

IA No: GA-Com 1 of 2024  
APOT No. 58 of 2024  
With  
CS No. 64 of 2020  
IN THE HIGH COURT AT CALCUTTA  
In appeal from its  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CIVIL APPELLATE JURISDICTION  
(Commercial Division)

Berger Paints India Ltd.  
Versus  
JSW Paints Pvt. Ltd.

Before:  
The Hon'ble Justice I. P. MUKERJI  
And  
The Hon'ble Justice PRASENJIT BISWAS  
Date: 10<sup>th</sup> April 2024

Appearance:  
Mr. Abhrajit Mitra, Sr. Advocate  
Mr. Sayantan Basu, Advocate  
Mr. Niladri Khanra, Advocate  
Mr. Kavach Kashyap, Advocate  
Ms. Abanti Bose, Advocate  
for the appellant  
Mr. Debnath Ghosh, Advocate  
Mr. Shounak Mitra, Advocate  
Ms. Vaibhavi Pandey, Advocate  
for the respondent

The Court: We have heard both learned counsel for the parties.

The arguments were so fair and to the point that we are in a position to dispose of this appeal dispensing with all formalities.

Learned counsel are ad idem that the word "silk" on the tumbler of the products of the parties should denote description of the products. But when this word is so couched with the trademark or trade name of a product it might tend to pass off the goods of one party as those of the other.

In those circumstances, there shall be no interference with the impugned judgment and order dated 12<sup>th</sup> December 2023 provided the respondent uses the word "silk" on the tumbler only when the product contained therein has a silk finish and does not use that word when the

product has any other finish/sheen. Such description would be maintained in the website of the respondent and in any other form of advertisement of the product.

Mr. Abhrajit Mitra, learned senior counsel appearing for the appellant submits that the above observation would not defeat his claim in the suit that his client has proprietary rights over the word “silk” in relation to the product.

This is denied by Mr. Denbath Ghosh, learned counsel appearing for the respondent.

At this prima facie stage, we maintain our observation made above and hold that such a right is yet to be established at the trial of the suit. All contentions are kept open to be decided at the trial.

The appeal (APOT 58 of 2024) and the stay application (IA No: GA-com 1 of 2024) are disposed of.

As affidavits were not invited, the allegations contained in the stay application are deemed to have been not admitted.

We expect that the suit would be speedily got ready for trial and hearing so as to conclusively decide the issues in question.

(I. P. MUKERJI, J.)

(PRASENJIT BISWAS, J.)