

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 232 OF 2015
IN
SUIT NO. 427 OF 2014

Photoquip India Limited ... Plaintiff
Versus
Delhi Photo Store and Another ... Defendants

Mr. Amit Jamsandekar, *with Ms. Alka Paralekar, Ms. Esha Trivedi,*
i/b V.A. Associates for the Plaintiff.
Mr. Anand Kumar, *for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 5th December 2016

PC:-

1. Listed on the final hearing board today is the Plaintiffs' Notice of Motion under Order 39 Rule 2A and 11 of the Code of Civil Procedure 1908 against the Defendants. In view of the statement made by the Defendants in paragraph 3 of their Affidavit dated 6th October 2016,¹ it may not be necessary to deal with the merits of the case. In any case, Mr. Anand Kumar says that he has instructions to proceed on this basis. Paragraph 3 reads thus:-

3. I say that I am ready and willing to amicably resolve the suit by submitting to a decree in terms

¹ Notice of Motion paper book *pp.147-148*.

of prayer clauses (a) to (c) of the Suit plaint in favour of the Plaintiff. I say and submit that I have no intentions to use the drawings which purport to infringe upon the copyrights of the Plaintiff.

2. Mr. Kumar clarifies that this statement is in respect of the impugned product shown at Exhibit “I” to the Plaint at page 49. He also states on instructions that the product at Exhibit “C” to the Affidavit in Support of the present Notice of Motion at page 27 is not being manufactured or put to commercial use by the Defendants, and, further, that the Defendants agree and undertake to this Court not to make any commercial use of the product at Exhibit “C” to the Notice of Motion paper book either. In other words, Mr. Kumar confirms on instructions that the injunction and orders in terms of prayers (a) to (c) will extend also to the product shown at Exhibit “C” to the Notice of Motion at page 27.

3. These statements are noted and accepted as undertakings to the Court.

4. The Suit is partly decreed in these terms against the Defendants. The drawn up decree is dispensed with. However, for the purpose of implementation of these Consent Terms, should the parties require a drawn up decree, they will be entitled to apply to the Department for one without having to make a separate application in that behalf and on production of an authenticated copy of this order. If sought, decree to be drawn strictly in accordance with this order.

5. The Suit will continue against the Defendants in relation to prayer clause (d), which is a prayer for damages. Mr. Kumar says that he has no instructions to submit to a decree in damages and Mr. Jamsandekar for the Plaintiff states that he has no instructions to give up that claim for damages. On the contrary, he says that his instructions not only to press for them but to move an amendment to increase the amount as well.

6. The Plaintiffs will be at liberty to make an application for amendment which will be dealt with on its own merits. All contentions in that behalf are kept open.

7. As regards the Written Statement filed by the Defendants, this will be restricted now to the claim in damages. In other words, the defence as to dissimilarity or distinctiveness of the rival products will necessarily have to be deemed to have been given up by the Defendants.

8. The present Notice of Motion is disposed of in these terms. In the facts and circumstances of the case, there will be no order as to costs.

(G. S. PATEL, J.)