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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1205/2014**

SLEDGEHAMMER OIL TOOLS PVT LTD Plaintiff
Through: Mr. Dushyant K. Mahant, Adv.

versus

VIKAS GUPTA Defendant
Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **10.02.2016**
IA 7865/2014(u/O 39 Rules 1 and 2 CPC)

1. Despite service, the defendant is not present. He is proceeded ex parte. Learned counsel for the plaintiff relies upon the judgment of this Court titled *Hard Rock Ltd. vs. Hard Rock Beach Shack/Resort* reported in 2014 (59) PTC 285 to contend that in view of the fact that the defendant is ex parte and defendant despite service, has not cared to appear in the proceedings, neither written statement has been filed, there is no necessity for the plaintiff to lead the evidence as there is already an affidavit filed by the plaintiff in support of the plaint, the suit be disposed of.

2. It is averred in the plaint that the plaintiff is a renowned name

in the world of quality cementing products with an experience of more than three decades. The equipment confirms to API 10D specifications under license from the American Institute. The plaintiff company is one of the few API 10D, 5CT & ISO 9001:2008, 14001:2004, 18001:2007 certified manufacturer of cementing products in the world.

3. The plaintiff offers a complete line of both welded and non-welded bow spring centralizers, cementing plugs, float equipment and other accessories for oil and gas drilling industry. The product designs and manufacturing expertise of the products of the plaintiff have been developed by experience, field knowledge and exposure to the technology throughout the world.

The popularity of the plaintiff's products can be gathered also by the following sales and expenditure figures of the last few years.

<i>Year</i>	<i>Sales (In Rs.)</i>	<i>Expenditure (in Rs.)</i>
2008-09	72,213,280	61,759,565
2009-10	96,219,423	85,150,682
2010-11	17,91,85,270	15,52,67,989
2011-12	32,45,62,291	25,97,09,956
2012-13	51,49,63,624	41,79,43,822

4. It is the case of the plaintiff that the plaintiff had business dealings with one Mr. Narender Gupta of M/s Mamta Engineering Corporation. Mr. Gupta was a vendor to the plaintiff for manufacturing of parts based on specification/drawings/sample/ dye mould supplied by the plaintiff. The plaintiff and M/s Mamta Engineering Corporation entered into a non-disclosure agreement dated October 30, 2013. The elaborate agreement was to safeguard the intellectual property of the plaintiff and various other elements which became available to M/s Mamta Engineering Corporation in due course of time. The agreement was also binding upon the successor and assigns of the parties. The defendant herein Mr. Vikas Gupta, who is the son of Mr. Narender Gupta has blatantly copied various images of the plaintiff's products and uploaded them on his brochures and website. The website of the defendant is accessible at www.oiltechnegineers.com.

The defendant had copied the entire literature and margins of the plaintiff. The plaintiff had noted that the defendant is presenting the impugned brochure to the people in the trade circles to invite business. He is selling his products after using the impugned literary

work including images and literature and blatantly infringing plaintiff's copyright. It is the case of the plaintiff that the aforesaid adoption, usage and all allied activities of the defendant in any manner in whatsoever, is causing and is likely to further cause irreparable harm, damage and injury to the plaintiff. Inasmuch as, members of the trade and public are likely to purchase the defendant's products thinking that the said defendant has some connection or affiliation with the plaintiff, wherein there exists no such connection or affiliation.

5. It is averred by the plaintiff that in February 2014, the plaintiff discovered the impugned brochure of the defendant through a field survey, it had come to its knowledge the defendant is continuing to sell the impugned title infringing copyright of the plaintiff.

6. It is submission of the learned counsel for the plaintiff that in view of non-disclosure agreement, the father could not have disclosed the same to the defendant. According to him, the adoption of the usages and images are identical to the plaintiff's images by reproducing the trading and using the impugned measures the defendant has infringed the plaintiff's copyright.

7. In these circumstances, the plaintiff is entitled to permanent injunction against the defendant and their agents from infringing the plaintiff's copyright in the margins by reproducing them or substantial part of it in any, material, form or /and a trade upon using the margins in any manner whatsoever. He would submit that the conduct of the defendant is a violation of Section 63 and 64 of the Copyright Act. Learned counsel for the plaintiff states that he would only press for the relief of permanent injunction of para (a) (i), which is as under:-

“For a decree for permanent injunction restraining infringement of copyright, this relief is valued for purposes, of court fee and jurisdiction at Rs.200/- and court fees of Rs. 20/- is affixed hereto.”

8. Noting the submissions made upon and hearing the learned counsel for the plaintiff and also noting the contents of non-disclosure agreement entered into between the plaintiff and the father of the defendant and comparison made in the plaint of the plaintiff's product with that of the defendant's product, it is clear that the defendant has violated the Copyright Act and had adopted and use the plaintiff's margins. The defendant impugned margins are identical to the plaintiff's margin and noting that it is the case of the plaintiff that the

defendant by reproducing and trading and using the impugned margins, the defendant has infringed plaintiff's copyright and literary work by producing the explanation given by the plaintiff of its product, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant. That the defendant shall not reproduce, print, distribute or in any manner use the impugned brochure or any other literary work confusingly similar to plaintiff's brochure or the images therein in any manner whatsoever infringing the plaintiff's copyright. The plaintiff is also entitled to costs.

In view of the order passed in the suit, the order dated April 30. 2014 is confirmed and the suit is disposed of.

V. KAMESWAR RAO, J

FEBRUARY 10, 2016
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