

Every Order Not A 'Judgment'

Shyam Steel Industries (respondent-plaintiff) filed a suit against Shyam Sel & Power (appellants-defendants - represented by Remfry & Sagar) for infringement of trademark and passing off in respect of the word 'SHYAM' and various label marks comprising the word 'SHYAM' (note: 'Shyam' is a fairly common name in India). Both parties are engaged in the business of manufacture and sale of *inter alia* 'thermo mechanically treated bars (TMT bars)'. The case of the respondent-plaintiff was that in the year 2015 it came across appellants-defendants use of the mark SHYAM, objected to the same, and pursuant to which the appellants-defendants agreed to phase out their products bearing the mark SHYAM and not use the said mark on their products in future. Thereafter, appellants-defendants applied for registration of the mark SHYAM-INFRA which too was objected to by the respondent-plaintiff, however, since the appellants-defendants did not file their counter statement to the same, the application lapsed and was treated as abandoned.



It was the case of the respondent-plaintiff that towards the end of 2018, appellants-defendants started using the mark SHYAM METALICS on the packaging of their TMT bars as a result of which respondent-plaintiff filed a suit in the High Court of Calcutta. The judge made a *prima facie* observation that he was of the view that 'SHYAM' being a part of the business name of the appellants-defendants, no injunction should be passed to restrain the appellants-defendants from using the said word 'SHYAM' on their packaging and deemed it appropriate to grant time to appellants-defendants to file their affidavit-in opposition within 2 weeks. On appeal against this order by the respondent-plaintiff, the division bench modified the aforesaid order and in effect granted an injunction restraining the appellants-defendants from manufacturing, selling or advertising their goods with the mark 'SHYAM' or with a label or device containing the mark 'SHYAM' till the disposal of the suit.

The appellants-defendants filed an appeal before the Supreme Court of India challenging the above-mentioned order passed by the division bench on the grounds *inter alia* that the appeal filed by respondent-plaintiff before the division bench was not tenable as the order passed by the single judge was not a 'judgment' within the meaning of Clause 15 of the Letters Patent of the high court and was thus, not maintainable; and that since the single judge did not adjudicate the injunction application vide its order but only granted time to the appellants-defendants to file a reply, the same is neither a preliminary judgment nor a final judgment nor an interlocutory order.

After hearing the rival submissions, the Supreme Court was of the view that to come within the ambit of 'judgment', such an order must affect vital and valuable rights of the parties, causing serious injustice to the party concerned. The court noted that each and every order passed by a court during the course of trial, though it may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'. The Supreme Court held that an appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. If the appellate court itself decides the matters required to be decided by the Trial Court, there would be no necessity to have the hierarchy of courts. The court highlighted that the single judge had postponed the issue with regard to consideration of the prayer of the respondent for grant of ad-interim injunction by a period of mere three weeks and that too only in order to afford an opportunity to the appellants-defendants to file their affidavit-in-opposition. Therefore, there was no adjudication with respect to the rights of the respondent-plaintiff and the said order as such did not contain the 'traits and trappings' of finality to warrant an appeal.

The Supreme Court, in chiding the practice of filing and entertaining frivolous appeals, stated that, *“it was difficult to appreciate the anxiety on the part of the Division Bench of the High Court to itself dispose of the interlocutory application instead of relegating it to the court below for its disposal. When the Division Bench of the High Court itself took 8-9 months to decide the appeal, it is difficult to understand as to what the learned Judges of the Division Bench of the High Court meant by “unnecessary prolongation of the litigation and utter wastage of time”. If the learned Judges of the Division Bench were so much concerned with the prolongation of litigation, they could have very well requested the learned Single Judge to decide the injunction application within a stipulated period. Instead of waiting for a period of 8-9 months, this could have been done by them at the very first instance when the appeal was listed. The hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law...”* Thus, the apex court noted that the approach of the division bench was completely unwarranted and uncalled for and given the huge pendency of cases across courts in India, it was high time that courts started taking note of frivolous appeals being filed against un-appealable orders which, in turn, waste precious judicial time. The Supreme Court allowed the appeal in favour of the appellants-defendants and imposed costs of INR 5 lakh (approx. USD 6,550) on the respondent-plaintiff.