JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.23 of 2013

Rani Foods (Pvt.) Limited
Versus
Rani Refreshment FZC

Date of Hearing:	08.06.2016
Appellant by:	Mr. Khalil-ur-Rehman Abbasi, learned ASC
Respondent by:	Mr. Hassan Irfan Khan and Mirza Saqib Asghar, Advocates

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MIANGUL HASSAN AURANGZEB, J:- Through the instant First Appeal, the appellant Rani Foods (Pvt.) Limited, impugns the Order dated 10.04.2013, passed by the Court of learned Additional District Judge, Islamabad, whereby respondent's application under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908 ("C.P.C.") was allowed, and the appellant was restrained from *"using or advertising the badge/ Mark RANI in respect of beverages including juices and drinks of any type, or selling any such goods bearing the trademark RANI".*

2. At the very outset, the learned counsel for the appellant submitted that the appeal had been rendered infructuous, because the appellant was no longer selling its products bearing the trademark, 'RANI' and that after obtaining a certificate of registration of trademark 'Fruit Edge', the appellant is selling its products bearing the said trademark.

3. Learned counsel for the respondent submits that as long as the products of the appellant bear the name 'RANI', the grievance of the respondent is not redressed. The mere registration of the trademark 'Fruit Edge' does not resolve the dispute between the parties, as long as the products sold by the appellant has the name 'RANI' in the name of the manufacturer of such products.

4. In view of the divergent positions taken by the learned counsel for the contesting parties, the learned counsel were required to address their arguments on merits.

5. Learned counsel for the appellant submitted that as regards the use of the company name, 'RANI' on the product sold by the appellant, the respondent in paragraph 13.5 of its suit has pleaded that it shall be filing separate proceedings with the Securities & Exchange Commission of Pakistan ("SECP") to seek the cancellation/expungement of the company name with 'RANI' as its part because the company (i.e. the appellant) was incorporated in contravention of the provisions of the Companies Ordinance, 1984. The learned counsel for the appellant was of the view that until the respondent institutes proceedings before the SECP, the respondent cannot complain against the use of the name 'RANI' as part of the name of the appellant company.

6. He further submitted that the respondent has instituted another civil suit before the Court of the District Judge, Islamabad, against the appellant for using the word 'RANI' as a part of its name; that the subject matter of the said suit cannot be agitated in these proceedings; that on 25.06.2013, a deed of assignment was executed between Messrs Aujan Industries Co. (a company incorporated by the laws of the Kingdom of Saudi Arabia) and the respondent whereunder the trademark RANI (in stylized characters Latin and Arabic) bearing Registration No.200181, was assigned in favour of the respondent with effect from 18.03.2012; that subsequently on 15.07.2013, the respondent applied to the Registrar of Trademarks, to enter its name in the register of trademarks as a subsequent proprietor of the said trademark under Registration No.200181, with effect from 18.03.2012 on the basis of the said deed of assignment; that it was not until 12.10.2015 that the Registrar of Trademarks Karachi, allowed the respondent's said application, with effect from 18.03.2012; that Section 39(2) of the Trade Marks Ordinance, 2001, provides that the proprietor of a registered trademark shall have exclusive rights in the trademark which is infringed by the use of the trademark in Pakistan without his consent; that the term 'proprietor' has been defined in the Trade Marks Ordinance, 2001, to mean *"the person who for the time being*

entered in the register as proprietor of that trademark"; and that when the suit was instituted on 15.02.2013, the trademark 'RANI' under Registration No.200181 had not been registered in Pakistan in favour of the respondent.

7. On the other hand, learned counsel for the respondent drew the attention of the Court to an advertisement published by the appellant (annexed at Page 239 of the appeal) to show that the appellant was still using the name 'RANI' on its products and as part of its name. He further submitted that as the trademark bearing Registration No.200181 was registered with effect from 18.03.2012 (i.e. prior to the institution of the suit), the respondent was entitled to take the benefit of the said registration from 18.03.2012; and that he had no knowledge of the subsequent suit instituted by the respondent before the Court of the learned District Judge, Islamabad. Learned counsel for the respondent prayed for the appeal to be dismissed.

8. I have heard the arguments of the learned counsel for the contesting parties and have perused the record with their able assistance.

9. On 15.02.2013, the respondent instituted a suit against the appellant for permanent injunction restraining the appellant from using 'RANI' as a trademark, corporate name and trade name or infringing the respondent's registered trademark 'RANI', and committing acts of unfair competition under Section 67 of the Trademarks Ordinance, 2001, and passing of the respondent's goods and business as goods and business of the appellant, and for rendition of accounts and damages etc. Along with the said suit, the respondent also filed an application for interim injunction. The appellant contested this suit by filing a written statement. As mentioned above, vide order dated 10.04.2013, the learned Trial Court issued an interim injunction against the appellant. Aggrieved by the said order dated 10.04.2013, the appellant has filed the instant appeal.

10. It is not disputed that the respondent obtained the benefit of the trademark 'RANI' (in stylized characters Latin and

Arabic) bearing Registration No.200181 on the basis of the deed of assignment executed between Aujan Industries Co. (assignor) and the respondent (assignee). Although, this deed of assignment is undated, it has been attested by a notary public in Dubai on 25.06.2013, and is supposed to be effective from 18.03.2012. On the basis of this deed of assignment, the respondent filed an application on 15.07.2013 before the Registrar of Trade Marks, seeking the entry in the register of Trade Marks in its favour, as a subsequent proprietor, of the trademark 'RANI' under Registration No.200181. The respondent considered itself entitled to the said trademark by virtue of the deed of assignment. It was not until 12.10.2015 that the Registrar of Trade Marks, Karachi, allowed the respondent's application dated 15.07.2013 with respect to the said trademark) bearing Registration No.200181 with effect from 18.03.2012. When the suit was instituted on 15.02.2013, the respondent had not even submitted its application for its name to be entered in the register of Trade Marks as a subsequent proprietor of the trademark 'RANI' under Registration No. 200181. The learned counsel for the respondent has no knowledge of the subsequent suit instituted in 2015 by the respondent against the appellant before the Court of the learned District Judge, Islamabad. A copy of the said suit has been submitted by the learned counsel for the appellant. The first prayer in the said suit is reproduced herein below:-

> *"(a) For a permanent injunction restraining the Defendant by itself or by or through its Chief executive, Directors, officers, employees, servants, agents, dealers or otherwise, howsoever, from infringing the trade mark RANI of the Plaintiff registered under No.86831, **200181** and 175875 in class 32 through the use of the infringing mark RANI or any other mark confusingly similar to the RANI trade mark of the Plaintiff as to be likely to deceive or cause confusion." (Emphasis added)*

11. As the respondent's name had not been entered in the register of Trade Marks as a subsequent proprietor of the trademark RANI (in stylized characters Latin and Arabic, bearing Registration No.200181, Class-32, when the first suit was instituted by the respondent against the appellant on

15.02.2013, and as the said trademark under Registration No.200181 is now the subject matter of the second suit instituted by the respondent, I am inclined to modify the impugned order dated 10.04.2013, to the extent that the restraint against the appellant from using or advertising the badge/trademark "RANI" in respect of the beverages including juices and drinks of any type or selling any such goods bearing the trademark "RANI" shall not apply only as regards the trademark "RANI" under Registration No.200181, Class-32. The trademark "RANI" under Registration No.200181 was not and could not have been the subject matter of the first civil suit instituted on 15.02.2013. The mere fact that respondent's said application dated 15.07.2013, was allowed on 12.10.2015 by Registrar of Trade Marks with effect from 18.03.2012, does not derogate from the fact that when the first suit was instituted by the respondent, the respondent's name had not been entered in the register of Trade Marks as the subsequent proprietor of the trademark "RANI" (in stylized characters Latin and Arabic), bearing Registration No.200181. Therefore, when the first civil suit was instituted, the respondent was not a 'proprietor' of the trademark bearing registration No.200181, as by then its name had not been entered in the register as proprietor of the said trademark.

12. For the foregoing reasons, the impugned order dated 10.04.2013 is modified to the extent as mentioned above. Consequently, the appeal stands disposed of.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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