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

+ **CS(COMM) 1013/2016 & IA No.16727/2012**

M/S CASTROL LIMITED & ANR Plaintiffs

Through: Mr Sushant Singh and Mr Harsh
Vardhan, Advocates.

versus

JOGINDER COOLANT CO PVT LTD Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.02.2017

VIBHU BAKHRU, J

1. Summons in the present suit were issued on 07.12.2011. On 26.03.2012, the learned counsel for the defendant had entered appearance and submitted that he would file his vakalatnama during the course of the day. At the said hearing, the learned Joint Registrar passed an order directing that the written statement be filed within the time prescribed in accordance with law and the suit was listed on 17.05.2012 for completion of pleadings and admission/denial of documents. On 17.05.2012, the learned Joint Registrar noted that the written statement had not been filed and directed that the written statement be filed in accordance with law and the suit was posted on 03.08.2012 for completion of pleadings and admission/denial of documents.

2. On 03.08.2012, the learned counsel appearing for the defendant submitted that the written statement had been filed together with the

application for condonation of delay. However, the same had not come on record. The learned counsel further undertook that the defects would be cured within a period of two weeks from that day.

3. On 11.09.2012, the learned counsel appearing for the plaintiffs made a grievance that the time prescribed for filing the written statement had elapsed but the written statement had not been filed till that date. The learned counsel also moved an application (I.A. No.16727/2012) under Order VIII Rule 10 of the Code of Civil Procedure, 1908 for the suit to be decreed.

4. On 27.09.2012, the learned counsel for the defendant once again reiterated that the written statement along with application for condonation of delay had been filed on or around 04.07.2012. This was again reiterated when the matter was listed before the learned Joint Registrar on 09.11.2012. Again on 19.02.2013, the learned Joint Registrar noted that the written statement was not available on record and directed the defendant to remove the objections.

5. On 02.09.2013, it was stated that the Registry has traced the written statement but the same had not been placed on record. The matter was listed on several dates, thereafter, and was adjourned since it was informed that the parties were attempting to settle their disputes. The Court on several occasions also directed that the pleadings be completed.

6. On 18.02.2015, this Court noted that despite a lapse of almost three years, written statement had not been filed despite several opportunities having been granted to the defendant.

7. On 27.07.2016, the learned counsel for the defendant once again reiterated that the written statement had been filed but the same was not on

record. In the circumstances, the learned counsel was once again directed to take steps to ensure that the written statement is placed on record. The order passed by the learned Joint Registrar on 25.10.2016 indicates that the defendant had claimed that the written statement was filed vide diary no.249807 dated 18.05.2015. The Court also noted that the office note indicated that “*some reply filed vide this diary number is returned under objection.*” The learned Joint Registrar once again directed the defendant to check with the Registry and ensure that the written statement stated to have been filed under the diary number mentioned, be placed on record.

8. On 02.12.2016, learned counsel for the defendant submitted that the copy of the written statement was also filed along with the reply to I.A. No. 16727/2012, which was also lying under objections. He stated that the same would be re-filed within a period of one week. The learned Joint Registrar directed the defendant to file a copy of the written statement under signatures within a week from that date.

9. On the next date of hearing, i.e., 10.01.2017, the learned Joint Registrar noted that despite opportunities, the defendant had not filed a copy of the written statement and further was also not represented before the Court.

10. It is seen that neither the written statement nor a copy of the said written statement stated to have been filed in 2012 has been placed on record as yet. The reply to the plaintiffs’ application (I.A. No. 16727/2012) is also not on record.

11. None appears for the defendant even on the second call. In the circumstances, the defendant is proceeded *ex parte*.

12. The plaintiffs have filed the present suit *inter alia* praying for a decree

of permanent injunction restraining infringement of their trademark and copyright, passing off, damages, delivery up, etc. against the defendant.

13. The plaintiffs have averred that plaintiff No. 1, a company incorporated under the laws of England, is engaged in the business of manufacturing, processing and marketing of high grade lubricating oil products in the United Kingdom and in several various countries.

14. It is averred that plaintiff No.2 is a company incorporated under the Companies Act, 1956 and is engaged in the same business as that of plaintiff No.1. It is further averred that plaintiff No.1 markets its products through plaintiff No.2 in India. It is stated that plaintiff No.1 is the registered proprietor of the trademark CASTROL, registered under registration No.1494 in Class 4 in respect of oils for heating, lighting and lubricating. The trademark is also registered under registration number 260626 in respect of industrial oils and greases (other than edible oils, fats and essential oils), hydraulic fluids being oils, lubricants, fuels and illuminant as a distinctive logo comprising a solid coloured circle across which is an irregularly shaped white portion occupying about one half of the total area of the mark. Plaintiff No. 1 also claims to be a registered proprietor of the trademark ACTIV which is used by it along with the trademark CASTROL. The learned counsel for the plaintiffs has drawn the attention of this Court to a copy of a registration certificate which indicates that the trademark ACTIV is registered by plaintiff No. 1 under registration no. 838183 in class 4.

15. Plaintiff No. 1 is also a registered proprietor of the device HALF FLASH which is registered under registration no.1368008 dated 29.03.2007 and also of DYNADRIVE, which is registered under registration no.1538309 dated 13.02.2007.

16. Plaintiff No. 2 has also provided the details of its turnover which indicates that its turnover under the brand ACTIV in the year 2010 was ₹434.44 crores.

17. The plaintiffs state that in the month of August, 2011, it came across a product with “SUPER ACTIV 4T AUTOPOL” trademark on its packaging, which infringed the trademark ACTIV as well as DYNADRIIVE device of plaintiff No.1

18. Plaintiffs have also drawn the attention of this court to the photographs of the defendant's product sold in pouches as well as in larger containers. The trade dress of the pouches indicates a distinct similarity between the packaging of the product of the plaintiffs and that of the defendant. The packaging of the containers also indicates that the defendant is using the brand name ACTIV.

19. Since the defendant is neither represented nor has placed his written statement on record to contest the aforesaid claims, despite sufficient opportunity, the suit is decreed in terms of prayers (i), (ii) & (iii), which reads as under:-

- “(i) An order for permanent injunction restraining the defendant, his partners or proprietors as the case may be, his officers, servants, agents and representatives from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in Industrial Oil including Engine Oil and brake oil or lubricants under the trademark ACTIV/ACTIVE and/or any other deceptively similar trademark(s) and/or Dyna Drive Device which amounts to infringement of trademarks of the Plaintiffs.
- (ii) An order for permanent injunction restraining the Defendant, his partners or proprietors as the case may be, his officers, servants, agents and representatives from

manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in Industrial Oil including Engine Oil and brake oil or lubricants under the trademark ACTIV/ACTIVE and/or any other deceptively similar trademark(s) and/or Dyna Drive Device and/or any other trade mark, sticker, label and container which may amount to passing off their goods as the goods of the plaintiffs.

- (iii) An order for permanent injunction restraining the Defendant, his partners or proprietors as they case may be, his officers, servants, agents and representatives from reproducing, printing or publishing, selling or offering for sale any label like **Annexure F** which is a colourable imitation or substantial reproduction of the Plaintiffs' Castrol Scootek 2T pouch amounting to infringement of copyright thereto."

20. This Court is not inclined to award damages as the same have not been established by sufficient material.

21. Let a decree sheet be drawn up, accordingly. The suit and application are disposed of.

FEBRUARY 22, 2017
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VIBHU BAKHRU, J