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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 1073/2013

NAV SHIKHA POLYPACK IND. PVT LTD

..... Plaintiff

Through: Mr. Sunil Kumar Ojha, Advocate

versus

MOHMMAD RASHID & ORS

..... Defendants

Through: Mr. N. Mahabir with Mr. Manoj Arora
and Mr. P.C. Arya, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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08.09.2016

IA No. 13945/2013 (filed by D-1 & 3 u/O VII R 10 & 11 CPC)

1. This is an application filed by Defendant Nos. 1 and 3 under Order VII Rules 10 and 11 CPC seeking return of the plaint to the Plaintiff for presentation to the appropriate court. The case of the Defendants is that no part of the cause of action in the present suit has arisen within the jurisdiction of this Court.

2. Notice in this application was issued way back on 3rd September, 2013.

3. The background to the present application is that the aforementioned suit has been filed by Nav Shikha Polypack Ind. Pvt. Ltd, having its office in 508, Som Dutt Chamber-II, Bhikaji Cama Place, New Delhi-110066 against Defendant No. 1, Mr. Mohammad Rashid, proprietor of M/s. A.R.K.

Enterprises, Defendant No. 2 at Bulanshahr Uttar Pradesh , M/s. P.L. Electricals, at Aligarh and Defendant No. 3, M/s. Deepak Electricals at Agra, respectively, seeking permanent injunction restraining them from using the trademark/label/trade name 'POLYPACK', for rendition of accounts, delivery up etc.

4. At the outset, it requires to be noticed that as the suit is for passing off, the benefit of Section 134 (2) of the Trade Marks Act, 1999 is not available to the Plaintiff. Therefore, in order to justify the jurisdiction of this Court, the Plaintiff has to show that some part of the cause of action arose within the jurisdiction of this Court.

5. In the above context, learned counsel for the Plaintiff referred to para 17 of the plaint which reads as under:

“17. That in the second week of January, 2013, the Plaintiff became aware about the Defendant No. 1's illegal adoption/use of the trademark/trade name/label POLYPACK through its dealers and distributors in Delhi and other market sources. Upon enquiry from the website of the Trade Marks Registry, it was revealed that the Defendant No. 1 has also applied for the registration of the trademark POLYPACK (Device) vide application No. 2276170 dated 2nd February, 2012 in relation to the goods/services P.V.C. Conduit Pipes as mentioned in Class 9. It was also transpired from the record available on the said website that the Defendant No. 1 has filed the said application with option "Proposed to be used". It is submitted that the Plaintiff craves the leave of this Hon'ble Court to file notice of opposition to the said application filed by the defendant no.1 at the appropriate and relevant time.”

6. However, the above paragraph is vague as to which dealers and distributors in Delhi informed the Plaintiff about the adoption/use of the

impugned trade mark by Defendant No. 1. It does not show how any part of the cause of action arose within the jurisdiction of this Court.

7. Learned counsel for the Plaintiff then referred to para 21 of the plaint, which reads as under:

“21. That recently through market sources/dealers, it has come to the knowledge of the Plaintiff that the Defendant No. 1 is selling its goods/services under the deceptively similar mark POLYPACK throughout out India including Delhi-NCR and this fact is also evident from the fact that the Defendant No. 2 & 3 are acting as agents/distributors for the defendant no.1 in relation to said goods. It is submitted that the Defendants have not obtained any kind permission/licence/consent from the Plaintiff to use or adopt the same in relation to their goods or in any other manner whatsoever. The Defendants are secretly marketing/selling their goods/services under the deceptively similar mark POLYPACK in the NCR Region including Delhi i.e. within the territorial jurisdiction of this Hon'ble Court in clandestine manner and are not issuing any invoices/bills for the same. The Plaintiff, somehow, succeeded in getting the goods of the Defendant along with packaging material in Delhi without valid bill. The said activities on the part of the Defendants are highly illegal and the same are motivated by some ulterior motives best known to them only. The Plaintiff craves the leave of this Hon'ble Court to place on record bills/invoices issued by any distributor/dealer of the Defendants in Delhi as soon as the same comes to the knowledge of the Plaintiff.”

8. Here again, the Court would like to observe that the above allegations are broad and sweeping. As regards the submission of the Plaintiff that the Defendants are marketing/selling their goods/services in a clandestine manner, there is no averment as to where in Delhi the goods are being sold. There is no document of any kind in the form of invoice of the sale of such products anywhere in Delhi. The goods in question are PVC pipes which

obviously would be sold in shops/outlets. There is no affidavit of a customer or investigator to show that purchases were made of such goods in Delhi. The averments in the plaint are wholly insufficient to even *prima facie* enable the Court to satisfy that some part of cause of action arose within the jurisdiction of this Court. It was incumbent on the Plaintiff in terms of Order VI Rule 4 CPC to furnish some particulars with details to justify the filing of the present suit in this Court particularly where the Defendants are shown to be located and carrying on business outside the jurisdiction of this Court.

9. For the aforementioned reasons, the Court holds that the averments in the plaint do not disclose a cause of action arising within the jurisdiction of this Court. The Plaintiff ought to approach the appropriate Court for relief. Accordingly, this application is allowed and the plaint is returned to the Plaintiff for presentation to the court of appropriate jurisdiction in accordance with law.

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10. The suit and the pending application are dismissed.

S.MURALIDHAR, J

SEPTEMBER 08, 2016

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