

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

% *Date of Judgment: 21.05.2015.*

+ CS(OS) 144/2009

DELTA ENERGY SYSTEMS(INDIA) PVT. LTD

..... Plaintiff

Through Mr Anil Airi, Ms Shreya
Bhandari and Mr Ravi Chandana,
Advts.

versus

DIAC SERVICES & ANOTHER

..... Defendants

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Present suit is a suit for permanent and mandatory injunction.
2. The plaintiff is a company incorporated under provisions of the Indian Companies Act. It is engaged in the business of manufacture and sale of power systems such as DC power supply systems, auxiliary power supply systems, UPS etc. It is a well recognized company and

enjoyed good reputation. Defendant No.1 is proprietorship firm of defendant No.2. It is engaged in the business of sales, services, maintenance, rentals and buy-back of power electronic products like UPS systems etc.

3. The plaintiff and defendant No.1 had entered into a dealership agreement dated 07.11.2006 whereby the plaintiff had appointed defendant No.1 as its dealer for reselling/distributing/marketing/servicing the plaintiff's product in India. This arrangement continued and payment for the supplies made by the plaintiff to the defendants for July, 2008 to December, 2008 to the tune of Rs.17,83,080/- are yet outstanding.

4. In spite of various requests, this amount was not paid by defendant. The plaintiff was constrained to stop the supply of goods to defendant No.1. Soon thereafter, the plaintiff was flooded with calls/communications from its partners/dealers regarding various SMSs where the defendant attempted to malign and defame him. The plaintiff set up an enquiry as to find out who was the registrant of the web site www.smstobiz.in and he was acting with a malafide intention to defame

impeccable goodwill and reputation of the plaintiff. The plaintiff as a result of the aforementioned SMSs has suffered humiliation, embarrassment and mental agony. The business of the plaintiff has also been adversely affected. The suit of the plaintiff was accordingly filed seeking restraint the defendants from sending or issue any defamatory or malicious statements or communication qua the plaintiff.

5. The defendant had put in appearance. He filed written statement. He denied the allegations and submissions made in the plaint. Submission was that it was the duty of the plaintiff to supply goods and services to the defendant but it has failed to do so within time. It was admitted in para 5 that the said website www.smstobiz.in was registered in the name of defendant but it was running since the year 2008. He otherwise denied the allegations made in the plaint.

6. Replication was filed reiterating the averments contained in the plaint and refuting the submissions made in the written statement.

7. On the pleadings of the parties, on 27.08.2010, the following issues were framed. They read herein as under:-

(i) Whether this Court has the territorial jurisdiction to

entertain the present suit? OPD

- (ii) Whether the SMSs sent by the defendants are defamatory in nature? OPP
- (iii) Whether the plaintiff has suffered damages to its goodwill and reputation due to the SMSs? OPP
- (iv) Whether the plaintiff's business has been adversely affected due to the circulation of the defamatory SMSs sent by the defendant? OPP
- (v) Whether the plaintiff is entitled for perpetual and mandatory injunction as prayed for? OPP
- (vi) Reliefs.

8. The plaintiff in support of his case has examined PW1 Deepak Sharma. He has proved the documents in support of the claim of the plaintiff as Ex.P-1 to Ex.PW1/26. PW-1 was cross examined by the learned defence counsel. It was admitted that the proof of losses has not been filed because the same are to be quantified in due course. It was reiterated that the plaintiff had received emails and SMSs from the defendant. He denied the suggestion that these mails were not sent by the defendant.

9. In spite of opportunity having been granted to the defendant, he

did not lead any evidence. Right of the defendant to lead evidence was accordingly closed on 07.05.2014.

10. Arguments have been heard.

11. The oral and documentary evidence which has been placed on record which includes the statement of PW-1 duly supported by the documents establishes the case of the plaintiff. The witness has not been shaken in his cross-examination. No evidence has been led in defence. The plaintiff is entitled to the relief as claimed for by him. Learned counsel for the plaintiff has pressed for prayers (b) and (c) in the prayer clause.

12. Accordingly, the suit of the plaintiff is decreed and a decree of perpetual injunction is passed in favour of the plaintiff and against the defendants and they are restrained from printing, publishing, reproducing or circulating in any manner SMSs/articles which are defamatory or in any other malicious statement through website www.smstobiz.in or through any other medium whatsoever. No order as to costs.

13. Suit of the plaintiff is decreed and disposed of in the above terms.

MAY 21, 2015
Mk/A

INDERMEET KAUR, J