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

+ **CS(COMM) 372/2016 & IAs No.4744/2016 (u/O 39 R-1&2 CPC)**

KENT RO SYSTEMS LTD & ANR Plaintiffs
Through: **Mr. Jaishankar Bharadwaj and Ms. Isha Tyagi, Advs.**

Versus

RO CARE INDIA & ANR Defendants
Through: **Mr. Kamal Khurana, Adv. for D-2 with D-2 in person.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.11.2016

1. The two plaintiffs namely (a) Kent RO Systems Limited; and, (b) Mr. Mahesh Gupta, disclosed to be the Chairman and Managing Director of Kent RO Systems Limited, have filed this suit against (i) M/s RO Care India; and, (ii) Mr. Manoj Sharma, disclosed to be the proprietor of M/s RO Care India, to restrain them from (A) selling or offering for sale or offering after-sales services or dealing in RO products or their spare parts or any other goods bearing the trademark 'KENT' or similar trademark; (B) using the copyright, advertising and promotional material of the plaintiffs; (C) using the trademarks, label, logo or device of the plaintiffs or any mark, logo, label or device identical or similar thereto; (D) selling or offering for sale spurious spare parts of the plaintiffs products; and, (E) for ancillary reliefs.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 21st April, 2016, the defendants were restrained from, in any manner, representing themselves as dealers or authorised service agents or being authorised in any other manner whatsoever by the plaintiffs with respect to the RO systems of the plaintiffs sold under the trademark 'KENT'.
3. The suit is listed today for framing of issues and for consideration of the application for interim relief.
4. The counsel for the plaintiffs at the outset states that replication/rejoinder to the written statement/reply of the defendants has to be filed.
5. The written statement/reply is found to have been filed on 4th October, 2016 and the replication/rejoinder if any ought to have been filed by now and no adjournment can be granted for the said purpose.
6. I have enquired from the counsel for the defendants the defence of the defendants to the suit, so as to gauge the issues, if any which arise for adjudication.
7. The counsel for the defendants states that the defendants, though were earlier the dealers of the plaintiffs, are now no longer the dealers and are not doing any of the acts on the basis whereof the plaintiffs have filed this suit and have no objection to the suit, insofar as for the reliefs of permanent injunction, being decreed against the defendants; the defendants however oppose the other claims made, of delivery and damages.
8. The counsel for the plaintiffs states that subject to the defendants agreeing to suffer a decree for permanent injunction, as claimed, the plaintiffs do not press for the other reliefs. It is however pointed out that

applications under Order XXXIX Rule 2A of Civil Procedure Code, 1908 (CPC) have been filed and which are pending consideration.

9. The aforesaid applications under Order XXXIX Rule 2A CPC will be taken up separately.

10. A decree is accordingly passed in favour of the plaintiffs and against the defendants jointly and severally, in terms of prayer paragraph 48 (i) to (v) of the plaint, leaving the parties to bear their own costs.

11. Decree sheet be drawn up.

IA No.7338/2016 & 8622/2016 (both u/O 39 R-2A CPC)

12. The plaintiffs allege violation of the *ex-parte* ad-interim order dated 21st April, 2016 by the defendants continuing to show the products and advertisements of the plaintiffs on the website of the defendants.

13. Though the counsel for the defendants does not dispute but states that a contract was given to M/s Gap Infotech, an advertising agency in this regard when the defendants were the authorised dealers of the plaintiffs and though the said advertising agency had been informed and directed to remove the advertisements and to make the requisite changes to the website but the same has not been done owing to the negligence of the said advertising agency.

14. The same is not an explanation for the violation of the order. Rather, the explanation is found to be false and unbelievable.

15. The defendant No.2, proprietor of defendant No.1 M/s RO Care India (who is present in Court states that his name is Bhagwan Sharma @ Manoj Sharma and discloses himself to be resident of H.No.944, Sector 9, Gurgaon, Haryana and has also handed over proof of his identity, photocopy

of which is taken on record and Ex.D-1 is put thereon for the sake of identification), though is found to be guilty of violation of the order of this Court and is liable to be punished therefor, is given an opportunity to rectify the website of the defendants on or before 15th November, 2016, failing which on an application of the plaintiff of the same having not been rectified, warrants of arrest of the said Mr. Bhagwan Sharma @ Manoj Sharma shall be issued forthwith.

16. It is clarified that the reference if any to the products of the plaintiffs from the product list of the defendants displayed on the website shall also be removed.

17. With the aforesaid directions, the applications are disposed of.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 10, 2016

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