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

+ CS(COMM) 249/2016 & IAs No.3852/2016 (u/O 39 R-1&2 CPC),
3853/2016 (u/S 135 of Trademarks Act), 3854/2016 (for filing
additional documents) & 9141/2016 (u/O 39 R-2A CPC)

INTER IKEA SYSTEMS BV Plaintiff
Through: Ms. Tanya Verma and Mr. Ayush
Bansal, Advs.

Versus

MUKESH GUPTA Defendant
Through: Mr. Sarthak Choudhury and Mr.
Shantanu Guchhait, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.11.2016

1. The plaintiff has instituted this suit for permanent injunction to restrain the defendant from infringing the trademark 'IKEA' of the plaintiff by adopting the same mark in relation to the same goods and by registering the website www.ikia.com, and for ancillary reliefs.
2. The suit came up before this Court first on 22nd March, 2016 when, while issuing summons of the suit, vide *ex-parte* ad-interim order, the defendant was restrained from in any manner using or manufacturing and selling furniture under the trademark 'IKIA' or any other trademark which is deceptively similar to the trademark 'IKEA' of the plaintiff. The said interim order continues in force.
3. The defendant has since filed written statement.

4. The plaintiff has filed IA No.9141/2016 under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 averring violation of the interim order by the defendant.

5. The counsel for the plaintiff has in Court handed over a printout of the website of the defendant taken today, on which for the sake of identification Ex.P-1 is put in today's date, to demonstrate that the defendant continues to use the website aforesaid and the word 'IKIA' though printed as:



to describe his goods.

6. The counsel for the defendant and the defendant present in person though have no reply to the continued use of the mark 'IKIA' on his website, with respect to the mark used to describe his goods stated that it is differently printed than the trademark of the plaintiff.

7. The aforesaid cannot be accepted.

8. The counsel for the defendant then states that the alphabets used by the defendant to describe his goods are 'KIA' only and the device before that is of a human being

9. However the placing of a dot above the said device, makes it read as letter 'I', leading the public to read the same as 'IKIA' only and the explanation that the dot is the head of a human being is not acceptable.

10. The defendant is indeed found to be guilty of violation of the order of the Court and is liable to be proceeded thereagainst.

11. At this stage, the counsel for the defendant under instructions from the defendant stated to be present in the Court states that the defendant be granted 48 hours to change name of its website and to remove any references to 'IKIA' including as aforesaid from its website. The defendant as identified by the counsel undertakes to the Court to the said effect.

12. Accepting the said undertaking, it is deemed appropriate to not proceed against the defendant. However, the defendant is ordered to be bound by the undertaking and is made aware of the consequences of breach of undertaking given to the Court.

13. I have next enquired from the counsel for the defendant as to what is the defence to the suit.

14. The counsel for the defendant states that subject to the plaintiff not pressing its other reliefs, the defendant is willing to suffer a decree for injunction as claimed in prayer paragraph 37(a) to (c) of the plaint and is further willing to undertake that the defendant in future also will not use the word or mark 'IKIA'.

15. The counsel for the plaintiff states that the defendant has made two applications for registration of the same trademark.

16. The defendant undertakes to this Court to within fifteen days hereof withdraw the said trademark applications No.3226468 and 2920689 also.

17. The counsel for the plaintiff then states that the plaintiff be permitted to prove its claim for damages, inasmuch as the defendant has violated the order for over six months.

18. Now, when the defendant is ready to suffer a decree for permanent injunction and is also willing to give undertaking to the said effect and with which the defendant is ordered to be bound, it is not deemed to be a fit case where the suit should be kept pending qua the claim for damages. The plaintiff also ought to show the same grace as the defendant has shown in the matter.

19. Accordingly, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph 37(a) to (c) of the plaint and the parties are left to bear their own costs.

20. Decree sheet be drawn up.

21. It is however made clear that if the defendant does not comply with his undertakings aforesaid, he shall, besides becoming liable for contempt of this Court for breach of undertaking given to the Court and for execution of the decree, shall also be liable to the plaintiff for costs of this suit.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 15, 2016

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