

ROYAL ORCHID HOTELS LTD.

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v.

KAMAT HOTELS (INDIA) LTD. & ORS.

(Special Leave Petition (C) No.6131 of 2015)

DECEMBER 14, 2017

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[**RANJAN GOGOI AND R. BANUMATHI, JJ.**]

*Intellectual property: Trademark – Registration of trade mark of petitioner refused by Deputy Registrar on the ground that the petitioner was not the first user of the logo/mark ‘Royal Orchid’ as claimed and in fact, the mark/logo ‘Orchid’ was being used by respondents no.1 from an anterior date and also the two logos/marks were similar – IPAB set aside the order of Deputy Registrar and allowed the registration of petitioner’s trademark in class 42 holding that use of mark by petitioner was prior in point of time and considering the class of customers serviced by the parties, no confusion was likely to be caused by use of two logos/marks – High Court set aside the order of IPAB – Special leave petition – Held: The judgment of High Court was arrived at after elaborate consideration of the materials and evidence adduced by the parties before it – The conclusions reached by High Court cannot be said to be, in anyway, unreasonable and/or unacceptable – Rather, the view recorded by the High Court was a perfectly possible and justified – Interference with the order of High Court not called for.*

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**Dismissing the Special Leave Petition, the Court**

**HELD:** The High Court observed that the view expressed by the IPAB that having regard to the class of customers serviced by the hotels (High Income) there could be no possibility of being misled cannot be accepted as a general proposition and will always depend on individual customers. If the High Court on an elaborate consideration of the materials and evidence adduced by the parties before it had thought it proper to reach a conclusion consistent with the findings of the primary authority i.e. the Deputy Registrar and the reasons for reversal of the view of the primary authority by the IPAB being summary, the present petition really turns on the question of appreciation of the evidence on record. The conclusions reached by the High Court cannot be said to be, in

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A **anyway, unreasonable and/or unacceptable. Rather, the view recorded by the High Court is a perfectly possible and justified and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record. [Paras 14, 15] [221-C-F]**

B **CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No.6131 of 2015.**

From the final Order dated 11.02.2015 of the High Court of Judicature at Madras in W.P. No.22691/2013.

C Sudhir Chandra, Sr. Adv, Pravin Anand, Shrawan Chopra, Aditya Verma, Pundreek Dwivedi, Nikhil Krishnamoorthi, Vikas Singh Jangra, Ms.Jennifer Rohita Xavier, Ms. S. Lakshmi, Advs for the Appellant.

B.H. Marlapalle, Shyam Divan, Sr. Advs, Aniruddha P. Mayee, Ajit Wagh, Chirag Jain, Advs for the Respondents.

D The Judgment of the Court was delivered by

**RANJAN GOGOI, J.** 1. After hearing the matter elaborately we arrive at the conclusion that the Special Leave Petition ought not to be entertained. However, in view of the extensive arguments at the Bar we deem it appropriate to support our aforesaid conclusion with the reasons therefor.

E 2. The brief facts are as follows:

F The petitioner – ‘Royal Orchid Hotels Limited’ got registration of its trademark ‘Royal Orchid’ and ‘Royal Orchid Hotels’ in class 16 sometime in the year 2005. The aforesaid registration was challenged by the Respondent No.1 before the *Intellectual Property Appellate Board* (for short, ‘IPAB’) which dismissed the challenge on 04.10.2011. The respondent No.1 approached the High Court of Madras by instituting Writ Petition Nos.26544-26545 of 2011, which was dismissed by the High Court on 07.02.2014. The special leave petition against the order of the High Court was also dismissed by this Court on 01.09.2014. The dispute with regard to registration of the trademarks ‘Royal Orchid’ and Royal Orchid Hotels in class 16, therefore, has attained finality in law.

G 3. It appears that the petitioner sometime in the year 2004 applied for registration of its aforesaid trademarks in class 42. This was refused by the Deputy Registrar of the Trademarks. In appeal, the IPAB by order dated 18.06.2013 set aside the order of the Deputy Registrar and

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allowed the registration of the petitioner's trademark in class 42. The respondent No.1 had approached the High Court by instituting a Writ Proceeding registered and numbered as Writ Petition No.22691 of 2013. The same has been allowed by the impugned order dated 11.02.2015. Aggrieved, this special leave petition has been filed seeking leave to appeal against the aforesaid order of the High Court dated 11.02.2015.

4. It may be necessary to notice at this stage that the respondent No.1 had got its trademark 'Orchid' registered in class 42 sometime in the year 2007.

5. A reading of the order of the Deputy Registrar dated 29.06.2009 would go to show that the refusal of registration of trade mark "Royal Orchid" to the petitioner in class 42 was on a consideration of the evidence and materials laid before the said authority. On such consideration the Deputy Registrar concluded that the petitioner was not the first user of the logo/mark 'Royal Orchid' as claimed and, in fact, the mark/logo 'Orchid' was being used by the respondent No.1 from an anterior date.

6. The similarity of the two logos/marks was also taken into account by the Deputy Registrar in refusing registration to the petitioner.

7. The IPAB, in appeal, reversed the aforesaid conclusion of the Deputy Registrar primarily on the ground that the petitioner-company had been incorporated as 'Royal Orchid Hotels Limited' after effecting a change of its name in the year 1997 pursuant to the company's resolution dated 30.09.1996 which is prior in point of time to the use of the mark of the respondent no.1.

8. The IPAB also was of the view that considering the class of customers that would be serviced by the parties before it, no confusion is likely to be caused by use of two logos/marks i.e. 'Royal Orchid Hotels Limited' and 'Orchid' respectively. This is an additional ground on which the petitioner's claim for registration in class 42 was allowed by the learned IPAB.

9. In appeal by the respondents, the High Court framed the following two questions for decision ;

1. Who is the prior user of the word "Orchid/Royal Orchid" ?
2. Whether the trademark "Orchid" of the third respondent are deceptively similar and the adoption of the said trademark by the third respondent is dishonest ?

A            10. A reading of the discussions on question No.1 by the High  
Court goes to show that the conclusion recorded in the impugned order  
of the High Court dated 11.02.2015 is based on a detailed consideration  
of the materials brought on record by both the parties. The conclusion  
B            that the petitioner had not demonstrated that it was the first user of the  
logo/mark and that it is the respondent who is the first user was arrived  
at on such consideration. In fact, from the very application for registration  
filed by the petitioner on 22.06.2004 it is evident that the petitioner had  
claimed user since 03.11.1999. The High Court also came to the  
conclusion that 'Royal Orchid Hotels Limited' though came to be  
incorporated on 10.04.1997 on the basis of the company's resolution  
C            dated 30.09.1996 had, in fact, commenced its business in the year 2001  
in which year the flagship hotel of the petitioner company i.e. Royal  
Orchid Hotels Limited was set up on land leased by the Karnataka State  
Tourism Development Corporation. The claim of use of a banquet hall in  
hotel Harsha by naming it as Orchid in the year 1990 and use thereof till  
D            the year 1993 was also considered by the High Court. The said plea  
urged was rejected on the ground that there was no evidence brought on  
record to show continuous use of the aforesaid banquet hall by use of  
the word/mark 'Orchid'.

                 11. How far and to what extent the order of the High Court dated  
07-02-2014 in favour of the present petitioner in the earlier litigation  
E            between the parties relating to registration in class 16 would foreclose  
the dispute with regard to registration in class 42 was also considered by  
the High Court. In this regard, the High Court took note of the order of  
this Court dated 01-09-2014 in Special Leave Petition (C) Nos. 8902-  
8903 of 2014 filed by the present respondent No.1 against the said order  
F            of the High Court (dated 07.02.2014) to hold that there was no embargo  
imposed on the High Court by the order of this Court in so far the issue  
relating to registration of class 42 is concerned.

                 12. The order of this Court dated 01.09.2014 in Special Leave  
Petition (C) Nos. 8902-8903 of 2014 is in the following terms:

G            "We are not inclined to interfere with the order impugned herein.  
The Special Leave Petitions are dismissed. Moreover, the Division  
Bench has already made it very clear in paragraph 31 that  
whatever observations made by it in the judgment would not have  
any bearing on the appeals pending before the Appellate Board or

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any decision taken therein. We make it clear that the said observations will be applicable even to any other civil suit pending between the parties.” A

13. If the High Court, in view of the above, understood to be uninhibited in deciding the rival claims so far as registration in Class 42 is concerned, such an understanding and the decision on basis thereof cannot be faulted. B

14. The High Court was also of the view that notwithstanding the class of customers serviced by the parties before it, it cannot be said that the two logos/marks would not give rise to confusion amongst the customers using the Hotels. In this regard, the High Court observed that the view expressed by the IPAB that having regard to the class of customers serviced by the hotels (High Income) there could be no possibility of being misled cannot be accepted as a general proposition and will always depend on individual customers. As the marks/logos were largely similar, the High Court took the view that even on the second question formulated by it the writ petition has to be allowed and the order of the IPAB set aside. C D

15. If the High Court on an elaborate consideration of the materials and evidence adduced by the parties before it had thought it proper to reach a conclusion consistent with the findings of the primary authority i.e. the Deputy Registrar and the reasons for reversal of the view of the primary authority by the IPAB being summary, as noticed, the present petition really turns on the question of appreciation of the evidence on record. Having considered the matter we are of the view that the conclusions reached by the High Court cannot be said to be, in anyway, unreasonable and/or unacceptable. Rather, we are inclined to hold that the view recorded by the High Court is a perfectly possible and justified view of the matter and the conclusion(s) reached can reasonably flow from a balanced consideration of the evidence and materials on record. We will, therefore, not consider the present to be a fit case for interference with the order of the High Court. Accordingly, we dismiss the Special Leave Petition and refuse leave to appeal. E F G