

Court No. - 10

Case :- ORIGINAL SUIT No. - 1 of 2016

Plaintiff :- M/S Action Construction Equipments Ltd.Thru V. Saroha

Defendant :- R.N. Gupta And Co. Ltd.

Counsel for Defendant :- Manu Khare

Hon'ble Kshitij Shailendra,J.

1. This is an Original Suit filed under the Designs Act, 2000.
2. It is listed at the top of the list under the category "**Hon'ble Supreme Court (Expedited)**".
3. I have perused the order of Hon'ble Supreme Court dated 05.09.2016, which is quoted as under:

"The learned counsel appearing for the petitioner seeks permission to withdraw this petition, so as to enable the petitioner to approach the High Court so that the issue with regard to injunction can be considered and decided by the High Court.

Permission is granted.

The special leave petition stands disposed of as withdrawn. However, the question of law is kept open.

The High Court shall consider the case of the petitioner as soon as possible, preferably within four weeks from the date of receipt of intimation of this order.

We are sure that the learned counsel appearing for both the sides shall extend their cooperation to the High Court so that the matter can be decided expeditiously.

The parties are directed to appear before the High Court on 9th September, 2016, so that the date for hearing of the issue with regard to injunction can be fixed."

4. It is apparent from the aforesaid order that the plaintiff-petitioner withdrew the Special Leave Petition with liberty to approach the High Court for the purposes of considering the relief of injunction. The Apex Court while granting permission to withdraw, observed that the learned counsel for both the sides shall extend their cooperation to the High Court so that the matter can be decided expeditiously.

5. The matter came up before this Court on 03.08.2023. This Court taking note of the fact that the earlier counsel of the plaintiff had been elevated to the Bench directed the office to issue notice to engage another counsel.

6. The office report dated 14.09.2023/30.10.2023 indicates that Officer In-charge (Nazarat), Gautam Budh Nagar has submitted a compliance report flagged as "D" on record.

7. I have perused the compliance report marked by letter "D", which has been submitted in pursuance of issuance of notice to the plaintiff. The report indicates that when the process server went to serve the notice on the given address, it was found that the company named M/s Action Construction Equipments Ltd. was not in existence on the address E-223 Sector 63 NOIDA, rather, in its place another company namely, Divya Enterprises Private Limited was found functional.

8. Considering the fact that the learned counsel for the plaintiff was elevated to the Bench many years ago and that the plaintiff did not take any interest either in engaging another counsel by itself over a number of years nor even in pursuance of notice issued by this Court recently nor could the process server find that the plaintiff's company existent on the address, coupled with the fact that the case has been expedited by the Hon'ble Supreme Court with the observations as referred to herein-above, it appears that the plaintiff is not interested in pursuing the suit.

9. The Original Suit is **dismissed for want of prosecution with liberty** to the plaintiff to file an application seeking recall of this order.

Order Date :- 31.10.2023

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