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

+ CS(COMM) 1469/2016 & I.A.Nos.13499/2016, 1303/2017

KENT RO SYSTEMS LTD & ANR.

..... Plaintiffs

Through: Ms. Rajeshwari H., Advocate with
Mr. Kumar Chitranshu, Advocate.

versus

PUSHPENDRA YADAV & ORS

..... Defendants

Through: Mr. Rahul Vidhani, Advocate with
Mr. Ashish Singh, Advocate for
defendant No.2.
Mr. Satish Rai, Advocate for
defendant No.8.

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Date of Decision: 19th December, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral)

1. On 11th July, 2017, learned counsel for defendant no.8 undertook to remove any alleged infringing listing within two days of being informed by the plaintiffs specifying the details of such listing or other data, link or communication. The defendant no.8 also undertook to disclose the names and address of the infringing parties, who had uploaded the infringing material on their websites. He had further stated that in the event the plaintiffs informed the defendants of any alleged illegal listing on their e-

mail ID, namely, legal@paytm mall.com, requisite legal action would be taken within 48 hours.

2. Today learned counsel for defendant no.8 reiterates the said undertaking. Learned counsel for the plaintiffs has no objection if the suit is decreed against defendant No.8 in accordance with the said undertaking. Consequently, the undertaking given on 11th July, 2017 by defendant no.8 is accepted by this Court and defendant no.8 is held bound by the same.

3. Learned counsel for defendant no.2, on instructions, also states that the said defendant is agree to suffer a decree qua Design Nos. 219309, 224813, 252225. The statement made by learned counsel for defendant no.2 is accepted by this Court and defendant no.2 is held bound by the same.

4. Registry is also directed to prepare a decree sheet in accordance with the said statements/undertakings given by learned counsel for defendant nos.2 and 8.

5. Report of the Registry states that while defendant No.5 has refused to accept summons, service report of defendant No.3 is awaited and defendant No.1 is unserved.

6. Today, learned counsel for plaintiffs has handed over three affidavits of service. In the affidavit of Mr. Virender Kumar, it is stated that defendants No.1, 3 and 5 have been sent summons by speed post as well as approved courier. The tracking reports have also been enclosed. In the affidavit of Mr. Hardikbhai Labhubhai Lakhani, it is stated that defendant in Gujarat i.e. defendant No.3 has refused service. In the affidavit of Mr. Vijay Kumar Sharma, it is stated that defendant No.1 has been served. The said affidavits of service are taken on record.

7. Since none appears for defendants No.1, 3 and 5 despite service, they are proceeded ex parte.

8. Since defendants No.4, 6 & 7 despite service had not entered appearance before this Court, they were proceeded *ex parte* on 23rd October, 2017.

9. Learned counsel for the plaintiffs states that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.***, the present suit should be decreed qua the relief of injunction against the defendants No.1 and 3 to 7. The relevant portion of the judgment in ***Satya Infrastructure Ltd. & Ors.*** (Supra) relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

10. Learned counsel for the plaintiffs further states that she has instructions not to press for any other relief other than the relief of permanent injunction, as prayed for in prayer 46 (c) of the plaint. The prayer 46 (c) of the plaint is reproduced hereinbelow:-

“46 (c). A decree for permanent injunction restraining the defendant nos.1-7, their distributors, dealers, stockists, retailers, servants, agents and all others acting for and on their behalf from manufacturing, selling, importing, offering for sale, advertising and directly or indirectly dealing in any products that bear the mark AQUA GRAND+, AQUA PRIME, AQUA PEARL, AQUA SUPREME and/or any other mark which are

identical or deceptively similar to the plaintiffs' trademarks KENT GRAND+, KENT PEARL, KENT SUPREME, KENT PRIME and variants thereof;

11. The relevant facts of the present case as culled out in the order dated 27th October, 2016 are that the present suit has been filed for permanent injunction restraining infringement of designs, passing off, damages, rendition of accounts, delivery up and other related reliefs.

12. The plaintiff No.1 company has been in the business of manufacturing and selling mineral RO water purifier systems since the year 1999, through its predecessors. The plaintiff No.1 carries out its business activities exclusively under the well known trademark/name KENT. Plaintiff no.2, who is a technocrat from IIT, Kanpur, has founded the firm 'Kent RO Systems' in the year 1999 with the vision of providing pure and healthy drinking water to Indian homes at affordable price. Plaintiff no.2 has been granted a patent for '*house hold RO based drinking water purifier having controlled natural mineral contents in generated purified water*'.

13. It is averred in the plaint that the plaintiffs' products offer unique multipurification process of RO+UF+UV, which removes even dissolved impurities apart from bacteria and viruses and its TDS controller retains the essential natural minerals in the purified water. The plaintiff has extracted in para 13 of the plaint details with regard to the trademark KENT registered in India in various classes. Besides, the plaintiffs have some other applications pending registration. The plaintiffs have also successfully obtained registrations with regard to trade name/mark KENT in other countries, details of which have been extracted in para 14 of the plaint. The products of the plaintiffs such as KENT PEARL, KENT PRIME, KENT GRAND+, KENT SUPREME, etc. have been used

continuously, extensively and exclusively throughout India and abroad on a large scale and the products sold under the said mark have resultantly acquired a reputation of being extremely sound and reliable by virtue of adherence to strict quality standards maintained by the plaintiffs. The plaintiffs have made substantial investments in market research, development of new technology, advertising and promotion of its unique and patented mineral water purifier under the trademark KENT. The plaintiffs have extracted details with regard to annual sales and amounts incurred in advertisement at para 19 of the plaint. The plaintiffs have also extracted the details with regards to accolades and the awards they have achieved.

14. Learned counsel for the plaintiffs submits that defendants No. 1 and 3 to 7 are traders and manufacturers of water purifier systems, whose shape, look and appearance are deceptively similar to the water purifiers of the plaintiffs. The said defendants sell their products, especially water purifiers to various customers across India through the website of defendant no.8. Learned counsel for plaintiffs contends that defendants No. 1 and 3 to 7 are manufacturing and selling an identical product under the mark AQUA GRAND+ or AQUA GRAND. Similarly, the products KENT PEARL, KENT PRIME and KENT SUPREME are being sold as AQUA PEARL, AQUA PRIME AND AQUA SUPREME. Screenshots of some such infringing purifiers being advertised through defendant's No.8 website have been filed along with the plaint. The combination of the deceptively similar marks with identical look and feel of the products add to the confusion and leads to deception of the consumers. Learned counsel for plaintiffs has also drawn the attention of the Court to the comparison of the

products of the plaintiff and the products of the defendant nos. 1 and 3 to 7, which have been filed along with the list of documents. Learned counsel for plaintiffs contends that the said defendants' inaction and enabling sale of infringing products amounts to infringement of the plaintiffs' registered designs under the Designs Act, 2000.

15. It is contended by counsel for the plaintiffs that the goods being sold by defendants are inferior in quality and with the intent to ride upon the goodwill and reputation of the plaintiff to derive unfair gain. Learned counsel for plaintiffs also contends that the public at large is likely to be misled that the goods being sold by the said defendants originates from the house of the plaintiffs.

16. On 27th October, 2016, this Court had restrained the defendants, their distributors, dealers, stockists, retailers, servants, agents and all others acting on their behalf from manufacturing, selling, importing, offering for sale, advertising and directly or indirectly dealing in any products:

- i. *That infringe the plaintiffs' registered design nos.219309, 224813, 252225, 262661 and 220727;*
- ii. *that bear the mark AQUA GRAND+, AQUA PRIME, AQUA PEARL, AQUA SUPREME and/or any other mark which are identical or deceptively similar to the plaintiffs' trademarks KENT GRAND+, KENT PEARL, KENT SUPREME, KENT PRIME and variants thereof;*

17. In view of the averments made in the plaint, which remain uncontroverted, this Court is of the view that the plaintiffs are entitled to the judgment in terms of the relief claimed for in prayer 46 (c) of the plaint against defendant nos. 1 and 3 to 7. However, since the plaintiffs have not established the quantum of damages, no relief in this regard can be granted.

As noted above, the learned counsel for the plaintiffs has also not pressed for the said relief.

18. In view of the above, the suit is decreed in favour of the plaintiffs and against the defendants No. 1 and 3 to 7 in terms of prayer clause 46 (c) of the plaint along with the actual costs. The plaintiffs are given liberty to file on record the exact cost incurred by them in adjudication of the present suit. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit and pending application stand disposed of.

MANMOHAN, J

DECEMBER 19, 2017
KA/js

