

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.135 of 2016
and C.M.P.No.9258 of 2016

- 1.Dart Industries Inc.,
A corporation founded under to
Laws of Delaware USA,
14901, South Orange Blossom Trail
Orlando Florida 32837 USA.
Rep. By its Constituted Attorney,
Ms.Kimberly Weate.
- 2.Tupperware India Pvt. Ltd.,
204-206 Tolstoy House
15 Tolstoy Marg, New Delhi 110 001,
Rep. By its Authorized Signatory,
Ms.Vandita Batta. ... Appellants

-vs-

Techno Plastic Industries,
210/10, Rampur Jattan,
(Dhakewala) Nahan Road,
Moginand, Kala Amb, Distt. Sirmour,
Himachal Pradesh. .. Respondent

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the order dated 29.04.2016 in O.A.No.1102 of 2015 in C.S.No.828 of 2015 on the file of original side of this Court.

For Appellants : Mr.Hemant Singh
for Mr.Arun C.Mohan

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appellants have filed the suit for passing off against the respondents. There are inter se suits pending between the parties even before the Delhi High Court. One of the suits pertains to relief both for infringement of design and passing off. This is Civil Suit (O.S.) No.589 of 2005. Interim reliefs have been declined in that matter, against which the appellants preferred appeal. Final arguments are over in the appeal and judgment is reserved.

2.Learned Single Judge vide the impugned order dated 29.04.2016, after consideration of the issue of interim relief, has opined that since a similar suit is pending, it may be appropriate to await the judgment of the Division Bench of the Delhi High Court. Thus, the learned Single Judge has not really taken a view one way or the other.

3.The appellants by filing the present appeal seeks to insist that the hearing before the learned Single Judge must proceed without awaiting the judgment of the Division Bench of the Delhi High Court.

4.We have heard the learned Senior Counsel for the appellants and do not find any merit in the appeal for the following reasons:

- i. The impugned order is not an order on merits, but is a matter of discretion of the learned Single Judge exercised as a trial Judge, which must be respected.
- ii.If the learned Single Judge has opined that he would like to await the opinion of the Division Bench of the Delhi High Court, in which judgment is reserved, it cannot be said that the discretion has been exercised in such arbitrary manner as to call for interference by the Division Bench.
- iii.The learned Single Judge has not opined that the Division Bench judgment would be binding or would decide the controversy before him, but only seeks to have the benefit of that view since undisputedly, though the designs may be different, the parties are same, product nature is same and the suit at Delhi has also prayed for the relief in respect of passing off,

apart from the issue of infringement of design.

5.The submission of the learned counsel for the appellants that there is a mistake of fact in a presumption as if the designs in the two cases are same is not borne out from the record since that is not what the learned Single Judge has opined. Of course, the two designs are different as stated by the appellants. What has been stated in the impugned order is that there is a similar suit pending. The similarity of the suit is in the context of similarity of product and the relief of passing off being claimed in both the matters.

6.The grievance made by the learned counsel for the appellants that the judgment of the Division Bench has been awaited for quite some time is a matter which he has to address to the Courts at Delhi.

7.We are, thus, not inclined to interfere with the discretionary order of the learned Single Judge.

8.Original Side Appeal stands dismissed. No costs. Consequently, C.M.P.No.9258 of 2016 also stands dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

sra

To

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

1 cc to M/s.Arun C.Mohan, Advocate, sr.32981

O.S.A.No.135 of 2016

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