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

Date of decision: 27.04.2010

+ CS(OS) 2351/2000

ASIAN PAINTS (INDIA) LTD.

..... Plaintiff

Through

Mr. Sushant Singh, Manav Kumar, Veerender Kumar Sinha, Ms. Neha Kapoor, Ms. Parveen Radhi, Mr. Tejinder Singh, Mr. Chander Shekhar Patney, Mr. Prakash Chandra Arya, Advocates.

versus

SATISH GUPTA & ORS.

..... Defendants

Through

None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The Plaintiff has filed a suit against the defendants for permanent injunction, alleging infringement of trade-mark, and claiming delivery-up and other consequential reliefs.

2. Briefly, facts are that the plaintiff deals in paints and synthetic enamels and other like products. It claims to have been using the mark 'Asian Paints' since 1960s and relies for this purpose on the trade mark registration certificate (for the word mark) dated 10.09.1962. The said documents are produced in series and disclose that the plaintiff is a registered proprietor of the mark 'APCOLITE'. The trade-mark registration pertains to Class 16 of the Schedule to the Trade Marks Act. The plaintiff is also owner of the label containing 'APCOLITE' marked with a

distinctive device of a mischievous boy known as GATTU in class 2, w.e.f. 07.01.1965. It is stated that the registration in respect of these distinctive trade-marks have been renewed and are subsisting.

3. In support of its claim, counsel for the plaintiff states that the plaintiff's marks are widely known and associated with its products. The plaintiff relies upon sales figures, which have been tabulated and disclose as follows:-

XXX	XXX	XXX
YEAR	SALES (IN CRORES)	
1995-96	88,00,00000	
1996-97	938,00,00000	
1997-98	1019,00,00000	
1998-99	1124,00,00000	
1999-2000	1270,00,00000	

XXX XXX XXX

4. The plaintiff also states that it had been spending considerable amount towards advertisement expenses; these are disclosed in a tabulated form as follows:-

XXX	XXX	XXX
YEAR	ADVT EXP (IN CRORES)	
1995-96	12,00,00000	
1996-97	16,03,00000	
1997-98	20,08,00000	
1998-99	26,07,00000	

1999-2000	30,00,00000
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5. It is claimed that as a result of the high quality of the products sold by the plaintiff, the consumer associates the 'ASIAN PAINTS' mark as well as the label 'APCOLITE' with the distinctive GATTU device as emanating from it (i.e. ASIAN PAINTS). It is alleged that sometime in August- plaintiff became aware of unauthorized copying of the trade-mark in relation to sale of Synthetic Enamel by several persons, including the defendants. The plaintiff relies upon the photograph Ex-PW-1/6 to show that they are in respect of the defendant's goods. The photograph discloses a container with 'ASIAN PAINTS' and GATTU shown prominently, in red and yellow background. By way of comparison, the plaintiff has produced photographs of its products as Ex-PW-1/3. It is alleged that these would clearly show the defendant's motive at copying the plaintiff's label and attempting to pass off their goods, as those of the plaintiffs. The plaintiff, in order to substantiate this allegation, relies upon the report of a Notary Public (Ex-PW-1/4). The said report reads as follows:-

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Notarial Report

"Under the instructions of M/s Asia Paints (India) Ltd., A-17/B-1, Mohan /co-operative Industrial Area, Badarpur, Mathura Road, New Delhi-110044, I accompanied with Mr. Rohit Joshi, went to Bharatpur (Raj market on 26.08.2000 to purchase apcolite synthetic Enamel paint, 5.00 p.m. visited the place of M/s Shakti Traders, Pai Bagh, Bharatpur, (Raj), where I witnessed Mr. Rohit Joshi purchased the following items of Asian paints:-

- a) Two containers of apcolite synthetic enamel paints of 1 (one liter each @ Rs.145/- pr container, the total value of Rs.290/- on the container it is written "Asiant Paints" and the address of Asian Paints (India) Ltd. Nirmal Point Mumbai-400 02 There is also a Logo of Asian paints-" a boy with a brush in hand."*

The Proprietor of the firm did not issued any cash memo for the payment of Rs.290/- made to him for the purpose of the above goods.

I have personally packed the above said one container of apcolite synthetic

enamel paints in a parcel and the same has been sealed by me with my seal in the presence of Mr. Rohit Joshi. I have also issued a declaration to this effect which is contained in the sealed parcel.

I have set in my hand and seal of Notary on this report.

*(Surinder Kumar)
Notary Public.
Delhi.
NOTARY DELHI”*

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6. This Court had, by its order dated 19.10.2000 granted an ex-parte injunction against the defendant and also directed appointment of Local Commissioner to visit the defendant's premises and upon finding any incriminating materials, to seize them. The report of Ms. Priya Gandhi dated 02.11.2000 is on the record. The report inter alia states as follows:-

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“4. The factory premises had big boilers and machines which were operational at that time. There were many hardware material lying on the ground. I met one Shri Shivshankar, who said that he was also the employee and they were into the business of manufacturing paints. White, Blue and Yellow colour paints was being made at that time.

5. That we went to a room where containers of paints were being kept of different companies among those the employees of the plaintiff spotted Apcolite ‘Asian Paints’ ‘Synthetic Enamel’ of 200 ml. of description BLZ white 3606/P and super ‘Decoplast’ plastic emulsion paint of Asian Paints each.”

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7. After service of summons, the Defendant No.3 alone entered appearance and resisted the suit subsequently. During the pendency of proceedings, the said defendant is reported to have died and the suit accordingly abated. So far as, other defendants are concerned, the court set down them ex-parte during the pendency of proceedings.

8. This Court has carefully considered the averments in the suit and the documents placed on record. Mr. Sunil Jaifalkar, the plaintiff's constituted deposed as PW-1; his affidavit evidence was marked as Ex-PW-1/A on 18.02.2010. In the course of his deposition, PW-1 supported allegations in the suit and also marked the documents produced along with the plaint as Ex-PW-1/1 to Ex-PW-1/6.

9. In this case, the materials on record clearly shows that the plaintiff is the registered proprietor of the 'ASIAN PAINTS', word mark as well as label since at least 1965. The materials also reveal that the registration has been renewed from time to time and subsists as on date. The plaintiff's allegations in the suit – as well as the depositions of PW-1 about the extensive reputation that its products enjoy have also not been resisted. Initially the third defendant had entered appearance, but later, the suit abated against him

10. In the opinion of the Court, the plaintiff has proved that the defendant was attempting to or at least in one instance did sell products by both itself (ASIAN PAINTS), label and the word mark. A comparison of the plaintiff's label with product of the defendant's (photographs of which have been placed on record) shows that there is no difference between two labels and marks. The plaintiff has also been able to prove that the product alleged to have been purchased was in fact bought on the relevant date through Ex-PW-1/4, the notary report dated 26.08.2000. The plaintiff's allegations has been further substantiated by the Local Commissioner's report which states clearly that over 200 such containers were found in the defendant's premises.

11. In view of the discussion, this Court is of the opinion that the plaintiff has proved that it is owner of registered trade-mark 'ASIAN PAINTS' as well as 'APCOLITE' with distinctive Gattu device and that the defendants have infringed the same by offering for sale containers affixed a similar identical trade- mark 'ASIAN PAINTS' and the 'APCOLITE' mark.

12. So far as the other reliefs are concerned, in the absence of any proof from the material on record, the Court cannot direct the defendants who have been set down ex-parte to render the account further. The record does not disclose anywhere that such accounts were maintained by the defendants. The labels and other products seized in the defendant's premises were about 200 in number.

13. In these circumstances, the only order to be made is that if the labels are in the plaintiff's possession, he would be entitled to destroy the same. The suit is accordingly decreed in terms of para 32 of A, B & C of the plaint with costs; counsel's fee is quantified at Rs. 50,000/-.

**S. RAVINDRA BHAT
(JUDGE)**

APRIL 27, 2010

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