

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

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Date of decision: 7th September, 2016

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CS(OS) 1602/2006

**SAMSUNG ELECTRONICS COMPANY
LTD. AND ANR.**

..... Plaintiffs

Through: Mr. Pravin Anand, Adv.

Versus

MR. GYANJI CHOUDHARY AND ANR.

..... Defendants

Through: Ms. Sunita Arora, Adv. for D-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit has been listed today in terms of order dated 11th August, 2016 of the Joint Registrar and owing to the witness of the plaintiffs having not appeared inspite of earlier order dated 30th July, 2015 of this Court.

2. Issues in this suit for permanent injunction, to restrain the defendant no.1 Gyanji Choudhary, carrying on business as proprietor of defendant no.2 Metro Technologies from importing, exporting, distributing, selling, offering for sale, advertising or dealing in grey market ink cartridges / toners or any other products of the plaintiffs under the trade mark "SAMSUNG" or under any other mark deceptively similar to the plaintiffs' trademark and for ancillary reliefs, were framed as far back as on 5th November, 2008 and the

onus of the main issue was on the plaintiffs; the plaintiffs were directed to file affidavits by way of examination-in-chief of all their witnesses within 10 weeks and the suit posted before the Joint Registrar on 16th January, 2009 for fixing dates for cross-examination of the witnesses of the plaintiffs.

3. The order dated 16th January, 2009 records that neither any list of witnesses for which time had been given on 5th November, 2008 had been filed nor any affidavits by way of examination-in-chief had been filed by the plaintiffs. On request, further time of four weeks was given to the plaintiffs by way of last and final opportunity and the suit adjourned to 1st July, 2009 for recording of cross-examination of the witnesses of the plaintiffs.

4. The order dated 1st July, 2009 records that neither list of witnesses nor affidavits by way of examination-in-chief of any witnesses had been filed in spite of last opportunity. Accordingly, the learned Joint Registrar directed the suit to be placed before the Bench on 29th July, 2009.

5. On 29th July, 2009, on the request of the counsel for the plaintiffs and subject to payment of cost, again a “last opportunity” was granted to the plaintiffs to file list of witnesses and affidavits by way of examination-in-

chief of all their witnesses within six weeks and the suit posted before the Joint Registrar on 12th October, 2009.

6. On 12th October, 2009, though cost earlier imposed was paid but no affidavit by way of examination-in-chief had been filed till then. Adjournment was sought on the ground of the plaintiffs having moved an application under Order I Rule 10 CPC but which had not been listed. Recording that the same was not a ground for not complying with the earlier order but ignoring that the Bench had vide order dated 29th July, 2009 granted only one opportunity, another opportunity was given to the plaintiffs subject to payment of further costs and the suit adjourned to 5th March, 2010 for cross-examination of the witnesses of the plaintiffs.

7. The order dated 5th March, 2010 records that neither cost had been paid nor affidavits by way of examination-in-chief filed nor was any witness present in the Court. Still, further time of eight weeks was granted for filing the affidavits and the suit posted to 25th October, 2010.

8. On 25th October, 2010, the learned Joint Registrar was on leave and the suit posted to 5th January, 2011 which was a holiday and the matter was taken up on 6th January, 2011.

9. By 6th January, 2011 also no affidavits by way of evidence had been filed and the suit was listed before the Bench on 8th February, 2011.

10. The order of 8th February, 2011 records that still no affidavits by way of examination-in-chief were filed; however subject to payment of further costs another last opportunity was granted to file the affidavits within two weeks and it was ordered, failing which the evidence of the plaintiffs shall be treated as “peremptorily closed”. The suit was posted before the Joint Registrar on 28th February, 2011.

11. Though by 28th February, 2011 affidavit by way of examination-in-chief of one of the witnesses of the plaintiffs had been filed but neither the witness nor the counsel for the plaintiffs appeared and inspite of earlier order of the evidence of the plaintiff being peremptorily closed, another “final opportunity” was given subject to further costs and the suit posted on 27th April, 2011.

12. On 27th April, 2011, the Joint Registrar was on leave and the suit posted for the same purpose on 29th August, 2011.

13. On 29th August, 2011 though the witness of the plaintiffs was present but had not brought the original documents and some of the documents were

stated to be filed in another suit. Yet again, subject to further costs, the suit was adjourned to 2nd December, 2011.

14. On 2nd December, 2011 PW1 was examined in chief and partly cross-examined but his remaining cross-examination deferred to 5th March, 2012 because he had not brought some documents.

15. On 5th March, 2012 again the witness was not present and adjournment was sought and the suit adjourned to 29th May, 2012.

16. On 29th May, 2012 though the presence of the witness is not recorded but the counsel for the defendant sought adjournment and the suit adjourned to 11th September, 2012.

17. The position on 11th September, 2012 was the same and the suit adjourned to 15th March, 2013.

18. On 15th March, 2013 the witness of the plaintiffs was present but the defendant sought adjournment and the suit posted to 20th September, 2013.

19. On 20th September, 2013 again witness was not present but the defendants sought adjournment and the suit adjourned to 26th February, 2014.

20. On 26th February, 2014, it was informed that that the witness who was under cross-examination had left the plaintiffs' and another witness will have to be examined and adjournment was sought to move an application to this effect; however no application was filed till 9th May, 2014 and it was stated on that date that the witness who was under examination though had left the employment was ready to depose further. Accordingly, the suit posted to 23rd September, 2014 for further cross-examination.

21. The witness again did not appear on 23rd September, 2014 and an application for substituting the witness filed and of which notice was issued.

22. The aforesaid application was allowed on 30th January, 2015 and the plaintiffs permitted to substitute their witness and the suit posted for evidence on 15th May, 2015.

23. On 15th May, 2015 again the witness was not present and the Joint Registrar, observing that the plaintiffs did not appear to be interested in pursuing the suit, posted the suit before this Bench on 30th July, 2015.

24. On 30th July, 2015, though observing that the evidence of the plaintiffs was liable to be closed and there was no justification for any adjournment but yet again citing interest of justice, another substitution of

witness as sought was permitted and it was made clear that if the plaintiffs failed to produce the witness on the date fixed by the Joint Registrar, no further opportunity shall be granted.

25. The plaintiffs filed affidavit of the new witness but the witness did not appear on 18th February, 2016 before the Joint Registrar; though the evidence should have been closed in terms of order dated 30th July, 2015 but the Joint Registrar still posted the suit to 11th August, 2016 for recording of the evidence of the said witness.

26. It was in these circumstances, when the witness of the plaintiffs failed to appear on 11th August, 2016, that the learned Joint Registrar has posted the suit for today.

27. The counsel for the plaintiffs has in all fairness not justified any of the aforesaid but has offered to pay exemplary cost of Rs.2,00,000/- to any charity and has stated that the witness to be examined is present in Court today.

28. The Court, as would be obvious from above, has already given enough indulgence to the plaintiffs. The counsel for the plaintiffs forgets that in the present days of Right to Information Act, the happenings,

proceedings and the pendency of cases in the Court are there for all to demand and see. The issue of long delays in disposal of cases is today in public eye and is eroding the faith in the legal system of the country and which erosion can lead to disastrous consequences. Supreme Court in ***Ravinder Kaur Vs. Ashok Kumar*** (2003) 8 SCC 289 also noticed that the Courts have to watch out for their process being abused, “bringing bad name to the judicial system”. The Courts are being blamed for being not able to deliver justice and perform their duty.

29. The plaintiffs in the present case are enjoying interim order since 6th September, 2006 and evidently do not feel the need to pursue the suit further. The costs offered today cannot entitle the plaintiffs to “buy” further time from the Court. The legislature, vide amendment of the year 2002 to the CPC amended Order XVII thereof titled “Adjournments” by introducing a proviso to Rule 1 thereof to the effect that no adjournment shall be granted more than three times to a party during the hearing of the suit. Though Supreme Court in ***Salem Advocate Bar Association, T.N. Vs. Union of India*** (2005) 6 SCC 344 held that the same does not forbid grant of adjournment where the circumstances are beyond the control of the party and that in such a case there is no restriction on the number of adjournments

to be granted but clarified that such circumstances are where the litigant may be suddenly hospitalized on account of some serious ailment or there may be a serious accident or some Act Of God leading to devastation. Example was given of Bhopal gas tragedy, Gujarat earthquake, riots and devastation on account of tsunami.

30. Though the counsel for the plaintiffs, by way of explanation for the delay, has also stated that since the institution of the suit five officials of the plaintiffs' have left the plaintiffs' but the same in my view would not constitute a ground for the plaintiffs having not been able to lead evidence in the last eight years. It is not that owing to such leaving of the officials of the plaintiffs', which is bound to happen in any organization, the business of the plaintiffs has come to a standstill or the plaintiffs have stopped selling their goods. The said reason thus cannot be cited for not proceeding with the matters which are not considered as important and urgent by the plaintiffs. The reason cited on 11th August, 2016 for non appearance of the witness also was that he had to travel to Kolkata in connection with the audit of the plaintiffs companies. The date of 11th August, 2016 was fixed as far back as on 18th February, 2016 and the witness had ample time to arrange his affairs

so as to be able to appear before the Court especially when plethora of last and final opportunities had been granted.

31. The time has come when the Courts have to take a call whether they should allow their process to be abused in this fashion, at the cost of a stigma on the very functioning of the Courts. The Courts, in the past, in the name of “interest of justice” and “litigants should not suffer for default of others” have been indulgent on these issues but now, neither are the litigants illiterate or ignorant nor found to be suffering – rather they are commercial giants and who are found to be taking advantage of this indulgence. In the process, the Courts and the justice delivery system is a sufferer.

32. I am of the view that no amount of cost offered by the plaintiffs entitle the plaintiffs to determine the pace at which this Court has to perform its functions. Supreme Court in *Shiv Cotex Vs. Tirgun Auto Plast Pvt. Ltd.* (2011) 9 SCC 678, dealing with the judgment of the High Court in a second appeal setting aside the concurrent judgment and decree of the Courts below and remanding the suit to the trial court for fresh disposal after giving the plaintiff an opportunity to lead evidence negated the reasoning of the High Court “that the stakes in the suit being very high, the plaintiff should not be

non-suited on the basis of no evidence” and held it to be a case of misplaced sympathy and non-existent justification. It was further held that the plaintiff alone was to be blamed for the said lapse as the trial court had given more than sufficient opportunity to the plaintiff to produce evidence in support of its case. It was also noticed that the suit had been fixed for plaintiff’s evidence on three occasions but no evidence was led and it was held that the Court is not obliged to give adjournment after adjournment merely because the stakes are high in the dispute and that the Court cannot be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward. The practice, of the litigants seeking and the Courts granting adjournments at the drop of the hat and allowing the civil disputes to drag on and on, was deprecated and it was held that “it is high time that Courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later”. A direction was issued to the Courts to ensure that on every date of hearing effective progress takes place in the suit. It was held that no litigant has a right to abuse the procedure provided in the CPC and that “adjournments have grown like cancer corroding the entire

body of justice delivery system”. A directive was also issued that ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained and it was explained that “justifiable cause” is a cause which is not only “sufficient cause” but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like illness of the litigant or the witness or the lawyer, death in the family of any one of them, natural calamity like floods, earthquake, etc. in the area, an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. Absence of the lawyer or his non-availability because of professional work in other Court or elsewhere or change of lawyer or continuous illness of lawyer or similar grounds were held to be not justifying more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceeding was held to be an important circumstance to be kept in view whenever a request for adjournment is made. It was reiterated that a party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be led by it or the matter should be heard. It was yet further held that if the parties to the suit do not cooperate

in ensuring the effective work on the date of hearing, they do so at their own peril.

33. Recently also in *Gayathri Vs. M. Girish* 2016 SCC Online 744 Supreme Court reiterated that in a democratic set up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern; delay gradually declines the citizenry faith in the system. It was observed that it is the faith and faith alone that keeps the system alive and fragmentation of faith has the effect potentiality to bring in a state of cataclysm where justice may become a casualty. Timely delivery of justice was held to keep the faith ingrained and establish the sustained stability. The dilatory conduct of the defendant in that case was labelled as causing colossal insult to justice and to the concept of speedy disposal of civil litigation. Supreme Court again called upon the Courts to “awaken”. I may in this context also notice that this Court in relation to trial before Sessions Courts had as far back as on 12th July, 1987 issued a Circular calling upon the Sessions Courts to expedite trials, as was noticed by the Supreme Court in *Akil Vs. State of NCT of Delhi* (2013) 7 SCC 125. This Court cannot be seen as itself doing what it has instructed the subordinate Courts not to do.

34. I am conscious that the Courts owing to a large number of cases listed before them may not be able to take up all the cases listed on a particular date; however that does not become an excuse for the litigants to seek repeated adjournments and which in turn leads to large pendency.

35. Another aspect may be noticed. With the Delhi High Court (Amendment) Act, 2015 the minimum pecuniary jurisdiction of this Court has been enhanced from above Rs.20,00,000/- as existing at the time of institution of this suit to above Rs.2,00,00,000/-. This suit, valued at less than Rs.2,00,00,000/-, would have in accordance with the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice in exercise of powers under Section 4 of the Act aforesaid would have been transferred to the subordinate Courts but for the fact that it raises a commercial dispute within the meaning of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and as per first proviso to Section 7 of the said Act, this suit has to be proceeded with and decided by this Court. The Commercial Courts Act has also amended several provisions of the CPC in relation to commercial disputes and Order XVA introduced in the CPC to be applicable to commercial disputes requires commercial disputes to be adjudicated within a specified time. The plaintiffs, owing to

the aforesaid statutory scenario, are entitled on the one hand to have their suit adjudicated in this Court without even paying court fees as plaintiffs in other suits not qualifying as commercial suits are liable to pay and on the other hand are not wanting this Court to proceed. It appears that the plaintiffs are not sure of getting the final relief and for this reason want to perpetuate the interim relief. This Court cannot become privy to such actions of the plaintiffs.

36. The evidence of the plaintiffs is thus closed.

37. The onus of the main Issue being on the plaintiffs and the plaintiffs having failed to lead any evidence, the need to call upon the defendants to lead evidence, inspite of onus of one of the Issues being on the defendants, does not arise.

36. In the absence of the plaintiffs having proved the onus of the main Issue and on which the grant of relief to the plaintiffs depends, the suit is but to be dismissed.

37. The suit is dismissed. The interim order stands vacated.

I refrain from imposing exemplary costs on the plaintiffs for abusing the process of this Court.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 07, 2016
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