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

+ C.O. 23/2000

ESCORTS CONSTRUCTION EQUIPMENT
LTD. & ANR.

..... Petitioners

Through: Mr. Ajay Amitabh Suman, Adv. for
Mr. S.K. Bansal, Adv.

Versus

ACTION CONSTRUCTION EQUIPMENT PVT. LTD.
& ORS

..... Respondents

Through: Mr. Abhishek Ghai and Mr. Ajay
Kalra, Adv. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.07.2016

1. The two plaintiffs namely Escorts Construction Equipment Ltd. and Escorts Ltd. filed this Civil Original (CO) against the defendants Action Construction Equipment Pvt. Ltd., Mr. Vijay Aggarwal and the Controller of Patent and Design for removal of Design No.176729 dated 23rd June, 1998 from the register maintained under the Designs Act, 1911 and for a direction for cancellation of the said design and rectification of register.
2. The C.O. is ripe for final hearing.
3. The arguing counsel for the respondents No.1&2 is not available and adjournment is sought on his behalf.

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4. Finding the registration of the design to be of 23rd June, 1998, I have enquired from the counsel for the petitioners whether not the subject design of which cancellation is sought has already lapsed and is no longer protected.

5. The counsel for the petitioners agrees but contends that since the Full Bench of this Court in ***Mohan Lal, Proprietor of Maurya Industries Vs. Sona Paint Hardwares*** AIR 2013 Delhi 143 (FB) has held that even after the term of protection under the Designs Act has lapsed, common law rights in the design may be available, the petitioners are interested in adjudication of the said CO.

6. On enquiry, whether the respondents No.1&2 have instituted any proceedings asserting the common law rights in the design of which cancellation is sought in the present suit, the counsel for the petitioners states that no such proceedings have been instituted by the respondents No.1&2 as yet.

7. It is also the contention of the counsel for the petitioners that the respondents No.1&2 in their cross-examination on 19th November, 2015 in these proceedings admitted that the subject design is functional in nature and for this reason also its registration as a design was wrong. He contends that the CO is entitled to be allowed for this reason alone.

8. I am of the view that once the cause of action for the relief which was claimed in the CO has disappeared and no longer survives, no purpose will be served in this Court proceeding to decide the CO. Suffice it is to state that if the respondents No.1&2 at any time in future institute any

proceedings against the petitioners asserting any rights including of passing off accruing from the registration of the subject design, it would be open to the petitioners to, in that proceeding refer and rely on the present CO and to the proceedings herein and / or admissions made by the respondents No.1&2 and to, if so necessitated, also seek revival of the present CO.

9. With the aforesaid liberty, the petition is disposed of as infructuous, leaving the parties to bear their own costs.

RAJIV SAHAI ENDLAW, J.

JULY 19, 2016

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