

Trademark Dispute of Ganesh vs. Shree Ganesh

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The Supreme Court recently dismissed an SLP filed against the order of the Division Bench of the Calcutta High Court, reaffirming that there can be no exclusivity in the name of a deity as a trademark.

'Ganesh Grains Limited' (Appellant), a company based in Kolkata, claiming to have been using the trademark "GANESH" for its food products since 1936, had filed a suit for trademark infringement and passing off before the Calcutta High Court, against 'Shree Ganesh Besan Mill' (Respondent), a partnership firm based out of Raipur, Chhattisgarh. The Appellant claimed that it was the prior user of the mark GANESH since 1936 and it had even obtained registration of the word-mark GANESH from the Trade Marks Registry.

The Respondent appeared in court and filed documents to show that it has been using the tradename and trademark GANESH since 1989, and SHREE GANESH since the death of the founder of the Respondent whose first name was 'Ganesh'. However, on the basis of the claims of the Appellant, Single Judge of the Calcutta High Court passed an order of interim injunction against the Respondent on 15.03.2021 and restrained the Respondent from using the trademark GANESH in any manner whatsoever including tradename.

Aggrieved by the order of the Single Judge, the Respondent approached the Division Bench of Calcutta High Court. The appeal was argued extensively by both sides, and finally, vide its order dated 24.12.2021, the Division Bench accepted the claims of the Respondent that – it was an honest & concurrent user of the mark SHREE GANESH since:

- i. The founder of the Respondent was named Ganesh Lal Daryani, and the Respondent had the protection of Section 35 of Trade Marks Act, 1999.
- ii. GANESH is the name of a popular Hindu god, and it is generic and common to trade. Thus, the Appellant's trademark registration for the word-mark GANESH *prima facie* appears to be invalid.
- iii. Thus, the Appellant has no right to restrain Respondent from using the word mark GANESH, claiming infringement of its own mark.

The Appellant filed a Special Leave Petition against the order of the Division Bench of Calcutta High Court on various grounds, including that it had exclusive right over the use of the mark GANESH.

However, vide order dated 09.05.2022, the Supreme Court, speaking through the Bench of Hon'ble Mr. Justice M.R. Shah and Mrs. Justice B.V. Nagarathna, dismissed the SLP filed by the Appellant,

holding that the order of the Division Bench was balanced, and there was no reason to interfere with the same. The Bench also orally observed that the Appellant could not claim any exclusivity whatsoever, in the name of a deity worshipped all over the country.

The Respondent was represented by the team of [Mr. Manish Biala](#), Devesh Ratan and Ashutosh Upadhyaya along with AOR Mr. Vikas Singh Jangra.

The Appellant was represented by Khaitan & Co., led by Senior Advocates Mr. Mukul Rohatgi, Mr. Sudhir Chandra, and Mr. Ranjan Bachawat.

KEY CONTACT

Manish Biala
Partner
[View Bio of Manish Biala](#)