

\$~1

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

+ CS(COMM) 382/2016, IA No.4779/2016 (under Order XXXIX Rule 1 & 2 CPC), IA No.11717/2016 (under Order XXXIX Rule 2A CPC)

KENT RO SYSTEMS PVT. LTD. & ANR. Plaintiffs

Through: Ms. Rajeshwari H., Mr. Kumar
Chitranshu, Advocates

Versus

RAJKUMAR & ORS. Defendants

Through: Defendant No.1-in-person

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.11.2017

1. The two plaintiffs, namely, Kent RO Systems Pvt. Ltd. and Mahesh Gupta have instituted this Suit for permanent injunction restraining the three defendants, namely, (i) Mr. Rajkumar, (ii) Kent Smart RO System Pvt. Ltd.; and, (iii) Kensmart RO Systems OPC Pvt. Ltd., from dealing with their product bearing the mark 'KEN' and from infringing the registered Design Nos. 219309, 224813 and 262661 of the plaintiffs and from dealing in any water purifier or any other products under the marks KEN PEARL, KEN GRAND, KEN SUPERB, KEN PPRIME, KEN SWIFT and for ancillary reliefs of delivery, rendition of accounts, compensation etc.

2. The Suit was entertained and vide *ex parte* ad interim order dated 25th April, 2016, all the three defendants were restrained in terms of sub-para (a) to (c) of para 45 of the application of the plaintiffs for interim relief being IA No.4779/2016 and Court Commissioner appointed to visit the premises of the defendants and to seize the infringing products/material.

3. The counsel for the plaintiffs, on enquiry, states that as per the report of the Court Commissioner, infringing products were seized and handed over on superdari to the defendant No.1.
4. Subsequently, Mr. Bachhan Kumar and Hari Ions India Pvt. Ltd. were impleaded as defendants No.4 and 5 and the amended plaint taken on record.
5. Though defendants No.1 to 5 are found to have filed a joint written statement to the amended plaint and to which the plaintiffs are found to have filed their replication, but the issues have not been framed in the Suit as yet and the Suit has been languishing in mediation or for the parties to compromise.
6. The counsel for the plaintiffs, on enquiry, states that the *ex parte* ad interim order dated 25th April, 2016 continues to be in force and no application has been filed by the defendants under Order XXXIX Rule 4 of the CPC.
7. Today, one gentleman who claims to be the defendant No.1, Rajkumar, appears and is quite evasive when asked about his advocate and merely states that his advocate, though had said he will come, but has not come.
8. In the aforesaid state of affairs, I have enquired from the counsel for the plaintiffs as to whether the plaintiffs, even if succeed in getting the decree for damages against the defendants, would be able to execute the said decree. In the entirety of the facts, it seems highly unlikely.
9. The counsel for the plaintiffs states that in the mediation, the plaintiffs had offered to give up the claim for compensation if the defendants reimburse to the plaintiffs the costs incurred by the plaintiffs in the Suit but

the defendants have not agreed to the said proposal also.

10. This Suit being a commercial suit, cannot be kept pending in this fashion.

11. The defendants, merely by paying lip service through appearance cannot be permitted to keep the Suit pending. The appearance of the defendant No.1 today is no appearance in law.

12. The defendants are thus proceeded against *ex parte*.

13. Need to relegate the plaintiffs to leading *ex parte* evidence is not felt for the reasons stated in ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508.

14. I have perused the pleadings and the documents filed by the defendants and am satisfied that the plaintiffs have made out a case for grant of a decree for permanent injunction in terms of its claims and for delivery of the goods/material seized by the Court Commissioner.

15. The plaintiffs are also awarded costs of this Suit. The counsel for the plaintiffs has filed a bill of costs of Rs.2,50,000/- and this being a commercial suit, the plaintiffs are found entitled to the same. The costs are thus assessed at Rs.2,50,000/-.

16. A decree is accordingly passed in favour of the plaintiffs and jointly and severally against the defendants, of permanent injunction in terms of prayer paragraph 46(a) to (c) of the amended plaint dated 10th May, 2016 and of delivery of goods seized by the Court Commissioner and as reported by the Court Commissioner. The Superdar to whom the goods were entrusted is directed to deliver the said goods to the plaintiffs within 10 days

from today. The plaintiffs shall also be entitled to consolidated costs of Rs.2,50,000/- of this suit.

17. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 30, 2017
pk..