

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

+ **CS (OS) No. 72/2004**

Judgment delivered on: 24.02.2006

M/S BIKANERVALA

.... Plaintiff

versus

AGGARWAL BIKANER WALA

.... Defendant

Advocates who appeared in this case:-

For the Plaintiff : Mr Amit Sindhvani

For the Defendants : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

BADAR DURREZ AHMED, J (ORAL)

1. The defendant was directed to be proceeded with *ex parte* by an order dated 15.4.2004. Thereafter, the plaintiff led its *ex parte* evidence by filing an affidavit by way of evidence of one Mr Raj Kumar Shah who is the duly constituted attorney of the plaintiff firm. The plaintiff has also filed various documents which have been exhibited as Exhibits PW1/1 to PW1/93. The plaintiff has also filed an affidavit of the said Mr Raj Kumar Shah on 22.2.2006 vide diary No.5436. That affidavit is not on record. A copy of the same has been placed before me. The registry shall ensure that the affidavit is brought on record. The affidavit of 22.2.06 was necessitated because in the meanwhile the

CS(OS) 72/2004

Page No. 1 of 3



Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

15

plaintiff has been issued the registration certificate in respect of the trade mark "BIKANERVALA" in class 30 in respect of sweets, namkeens, biscuits, cakes, pastry, ice-creams, confectionary etc. The application for the same was made on 1.1.2004 which was advertised in the Trade Marks Journal on 13.12.2004. A copy of the registration certificate issued by the Trade Marks Registry, Mumbai dated 17.10.2005 is annexed with the said affidavit of 22.2.2006. Accordingly, the case of the plaintiff becomes quite straight forward inasmuch it is the owner of the registered trademark "BIKANERVALA" and the defendant has been using the trademark "AGGARWAL BIKANER WALA".

2. The plaintiff has been able to establish through its pleadings and evidence on record that the plaintiff is the proprietor of the trademark "BIKANERVALA". The plaintiff has also established that it has been using the same even prior to its registration since 1981. The plaintiff has also been able to establish that the defendant has started using the trade name "AGGARWAL BIKANER WALA". According to the learned counsel for the plaintiff, the trade name used by the defendant is virtually the same as that of the plaintiff except that the word "AGGARWAL" has been pre-fixed. The plaintiff has objection to the use of the word "BIKANER WALA" and has no objection to the word "AGGARWAL" being suffixed by any expression other than "BIKANER WALA" and / or an expression which is deceptively similar to "BIKANER VALA". It is pertinent to mention that on 15.4.2004 itself, this court had granted an injunction restraining the defendant from using the word "BIKANER WALA" or any other similar name either independently or in



16
conjunction with any other word in respect of its sweet meats / food products.

3. Considering the averments and the evidence on record, I feel that this order should be made in the suit also. The suit is accordingly decreed with costs. The decree sheet be prepared accordingly.

Badar Durrez Ahmed
BADAR DURREZ AHMED
(JUDGE)

February 24, 2006
M