

S-A-59 & 82

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

CM(M) 223/2017 and CM Nos. 7507/2017 & 7508/2017

SHEETAL FABRICS Petitioner
Through Mr. Gurvinder Singh, Advocate.
versus

LACOSTE S A Respondent
Through Mr. Kapil Kr. Giri and Mr. Pankaj
Kumar, Advocates.

CM(M) 239/2017 and CM Nos. 7889-90/2017

SHEETAL FABRICS Petitioner
Through Mr. Gurvinder Singh, Advocate.
versus

TOMMY HILFINGER LICENCING B V Respondent
Through Mr. Pravin Anand, Ms. Udit Patro
and Mr. Shamim Nooreyedat, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
27.02.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 21.01.2017 by which order an application filed by the petitioner/defendant under Section 153 CPC for amendment in the statement of DW-1 was dismissed.
2. The bone of contention is the reply allegedly made by DW-1 in his

cross-examination which reads as follows:

"It is wrong to suggest that I am not infringing the trade mark of the plaintiff company."

3. It is the contention of the petitioner that word "not" was not uttered by DW-1 in his cross-examination. It is stated that immediately after receipt of uncertified copy of the cross-examination, the present application has been moved.

4. The trial court however by its impugned order noted that DW-1 was examined and cross-examined. The counsel for the parties were present. Hence, DW-1 was duly represented by his counsel. It hence held that there is no substance/force in the contention of the petitioner that this mistake came to the knowledge of the counsel for the petitioner when he read the statement of DW-1. It concluded that there is no clerical mistake and dismissed the application.

5. Learned counsel for the petitioner has reiterated that there is a clerical mistake which has been pointed out to the court at the earliest opportunity and that in the entire statement of DW-1 in his cross-examination, there is nothing to show that he had accepted that he was making sale of goods bearing the infringed trade mark.

6. In my opinion, the trial court was the best judge to decide as to what transpired in court on that date. The trial court has exercised its discretion and concluded that there is no clerical mistake. It is not for this court to in exercise of its supervisory powers interfere in the said finding recorded by the trial court.

7. In any case, at best the said cross-examination would be interpreted by the respondent as an admission. The settled legal position is that even an

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admission can be explained away. Thus, it would be open to the petitioner to raise this plea at the time of adjudication, if so desired, as per law.

8. In view of the above, the present petitions stand disposed of. All pending applications also stand disposed of.



JAYANT NATH, J

FEBRUARY 27, 2017

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