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

\+ FAO (OS) (COMM) 46/2017

KALINGA TRADE LINKERS & ANR ..... Appellants

Represented by: Mr.Mohan Vidhani, Advocate with Mr.Rahul Vidhani, Mr.Vineet Mehta and Ms.Pooja Arora, Advocates

versus

CAMBOJ ELECTRICALS & ORS ..... Respondents

Represented by: Mr.Shailen Bhatia, Advocate with Ms.Ekta Nayar Saini and Ms.Priyanka Anand, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 22.02.2017

Cav.No.176/2017

Since counsel as above appears for the caveator/respondents, the caveat is discharged.

CM No.7150/2017

Allowed subject to just exceptions.

FAO (OS) (COMM) 46/2017

1. The appellants are aggrieved by the order dated October 21, 2016 followed by the order dated December 02, 2016 passed by a learned Single Judge of this Court.

2. The appellants instituted a suit to restrain the respondents from manufacturing and selling electrical and electronic goods under the trademark Kalinga and Kalinga Premium or any other mark deceptively similar thereto. The case of the appellants is that they are partnership firms,

partners whereof are members of the Sethi Family. It is pleaded that the Sethi Family adopted the trademark Kalinga in the year 1973 when the eight partners of the Sethi Family had constituted a partnership firm by the name M/s.R.K.Electrical Industries India. The Sethi Family incorporated a company by the name M/s.R.K.Electrical Industries (India) Pvt. Ltd. which became the registered proprietor of the trademark Kalinga, but due to inadvertence the trademark was not got renewed. The two appellants' partnership firm were constituted in the year 2000. In the year 2004 a family settlement was arrived at. It was decided amongst the members of the Sethi Family that the appellants shall use the trademark Kalinga Premium. The appellants thereafter applied for and were granted registration of the trademark Kalinga and Kalinga Premium for electrical and electronic goods. It is claimed by the appellants that the defendants are brazenly violating the proprietary interest of the appellant in the registered trademarks.

3. In the written statement filed, the respondents plead that respondent No.1 is a partnership firm of which respondents No.2 and 3 are partners of. That since the year 2002 the respondents bona-fide adopted the trademark Kalinga and applied for registration thereof on November 25, 2002. The application was advertised in Journal No.9999-5 on November 14, 2003. There was no opposition filed and therefore the Registrar of Trademarks granted the registration in favour of respondent No.1 for goods in Class IX and that the registration subsists. That the company M/s.R.K.Electrical Industries (India) Pvt. Ltd. had got issued a legal notice on October 25, 2005 alleging that respondent No.1 had infringed the proprietary interest of the company in the trademark Kalinga, which legal notice was replied to on

November 08, 2005. That after 10 years the appellants had filed the suit.

4. Order dated October 21, 2016 has disposed of IA No.16422/2015 filed by the appellants praying for an interim injunction pending disposal of the suit. The order reads : '*It is agreed that the defendants would maintain the proper accounts and copies of the accounts will be filed in this Court every six months. The application stands disposed of*'.

5. The appellants filed RP No.518/2016 taking the plea that the appellants never gave the consent for IA No.16422/2015 being disposed of as per the order dated October 21, 2016.

6. The respondents opposed the said application and took the stand that the consent as recorded was given. RP No.518/2016 has been dismissed vide order dated December 02, 2016. Paras 3 to 5 of which order being relevant for the purposes of the instant appeal, record as under:-

> *"3. Mr.Vidhani, learned counsel for the review petitioners submits that he had not agreed to the interim application being disposed of and in fact, he had pressed for hearing of the applications on merits.*
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> *4. Mr.Bhatia, learned counsel for the defendants, who appears on an advance copy, submits that the present application is misconceived and the contents thereof are misleading and factually incorrect. Mr.Bhatia submits that since the plaintiffs have referred to proceedings on 21.10.2016 which are fairly recent, the correct position is that this Court was inclined to dismiss the stay application for the reason that no injunction was granted while issuing summons in the suit and on 14.08.2015 when the matter was listed before the Court, the counsel for the plaintiffs had made a statement that he does not press for interim orders at that stage but sought liberty to seek the same subsequently. Mr.Bhatia submits that this Court while declining the injunction application on 21.10.2016 had also taken into*

account the delay in filing the present suit as initially the sister concern of the plaintiffs had issued a notice to the defendants, way-back in the year 2005 and the suit was filed in the year 2015. To balance the equities, this Court had directed the defendants to keep accounts and file the same every six months. Mr.Bhatia further submits that the defendants had agreed, but had prayed that they would file the accounts in a sealed cover, which was opposed by Mr.Vidhani and after some hearing the defendants had agreed to file copies in every six months.

5. I have heard the counsel for the parties and do not find any merit in the application and find fore in the submissions made by Mr.Bhatia. Resultantly, the application is without any merit and is dismissed."

7. Both impugned orders are oral orders dictated in the Court in the presence of the counsel for the parties. The recollection in the order dated December 02, 2016, of the oral proceedings which took place on October 21, 2016, would bring out that when confronted with the issue of delay with reference to the legal notice sent in the year 2005 by the company, 100% controlling shares whereof are held by the Sethi Family, and the suit being filed after more than 10 years by the appellants, which are partnership firms of the members of the Sethi Family, learned counsel for the appellants conceded to the consent order being passed.

8. We find no merit in the appeal which is dismissed in limine and hence without any order as to cost.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

FEBRUARY 22, 2017
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