

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 604/2004

%16.02.2009

Date of decision: 16.02.2009

**BOSCH INDIA LIMITED
(Earlier known as Motor
Industries Company Ltd)**

..... Plaintiff

Through: Mr M.S. Ananth, Advocate

Versus

GAGANDEEP TRADING COMPANY Defendant

Through: ex parte

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The plaintiff company engaged, inter alia, in the business of manufacture and marketing of a wide range of automotive components under the trademark MICO stated to be coined by taking the first letter of each of the words of the plaintiff's earlier corporate name and also under the devise of a "wheel", instituted the present suit for restraining the defendant stated to be a proprietorship of one Shri Avtar Singh Anand s/o Shri Gurdeep Singh Anand for restraining them from manufacturing, selling etc automobile parts under the plaintiff's trademark MICO and/or the devise of the "wheel" and for ancillary reliefs including of damages for recovery of Rs 25 lacs.

2. Vide ex parte order dated 27th May, 2004 the defendant was restrained from manufacturing, selling, offering for sale etc the

spurious automobile parts under the plaintiff's trademark / device or under any other trademark or device deceptively similar thereto. On an application of the plaintiff by the order of same date, a Court Commissioner was also appointed to visit the premises of the defendant or any other place where the Commissioner had reason to believe that the spurious goods were being stored and kept by the defendant. The Commission was executed on 29th May, 2004, as per the report dated 30th June, 2004 on record. The Commissioner found Mr Gurdeep Singh Anand and Mr Avtar Singh Anand in the premises. The Commissioner also found large quantities of used second hand auto components some of which were under chemical treatment and which included components bearing the mark MICO and/or the "wheel" mark. Though the Commissioner found large quantities of the infringing goods but the same were mixed with other goods/components not bearing the infringing mark/device.

3. The defendant filed a written statement dated 27th January, 2005 through Shri Avtar Singh Anand s/o Shri Gurdeep Singh Anand as proprietor of the defendant, generally denying the contents of the plaint. It was, inter alia, stated that the defendant concern was carrying on business as a scrap dealer but had closed its business prior to the institution of the suit. Similar statement was made by the counsel for the defendant on 29th March, 2006 including to the effect that the defendant was not manufacturing and selling Mico Fuel Injection Equipment and has no future plans of doing so. In the circumstances Mr Avtar Singh Anand, proprietor of the defendant, was directed to be present in person for recording his statement.

4. On 27th September, 2006 the statement of the proprietor of the defendant was recorded. He stated that he was earlier the sole

CS(OS)604/2004 Page 2 of 5

proprietor of M/s Gagandeep Trading Company which was closed on 31st March, 2003. He further stated that they were dealing in trading of auto motor parts prior to 2003 but thereafter stopped the said trading also and have no future plan of doing so.

5. On 11th December, 2006 it was recorded that the aforesaid statement of the defendant did not satisfy the plaintiff and the plaintiff sought to continue with the suit for the reliefs claimed against the defendant. Since the defendant did not appear on that date, it was ordered to be proceeded against ex parte and remains ex parte.

6. On 26th April, 2007 the counsel for the plaintiff made a statement that the suit may be disposed of by confirming the ex parte order only i.e., by merely passing a decree for permanent injunction against the defendant. However, this court felt that the plaintiff should lead evidence to prove its case.

7. The plaintiff has thereafter filed the affidavit by way of evidence of Mr V Sadanandam, Manager of the plaintiff and the affidavit was tendered into evidence on 20th January, 2009.

8. It is the case of the plaintiff and in evidence that the plaintiff prior to the institution of the present suit had instituted CS(OS) 2710/2000 in this court against Mr Gurdeep Singh Anand and Mr Satnam Singh, father and brother respectively of Mr Avtar Singh Anand, proprietor of the defendant herein and who were carrying on business in the name and style of M/s Anand Trading Company. In the said suit, an order of injunction was passed against the said Mr Gurdeep Singh and Mr Satnam Singh restraining them from

infringing the trademark and copyright of the plaintiff. It is the case of the plaintiff that the business in the name and style of the defendant was commenced to defeat the order of injunction against the father and brother of the defendant herein.

9. As far as the defence of the defendant of having closed down the business on 31st March, 2003 prior to the institution of the suit even, is concerned, the same stands falsified from the report of the Court Commissioner. The Commissioner not only found large number of infringing goods at the premises of the defendant but also found some auto components under chemical process which leads one to believe that the defendant was as on the date of visit by the Commissioner still carrying on business and had not closed down the business. Though the written statement was filed by the defendant but neither were any objections filed to the report of the Commissioner nor was any explanation contained in the written statement with respect to the same i.e., as to how, if the business of the defendant stood closed as on 31st March, 2003, the Commissioner found the infringing goods in the premises of the defendant. The aforesaid alone, in my view, entitles the plaintiff to the decree for permanent injunction. The witness of the plaintiff has otherwise also proved the case of the plaintiff. In any case, the evidence of the plaintiff remains unrebutted. The plaintiff has proved registration of trademark and device and extensive use thereof. It is axiomatic that the defendant cannot infringe the same.

10. The counsel for the plaintiff, as aforesaid, has made a statement confining the relief in the present suit to the relief of permanent injunction only. Even otherwise it is common knowledge that such persons, as the defendant, dealing in spurious goods, do

not maintain any account books and/or frequently change their place of business and as such no purpose would be served in directing the relief of delivery or of accounts.

11. In the circumstances aforesaid, the suit of the plaintiff is decreed in terms of prayer paragraphs (a) and (b) of the plaint. The plaintiff shall also be entitled to costs of the suit. Counsel's fee assessed at Rs 35,000/-.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 16, 2009
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