

\* **HIGH COURT OF DELHI: NEW DELHI**

+ **CS (OS) No.1004/2008**

% Judgment reserved on: 2<sup>nd</sup> July, 2009

Judgment pronounced on: 24<sup>th</sup> July, 2009

Mahesh Gupta & Anr. .... Plaintiffs

Through: Mr. Sanjeev K. Tiwari, Adv. with  
Ms. Rajeshwari, Adv.

Versus

Tej Singh Yadav & Anr. .... Defendants

Through : None

Coram:

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

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|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No  |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**MANMOHAN SINGH, J.**

1. The present suit has been filed by the plaintiffs, inter alia, seeking injunction against the defendants restraining them from infringing the registered patent no. 199716 of the plaintiff, copyright in the product brochure as well as for delivery of the infringing materials, rendition of account and damages.

2. The plaintiff no. 1 is the Managing Director of plaintiff no. 2 company. It is averred in the plaint that the plaintiff no. 1 introduced the revolutionary reverse osmosis (RO) based domestic water purifiers for the first time in India in 1999 and obtained registered Patent

No.199716. The copy of the said patent no. 199716 is proved and is Exhibit PW1/1. The suit patent has also been tested at the renowned Shriram Institute for Industrial Research and Spectro Analytical Labs Pvt. Ltd. These water purifier system were/are being sold by the plaintiff no. 2 under the mark KENT Mineral RO.

3. It is submitted that the plaintiff no.1 developed a system and apparatus whereby water could be purified and yet essential minerals may be retained therein. This revolutionary technology was called 'Mineral RO'. The said unique and new technology – mineral water purification has gained immense popularity among the general public. Over the years, the plaintiffs have made substantial investment in market research, development of new technology, advertising and promotion of its unique patented mineral water purifier under the brand name KENT & KENT Mineral RO. The products of the plaintiff have been advertised regularly on television (SONY, STAR, ZEE TV etc.), print media (Times of India, Economic Times, Hindustan Times etc.). In fact, the plaintiffs were an associate sponsor of the ICC Cricket World Cup 2007 which was aired on Set Max channel. Film stars such as Hema Malini, Esha Deol, Ahana Deol also endorse the plaintiff's mineral water purifier product under the mark KENT Mineral RO. Copies of product brochure and instruction manual of plaintiffs are exhibited as Exhibit PW1/6 and PW1/7 respectively. Copies of the advertisements of the plaintiffs' products are on record and exhibited as Exhibit PW1/8 to PW1/11.

4. It is stated that due to the extensive advertising of products of the plaintiffs, the mineral water purifier of the plaintiffs has over a short span of time gained immense popularity amongst the general public such that the public associates water-purifiers embodying this technology exclusively with the plaintiffs. The mineral water purifier has been so successful and popular that it won the 'Best Domestic Purifier 2006-07' award at Water Awards Ceremony organized by Water Digest in association with UNESCO and CNBC-TV18. It is submitted that the plaintiffs have acquired and enjoyed substantial goodwill and reputation on account of their innovative products. Various Indian national dailies like, Times of India, Economic Times, Hindustan Times etc. have carried articles and features on and about plaintiff's patented mineral water purifier, which articles are Exhibit PW1/13 and PW1/14.

5. It is submitted that the plaintiffs have been manufacturing and selling the patented water purifier systems embodying the aforesaid mineral water purification technology since February, 2006 under the mark KENT Mineral RO. The products are sold not only in India but also in countries such as Kenya, Nepal, UAE, Sri Lanka, New Zealand etc. The sales of the plaintiffs' product is over Rs.10 crores.

6. On or about May 2008, the plaintiffs had come across a newspaper advertisement of a mineral water purifier styled as PUROCOM. Upon investigations, it was learnt that defendant No.2 was manufacturing and selling a water purifier that infringed the intellectual property rights of the plaintiffs. Accordingly, the plaintiff filed civil suit

CS (OS) No. 776/2007 against the said defendant in this Court. Ultimately, the defendants in the said suit compromised the matter and filed an application under Order 23 Rule 3 CPC that they will not infringe the designs, copyrights and trade dress of the plaintiffs.

7. The plaintiffs conducted further investigations which revealed that defendant No.2 has changed the shape of their water purifier cabinet which was the subject matter of CS (OS) No.776/2007. However, the plaintiffs noticed that the new water purifier of the defendants fully and completely adopted and copied the patented technology of the plaintiff. Thus, the present suit was filed by the plaintiff for restraining the defendant from infringing the patent and copyright of the brochures of the plaintiff.

8. It is alleged that the water purifier of the defendants fully and completely infringes claim 1 and other claims of the plaintiff's patent. It is further averred that the defendant slavishly copied most of the essential and key aspects of the plaintiff No.1's patent No.199716. A comparison chart of the claims of the plaintiff No.1's patent with the defendant is given as under:-

| <b>Claim 1 of IP 199716</b>                                                                                                                                                              | <b>Process of Defendants</b>                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A reverse osmosis based drinking water purifier having ability to control natural mineral content of raw water in purified water, comprising of :                                        | The raw water is purified by RO process that consists of a Sediment Filter, Activated Carbon Filter, high pressure pump followed by RO membrane.                                            |
| A reverse osmosis membrane means for subjecting the water to reverse osmosis process to provide treated demineralized water and a control valve to mix water containing natural minerals | Essential natural mineral are then intelligently released into RO purified water by our with Mineral RO process. A control valve is also provided to adjust T.D.S. of the purified water on |

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| with said treated demineralized water and a further means of filtration and/or treatment to purify the mixture and free it from bacteria and viruses to thereby provide for reverse osmosis treated water having controlled natural minerals. | site.<br><br>The essential mineral incorporated RO water is further purified by UF process to give double protection from bacteria and viruses. |
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9. The defendants are therefore, guilty of infringement of the suit patent of the plaintiff. The defendants are guilty of infringement of copyright, passing off, unfair trading and competition. It is submitted that the defendants have adopted identical material in their brochure in toto and thus, generated an identical brochure without the plaintiffs' authority which amounts to a blatant and flagrant violation of the plaintiffs' copyright in its brochure. The plaintiffs have made huge investment in research, development, promotion, protection and advertisement of its water purifier (mineral RO technology) registered as Patent No.199716. As such the plaintiffs have acquired substantial reputation and goodwill in its products (water purifier using mineral RO technology) and the general public has now come to associate the said product exclusively with the plaintiffs and its mark, KENT MINERAL RO. The use by the defendant of impugned water purifier embodying the plaintiff's patented technology is inherently in bad faith with an intent to misrepresent to the general public that the defendant's products and business owe their origin to/or are licensed by the plaintiff and calculated to cause damage to the plaintiffs exclusive proprietary rights and the goodwill in the said water purifier.

10. It is submitted that the defendants are offering for sale and selling the infringing products to a common market. The defendants are trying to make unreasonable profit using the plaintiffs' intellectual property in the said water purifiers, thereby causing unlawful loss to the plaintiffs. It is further submitted that the plaintiffs have suffered and are likely to suffer irreparable loss, harm and injury as a result of infringement by the defendants of the plaintiffs' registered Patent No.199716 and identical product brochure.

11. In the plaint, the plaintiff prayed as under :

- “(i) an order of permanent injunction restraining the defendants jointly and severally by themselves, their directors, proprietors, officers, servants, representatives, stockiest, dealers, agents and all other persons claiming under or through them or acting in concert with them or otherwise howsoever from manufacturing, selling, distributing, offering for sale, advertising, directly or indirectly deal with water purifier embodying the claims of plaintiffs' registered Patent No.199716 in any manner;
- (ii) an order of permanent injunction to restraining the defendants jointly or severally by themselves, their partners, servants, agents, representatives and all those acting in concert with them or claiming under or through them or otherwise howsoever from infringing the plaintiffs' copyright in its product brochure in respect of their water purifier products;
- (iii) an order of permanent injunction to restraining the defendants jointly or severally by themselves, their partners, servants, agents, representatives and all those acting in concert with them or claiming under or through them or otherwise howsoever from adopting or passing off plaintiffs' mineral water purifier system;
- (iv) an order for delivery up for destruction of all water purifier and purifier type products, dies, labels, printed materials such as brochures, instruction manual, letterhead, stationery, visiting cards, promotional material, cash memos, cartons, blueprints or any other material of whatsoever description and nature, embodying the plaintiff

No.1's registered patent bearing No.199716 which would offend against the foregoing injunction;

- (v) an order for rendition of accounts of profit illegally earned by the defendants on account of use of purifiers employing the plaintiff's registered patent and a final decree for the ascertained amount be passed in favour of the plaintiffs;
- (vi) an order directing the defendants to pay damages to the tune of Rs.21 lac to the plaintiffs; and
- (vii) an order for costs of this suit and the proceedings."

12. In the case of **Raj Parkash Vs. Mangat Ram Chowdhry and Ors. AIR 1978 Delhi** it was held as under :

"That invention is to find out something or discover something not found or discovered by anyone before. Whether a patent sets out an invention is to be determined by a true and fair construction of the specifications on the basis of which an inventor claims that he is the first inventor of an invention which is to be patented. In order to properly construe the specifications, one should give ordinary meaning to the words, but where necessary the words must be construed in the sense in which they are used in a particular trade, a sphere in which the invention is sought to have been made. The grant of patent, no doubt, creates a monopoly in favor of the patentee but then law throughout the free world recognises that an inventor must first get the benefit of his invention, even if it means creating a monopoly. According to Clause (8) of Section 2 of the Act of 1911 an invention means any process of new manufacture and includes an improvement in an alleged invention. Clause (11) of Section 2 defines patent to mean one granted under the provisions of the Act. It is the pith and marrow of the invention claimed that has to be looked into and not get bogged down or involved in the detailed specifications and claims made by the parties who claim to be patentee or alleged violaters. It is not necessary that the invention should be anything complicated. The essential thing is that the inventor was the first one to adopt it. The principle, therefore, is that every simple invention that is claimed, so long as it is something which is novel or new, it would be an invention and the claims and specifications have to be read in that light,

.....The patented article or where there is a process then the process has to be compared with the infringing article or

process to find out whether the patent has been infringed. This is the simplest way and indeed the only sure way to find out whether there is piracy. Unessential features in an infringing article or process are of no account. If the infringing goods are made with the same object in view which is attained by the patented article, then a minor variation does not mean that there is no piracy. A person is guilty of infringement, if he makes what is in substance the equivalent of the patented article.

13. On 27<sup>th</sup> June, 2008 summons were issued to the defendant and ex-parte interim order against the defendant was passed. On the same date, a Local Commissioner was also appointed to visit the premises of the defendant and to take into custody the infringing goods of the plaintiff including brochures and literary material.

14. The Local Commissioner filed his report on 2<sup>nd</sup> August, 2008 wherein he stated that no infringing product of the plaintiff has been found in the premises of defendants. Neither any brochure or other literary material of the plaintiff was found by the Local Commissioner.

15. The defendants were proceeded ex-parte as they have neither put any appearance before the court nor filed the written statement. The interim order was made absolute on 2<sup>nd</sup> April, 2009. The case has gone un rebutted. The plaintiffs have filed affidavit by way of examination-in-chief of Mr. Mahesh Gupta which is exhibited as Ex. PW 1/A to prove its case. Considering that the case of the plaintiff is not being controverted by the defendants and in other suit being CS(OS) No.776/2007 pending before this Court, the settlement has been arrived between the parties wherein the defendants agreed to pay to the plaintiffs the damages to the tune of Rs.25 lac and stated that they will stop using the plaintiffs registered design bearing No.200427 in Class-

23-01 and also will not infringe the plaintiffs' copyright and its brochures, plaintiffs' traddress, getup, over all look etc., I am of the view that the plaintiffs have established the case for grant of the relief of permanent injunction in terms of para 33(i), (ii) & (iii) of the plaint. The plaintiffs have also urged for the relief of damages to the tune of Rs.21 lac in the suit. However, when the Local Commissioner was appointed, he did not find any infringing material from the premises of the defendants. Thus in the absence of any cogent evidence on record, to award damages to the plaintiff, relief as prayed in para 33 (vi) cannot be granted to the plaintiffs.

16. The case has been otherwise proved by the plaintiff. The suit is accordingly decreed for the relief of permanent injunction in favour of the plaintiffs and against the defendants. Decree sheet be drawn accordingly.

**MANMOHAN SINGH, J**

**JULY 24, 2009**

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