

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.3222 of 2012 (O&M)

Date of decision: 21.04.2015

M/s Ajay Industries

..... Appellant

versus

M/s Medallay Exports

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Tarun Khanna, Advocate for the appellant
Mr.Gaurav Tangri, Advocate for
Mr.Sanjay Tangri, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This appeal is directed against the order dated 9.1.2012, passed by the learned Additional District Judge, Jalandhar, vide which application of the plaintiff-appellant under order 39 Rule 1 and 2 read with Section 151 CPC for grant of ad-interim injunction was declined.

Briefly stated, the plaintiff had filed suit against the defendant for restraining the defendant/ dealers, agents, employees etc. from manufacturing, marketing, offering for sale or exporting or infringing the registered design of the plaintiff registered vide No.203399 of their product i.e. Vices which are identical and similar or fraudulent imitation of the plaintiff's design.

Suffice to say that according to the plaintiff, he has

registered the product 'VICE' under the Design Act, 2000 vide No.203399 on 6.3.2006. The design subsists for ten years from the date of registration and further extendable for a period of five years. It is stated that the defendant has infringed the design and copied the same.

The defendant took a plea that the owner of the said design vices is the German company namely Walter Blomback GmbH, who had already registered the design vide registration No.G-84 12 340.0 in the year 1984. Plaintiff willfully and intentionally misrepresented and got the design registered under his name against the basic provisions of the Design Act, 2000. The alleged registration is the result of fraud. The defendant has filed a petition under Sections 18 and 19 of the Registration of Design Act, 2000 before the Tribunal at Kolkata for cancellation of the design.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the appellant has taken this Court to the design of 'VICE' of the plaintiff and that of the defendant in the original file, which is now pending in this Court and has claimed that the defendant has copied the design of the plaintiff which has been registered on 6.3.2006.

On the other hand, learned counsel for the respondent has drawn attention of the Court towards the fact that the original design was got registered by a German company and that the design produced by the plaintiff is not original.

Learned counsel for the appellant has further argued that

the German company has invented the product but the design was exclusively prepared by the plaintiff -appellant herein. I am of the view that in order to get interim injunction, the plaintiff has to prove that he has come to the Court with clean hands. He has got prima facie case and the balance of the convenience in his favour. In this case, defendants have already applied for cancellation of design got registered by the plaintiff on the ground that it is copy of the original design of the German company and was obtained by misrepresentation. Thus there is a dispute whether the design is original design of the German company or not. Undisputedly, the design was originally invented by the German company.

In these circumstances, I am of the view that the lower Court was justified in refusing ad-interim injunction. Accordingly, the appeal is found to be without any merit and the same is dismissed. However, the respondents-defendants are directed to maintain the accounts of the sale of the product in dispute so that in case the plaintiff succeeds, the profit can be ordered to be paid to the plaintiff.

21.04.2015*gk***(Kuldip Singh)
Judge**