyright Order, 1999, was published on 06.04.1999 in the Official Gazette by the Central Government under the provisions of Section 40 of the Act. By virtue of the provisions of Section 40 of the Act and the Copyright Order, it is discernible that there is no proscription on the transborder territoriality of copyrights, subject of course, to the provisions of Act. However, it is significant to note that, provisions of Sub-section (a) of Section 40 of the Act pertains to the works claimed to be first published in any territory outside India to which the order (International Copyright Order 1999) relates. It is by virtue of the deeming fiction inhering in the said sub-section that the said



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work published in a territory other than India, shall be deemed to have been first published within India.

21. While the statutory law, as it stands today read with the International Copyright Order, 1999, do deem that Copyrights are exercisable, *sans* border, yet, whether the artistic work claimed, is in fact an original artistic work entitled to be vested with copyright, is altogether a different matter. In that, an individual or an entity claiming to be the 'First Owner', as postulated under Section 17 of the Act, must, necessarily, establish the assertion as a fact, which would be relevant to the issue at hand. In other words, before the petitioner can seek removal of the registered copyright of respondent no.1 from the Register of Copyrights, it necessarily has to establish that it is the 'First Owner' by virtue of 'First Publication' of the 'Original Artistic Work'. In this context, it may be relevant to reproduce hereunder the averments in the rectification petition in para (ix) and (x):

"(ix) CAMEL and  have been continuously and extensively used since 1913 in respect of tobacco products and since the late 1970s in respect of readymade garments, footwear, headgear etc. Copies of books titled 'CAMEL Cigarette Collectibles – The Early Years: 1913-1963', 'CAMEL Cigarette Collectibles: 1964-1995' by Douglas Congdon – Martin and 'LEGENDARY FOOTPRINTS – The Extraordinary Success of CAMEL Brand' (2002 Edition) are annexed herewith as ANNEXURE 'I'. The said books cover the development of the 'CAMEL' brand from 1913-1990s and demonstrate how

CAMEL and  were conceived, designed and adopted by Petitioners. From a perusal of the books, it may be noted that A. Hoen and Company, lithographers of Richmond, USA were hired to design a label on behalf of RJR for CAMEL cigarette. On September 24,



1913, the first copy i.e.  was submitted. Dissatisfied with the image of the CAMEL on the pack, 5 days later, on September 29,



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1913, Mr. W.R. Reynolds of RJR, sent one Mr. R.C. Haberkern to the Barnum & Bailey Greater Circus, to obtain a photograph of a CAMEL. The trainer at the circus brought two CAMELS (a two humped CAMEL and a single humped dromedary). While the CAMEL posed easily, the dromedary, Old Joe, balked and pulled at the reigns. The trainer slapped it on the nose and Old Joe raised his tail, threw back his ears, and closed his eyes just as the shutter released. Finally, from that photograph, the label/artwork was redesigned to match the likeness of Old Joe, which gave rise to the December 18, 1913 version



i.e. Needless to say, the creation enjoyed automatic protection under the law of copyright.

(x) As outlined hereinabove, the said artistic work was improvised from time to time and variants thereof were devised for use by Petitioners although the overall representation of CAMEL (word) and CAMEL (device) have remained notably consistent over the years. The variants



(1946),

CAMEL
COLLECTION

(1988),

CAMEL
COLLECTION

(1988),



(1989) and



(1997)

also

qualify as 'artistic works' within the meaning of Section 2(c) of the Act and

cannot be used without the permission of Petitioners. Pursuant to provisions

relating to International Copyright in the Act and the International Copyright Order 1999, all the provisions of the Act apply to all artworks, first made or published in a Berne Convention or Universal Copyright Convention country, in like manner, as if they were first made or published in India. Therefore, publication of the artworks in a convention country is sufficient to enforce copyright in India. It is apparent that Respondent No. 1/Mrs. Veena R Hinduja have merely

CAMEL
COLLECTION

and



lifted

from the artworks of Petitioners and

CAMEL
COLLECTION

over



to arrive at the

superimposed
impugned artwork."



22. From a perusal of the above extracts it is *ex facie* apparent that the petitioner relies solely on the rendition regarding the 'Original Artistic Work'

CAMEL

in respect of the words 'CAMEL' and the figure of



CAMEL i.e., contained in the books '*CAMEL Cigarette Collectibles - The Early Years: 1913-1963*'; '*CAMEL Cigarette Collectibles : 1964-1995*' by Douglas Congdon - Martin and '*LEGENDARY FOOTPRINTS - The extraordinary Success of CAMEL Brand*' (2002 Edition). The petitioner has also claimed that the artistic work was improvised from time to time and variants thereof were devised for the use by the petitioner in the years 1946, 1988, 1989 and as late as 1997. However, save and except for the aforesaid books, there is no iota of evidence to establish any of the said averments. It needs to be underscored that any individual or entity claiming to be the 'First Owner' of an original artistic work has to necessarily and mandatorily discharge the said onus in terms of the provisions of Section 17 of the Act. In that, either there exists a contract of service or contract for service and no agreement to the contrary, as postulated in Section 17 of the Act. Except for the said narration as contained in the aforementioned books, the petitioner has not placed any evidence at all to discharge such onus. For that matter, even the books relied upon have also not been proved in accordance with law.

23. The records reveal that the photocopies of the relevant pages of the aforementioned books were indeed on record, however, were neither brought to the attention of this Court nor proved in accordance with law. This Court

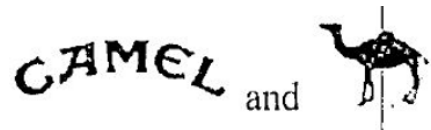


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lays emphasis on this aspect for the reason that the respondent no.1 by its affidavit of admission and/or denial dated 09.03.2023 has clearly denied the said documents. In such circumstances, in case the petitioner wished to rely on these documents, it was imperative to have proved the same as per law of evidence. This was not done. If that be so, it would be well nigh impossible for this Court to conclude that the petitioner is the 'First Owner' of the

'Original Artistic Work' in 'CAMEL' or



. Other

than the aforesaid pages of the books mentioned above, there is no tangible proof which may lead this Court to come to a firm opinion regarding the 'First Publication' or as to whether the petitioner is the 'First Owner' of the Artistic Work. It may also be noted that under the Indian Evidence Act, 1872, only once the party, upon whom the initial onus of proving a fact has successfully discharged its obligation, that the burden shifts to the other party. In case the initial burden is not discharged, the question of proving to the contrary, by the other party, does not arise. This opinion is clearly in alignment with sections 101 to 106 of the Evidence Act, 1872. Additionally, Section 48 of the Act envisages a presumption in favour of respondent no.1.

24. The strong arguments based on Section 40 of the Act read with the International Copyright Order, 1999, coupled with the fact that India is a convention country to the Berne Convention though attractive, yet, cannot assist the petitioner in overcoming the initial aspect of establishing that it is the 'First Owner' of the 'Original Artistic Work' in terms of Section 17 of the Act. That has not been established.

25. Thus, the petitioner has been unable to establish that it is the 'First Owner' of the 'Original Artistic Work' in the mark 'CAMEL' or 'CAMEL



COLLECTION’.

26. Learned counsel for the petitioner had also heavily relied on what was termed as ‘admissions’ by the respondent in the written statement filed to the suit instituted by the petitioner for infringement of its trademark ‘CAMEL’ in **CS(COMM) 644/2018** titled ‘*Japan Tobacco vs. D. Jhamnadas*’. Those paragraphs are extracted hereunder for convenience and appreciation. The same read thus:

“13. The contents of paragraph 3 are wrong, incorrect and denied. That the Defendants further submit that in the year _____ the Defendants were exporting garments to M/s Dorn Bush Company, in West Germany, who are the Licencee of Plaintiff No. 1. This itself reflects their attitude to the use of their so cleaned and reputed mark CAMEL by anybody as they themselves allowed the Defendants use of the mark CAMEL in Agreements for export to West Germany and Hong Kong.

XXX

XXX

XXX

29. That the contents of paragraph 29 wrong incorrect and denied. The plaintiff be put to strict proof for the averments made in the plaint since the said averments are not supported by any documentary proof. It is further submitted by the defendants that they have been using the trade mark CAMEL with the device of CAMEL since the year 1992 when the defendants used to export the finished garments under the trade mark CAMEL to the licensee of plaintiff No.1 to sell the garments under the said trade mark in Germany. This invariably leads to the conclusion that the plaintiff had the knowledge of the defendants’ existence since the year 1992.”

27. The aforementioned admissions of respondent in the said written statement displays an open declaration that it has been manufacturing readymade garments under its own label/mark ‘CAMEL’ which has been registered as Trademark as well as Copyright at least 10 years before the present petition was preferred by the petitioner. The respondent has also categorically stated that its sister concern, namely, M/s. Gokaldas Exports/Gokaldas Exports Limited, had been manufacturing and exporting readymade garments to Dornbusch & Co however, under its own brand CAMEL.



28. The contents of the aforesaid paragraphs appear to be admissions, though, one can discern resistance to the contents of the plaint. Yet, it has to be recalled that the suit was filed by the petitioner alleging infringement of its trademark by the respondent herein and is not related to Copyright at all. It is in that backdrop that the contents of the aforesaid paragraphs have to be examined and appreciated. Though the respondent does accept that they were exporting garments to M/s. Dornbusch GmbH and Co and that the said company was licensee of plaintiff No.1, however, simultaneously asserted that they were manufacturing readymade garments under the said trademark since the year 1992, which was to the knowledge of the petitioner herein. Thus the admissions are not unequivocal or unambiguous or clear.

29. So far as the allegations in the suit are concerned, arguments are yet to be heard. However, it is to be borne in mind that the suit pertains to alleged infringement of the trademark of the petitioner by the respondent. It is well settled that so far as trademarks are concerned, the territoriality principle would strictly be applied and are not interchangeable with the rights under the Act. The Act read with International Copyright Orders deem transborder principle which is sorely missing in the trademarks regime.

30. Moreover, from the purported admissions, all that one can discern is only an inferential analysis which still would not enure to the benefit of the petitioner to establish its 'First Ownership' rights over the original artistic work, which is the substratum of the Act. While that be so, the respondent has placed on record Form 9 granting registration of Copyright of its 'CAMEL' and 'CAMEL COLLECTION' by the Copyright Registry on 22.10.1997 with the assertion of first publication as in the year 1992. Thus, in such circumstances where the petitioner has been unable to establish itself as 'First Owner' of the original artistic work, it would be well nigh impossible for this



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Court to accede to the submissions of the petitioner in that context.

31. This petition pertains only to Copyright of the original artistic work in the mark 'CAMEL' and the petitioner has to necessarily establish that it is the 'First Owner', in the absence whereof, it may not be possible for this Court to conclude or determine that the impugned copyright is wrongly remaining on the Register of Copyrights and has to be expunged or removed.

32. So far as the submission of the petitioner regarding violation of Section 45(1) of the Act read with Rules 70 of the Copyright Rules, 2013, is concerned, having regard to the aforesaid analysis regarding the failure to establish rights as the 'First Owner', delving into this aspect appears to be academic. As such, the argument is unpersuasive.

33. The judgements relied upon by the parties are not relatable to the analysis above, and thus not required to be examined by this Court.

CONCLUSION:-

34. As an upshot of the aforesaid analysis, the petitioner has been unable to persuade this Court for rectification of the Register of Copyrights by expunging or removing the impugned copyright registration of respondent no.1. Resultantly, the petition is dismissed.

35. The observations made herein in relation to the references to **CS(COMM) 644/2018** titled '*Japan Tobacco vs. D. Jhamnadas*' shall not tantamount to expression on the merits of the said suit.

**TUSHAR RAO GEDELA
(JUDGE)**

OCTOBER 5, 2026

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