



Mobile TeleSystems OJSC vs. Mahesh Bhatti & Ors.

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A suit has been filed by the Plaintiff's Company against the Defendants (Mahesh Bhatti and his company Manisha TeleSanchar Pvt. Ltd.) for trademark infringement and passing off of the plaintiff's trademark "MTS". The Defendant filed a counterclaim alleging that they are the rightful proprietors of the trademark "MTS" having registered it prior to the Plaintiff. Following the Legal rule laid out in the Supreme Court case *Patel Field Marshal vs. D.B. Modak and Ors.*, the Plaintiff preferred an application under section 124 of the Trademarks Act 1999 for framing of a preliminary issue w.r.t. invalidity of the Defendant's trademark "MTS" and seeking a stay of the proceedings until the IPAB gave a finding w.r.t. the issue. The matter was heard by Hon'ble Justice Ms. Pratibha M. Singh on October 7, 2018. On hearing the arguments in the matter and perusing the material available on record, the court found that the Plaintiff's case w.r.t. invalidity of the Defendant's trademark registration was prima-facie tenable. Specifically, the court found that the IPAB was required to hear the matter on merits and decide the question of trademark validity after due consideration of the evidence. It is important to note that while interpreting section 124 of the Trademark Act 1999 read with the findings of *Patel Field Marshal v. D.B. Modak and Ors.*, the court has found that the standard required for framing the issue w.r.t. the validity of a trademark is to determine whether the facts of the case are triable or not. Given that the question of validity has been looked into by the IPAB, with the consent of the parties, the trial in the matter was directed to be carried on an expedited basis before a Local Commissioner.

