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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1317/2016 & IAs No.11729/2016 (u/O XXXIX R-1&2
CPC) & 2358/2017 (u/O XXXIX R-2A CPC)
KENT RO SYSTEMS LTD & ANR Plaintiffs

Through: Ms. Rajeshwari H. & Ms. Aparna
Gaur, Advs.

Versus

VAHID ALI & ANR Defendants
Through: Mr. Mohan Vidhani, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.02.2017

1. The two plaintiffs viz. Kent Ro Systems Ltd. and Mahesh Gupta (of which plaintiff no.2 Mahesh Gupta is the Chairman and Managing Director of the plaintiff no.1) have instituted this suit to restrain the defendant no.2 Eurofobes Water Tech Pvt. Ltd., of which the defendant no.1 Vahid Ali is a Director, from infringing registered designs and trademarks 'KENT PEARL', 'KENT GRAND+', 'KENT PRIME' and 'KENT SUPREME' of the plaintiffs by using 'EUROFOBES PEARL', 'EUROFOBES GRAND', 'EUROFOBES PRIME' and 'EUROFOBES SUPREME' and from passing off their goods as those of the plaintiffs.

2. The suit was entertained and vide *ex parte* ad-interim order dated 22nd September, 2016, the defendants restrained from manufacturing, marketing, selling, offering for sale products in the names of 'EUROFOBES PEARL', 'EUROFOBES GRAND', 'EUROFOBES PRIME' and 'EUROFOBES SUPREME' and / or any other name similar or deceptively similar to the plaintiffs' marks 'KENT PEARL', 'KENT GRAND+', 'KENT PRIME' and 'KENT SUPREME' and of the same design as shown in the plaint.

3. A Court Commissioner was also appointed to visit the premises of the defendants and to seize the infringing products.
4. Both the defendants appeared through counsel on 26th October, 2016 and thereafter on 6th February, 2017 and without filing the written statement and without prejudice to their rights and contentions stated that if the plaintiffs are willing to give up their other claims, the defendants are willing to suffer decree for permanent injunction in terms of prayer paragraph 42(a) to (c) of the plaint.
5. The matter was adjourned to today to enable the counsel for the plaintiffs to take instructions.
6. The counsel for the plaintiffs states that the offer of the defendants is mala fide inasmuch as the defendants are even now violating the interim order in force. IA No.2358/2017 under Order XXXIX Rule 2A of the CPC has also been filed by the plaintiffs in this regard. It is the contention of the counsel for the plaintiffs that the defendants are now selling the goods infringing the designs of the plaintiffs, instead of from their shop, through their website www.roshoppeonline.com.
7. The counsel for the defendants states that the defendants are not infringing.
8. The counsel for the defendants of course denies any such infringement or violation of the interim order. He today also states that the defendants have not infringed any design or trademark of the plaintiffs and are willing to suffer a decree for permanent injunction.

9. The counsel for the defendants however clarifies that the defendants would continue to use the mark 'EUROFOBES' in relation to the water purifiers and also as company name.

10. The counsel for the plaintiffs has no objection thereto.

11. I have enquired from the counsel for the plaintiffs that even if a decree for permanent injunction were to be granted in favour of the plaintiffs, in the event of the plaintiffs claiming violation or non-compliance thereof, the plaintiffs will have to establish that the product which is claimed to be in violation of the decree infringes the design of the plaintiffs and that if that be so, whether not it is in the interest of the plaintiffs to have the decree for permanent injunction today. It has further been put that the enforcement of a decree for permanent injunction also under Order XXI Rule 32 would be by detention of the defendant no.1 Vahid Ali and the other Directors of the defendant no.2 Eurofobes Water Tech Pvt. Ltd. in a civil prison as well as by attachment of their properties i.e. *inter alia* in the same way as an action under Order XXXIX Rule 2A of the CPC.

12. The counsel for the plaintiffs after obtaining instructions and due consideration is agreeable to giving up the other reliefs in the event of a decree for permanent injunction as sought being passed.

13. The counsel for the defendants on enquiry states that besides the defendant no.1, his wife is the only other Director of the defendant no.2 Eurofobes Water Tech Pvt. Ltd.

14. A decree for permanent injunction is accordingly passed in favour of the plaintiffs and jointly and severally against the defendants no.1 &2 Vahid

Ali and Eurofobes Water Tech Pvt. Ltd. in terms of prayer paragraph 42(a),(b)&(c) of the plaint, leaving the parties to bear their own costs.

15. It is clarified that the injunction would be applicable to sales through electronic and website mode also.

16. Decree sheet be prepared.

17. The Court Commissioner appointed in the suit has sealed the infringing goods.

18. The counsels state that date and time be fixed for the representative of the plaintiffs to visit the premises of the defendants and during which visit the seal put by the Court Commissioner shall be removed and the outer cabinet of the water purifier which have been sealed shall be destroyed in a manner that it cannot be used for RO systems and the internal parts shall be retained by the defendants.

19. It is ordered accordingly.

20. The representative of the plaintiffs to visit the premises of the defendants on 26th February, 2017 at 1100 hours.

21. It is further clarified that no order is being made on IA No.2358/2017 under Order XXXIX Rule 2A CPC but with liberty to the plaintiffs to, if the defendants do not remove the products that are averred in this application to be infringing, take the appropriate steps for execution of the decree.

RAJIV SAHAI ENDLAW, J

FEBRUARY 23, 2017

‘gsr’..