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

+ **FAO (OS) (COMM) 13/2018, CM APPL.2999-3002/2018**

M/S S K JAIN BROS HELMENT (I) PVT LTD Appellant
Through: Mr. Sagar Chandra with Ms. Ishani
Chandra and Mr. Bibhunanda Mishra, Advocates.

versus

M/S VEGA AUTO ACESSORIES (P) LTD Respondent
Through: Ms. Diva Arora Menon with Mr. Man
Mohan Mishra, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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24.01.2018

1. The appellant's grievance is that the impugned orders of 12.12.2017 and 04.01.2018 have in effect disposed of finally the issue of interim injunction. On 08.12.2017, the learned Single Judge had issued summons and notices on the application (I.A.14568/2017) under Order XXXIX Rules 1 & 2 CPC. On 12.12.2017, the Court issued an interim injunction in the following terms: -

"1. This order is in continuation of the earlier order dated 8th December, 2017.

2. Though the report of service of summons/notice is awaited but the counsel for the plaintiff has filed affidavit of service and Mr. Sushil Jaswal, Advocate appears for the defendant and seeks time to file written statement.

3. It was made clear in the order dated 8th December, 2017 that the application for interim relief shall be heard today. When the Court,

instead of granting ex-parte order as sought, issues notice for a short date, the defendant cannot delay hearing of the application for interim relief by so seeking adjournment.

4. Mr. Sushil Jaswal, Advocate then states that he does not know anything about the case.

5. That is the fault of the defendant and his advocate and the plaintiff cannot be made to suffer therefor.

6. The counsel for the defendant seeks two weeks' time to file written statement/reply.

7. Allowed.

8. Replication/rejoinder be filed on or before 20th January, 2018.

9. The parties to file their affidavit of admission/denial of each other's documents before the next date of hearing.

10. Till further orders, the defendant and its dealers and agents are restrained from making, selling, offering for sale, advertising and directly or indirectly dealing in helmets amounting to infringement of plaintiff's registered design No.264763 dated 13th August, 2013 (the counsel for the plaintiff states that the correct date is 13th August, 2014 and has been erroneously mentioned in the application as 13th August, 2013) and particularly the helmets under the mark 'POWER' as depicted in paragraph 22 of the plaint.

11. List on 15th February, 2018."

On 04.01.2018, the following order was made, rejecting I.A.123/2018 (which was filed by the appellant under Order-XXXIX Rule-4, CPC in the meanwhile). The said order of 04.01.2018 reads as follows: -

"IA No.123/2018 (of the defendant under Order XXXIX Rule 4 of the CPC).

1. The defendant / applicant seeks vacation of the ad interim order of injunction, pleading that the design of the defendant / applicant is also registered and there can be no infringement by one registered design holder against another.

*2. The counsel for the plaintiff appearing on advance notice has referred to the dicta of the Full Bench in judgment dated 15th May, 2013 in CS(OS) No.384/2008 titled **Mohan Lal, Proprietor of Mourya Industries Vs. Sona Paint & Hardwares**. The counsel for the plaintiff further states that reply is required to be filed.*

3. The senior counsel for the defendant / applicant states that the ad interim order dated 12th December, 2017 prohibits the defendant / applicant from marketing helmets under the mark „POWER" and the

defendant / applicant is marketing all its helmets under the mark "POWER" even though of different designs.

4. The ad interim order dated 12th December, 2017 only injuncts infringement of the plaintiff's registered design as mentioned therein and does not restrain the defendant / applicant from using the mark "POWER" for marketing helmets of other designs.

5. Be that as it may, since the senior counsel for the defendant / applicant states that the defendant / applicant, on a reading of the order entertains a doubt to the said effect, it is so clarified.

6. This application be treated as a reply to the application of the plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC).

7. The senior counsel for the defendant/applicant states that the defendant /applicant has also filed a reply to the application of the plaintiff under Order XXXIX Rules 1&2 of the CPC, taking the same pleas as taken in this application.

8. There is thus no need for reply to this application.

9. The application is disposed of.

2. It is urged that the impugned orders to the extent that they are final in rejecting the application for vacation of the injunction are not reasoned. Learned counsel stressed that the Single Judge nowhere recorded either the *prima facie* strength of the case or the irreparable damage and did not consider the issue of balance of convenience. It was submitted that the design registration upon which the suit is based nowhere discloses through the documents how the registered design is novel or unique. It is contended that the appellant also is a registered owner of a product which is unique and novel.

3. Counsel for the plaintiff (who appeared on advance notice) urged that though the Single Judge had not recorded his *prima facie* conclusions or indicated the reasons with respect to irreparable harm and balance of convenience, those issues are still at large. It was highlighted that the application (I.A.123/2018) essentially urged what

the appellant/defendant had alleged and averred in the reply to the temporary injunction application filed by the plaintiff (I.A.14568/2017). In the light of these averments, the Single Judge was of the opinion that it would be convenient to hear the parties on the main injunction application and, therefore, has merely adjourned it for further proceedings to 15.02.2018.

4. This Court is of the opinion that even though the application for vacation of an interim order was disposed of on 04.01.2018 and technically it might indicate some prejudice to the defendant/appellant, at the same time, the Single Judge has kept open the issue as to whether the plaintiff is entitled to temporary protection and listed the matter for 15.02.2018. In these circumstances, the question of intervention or re-appreciating all the documents and materials would not be appropriate. The Court is of the opinion that the Single Judge would take into account all contentions made by the parties and decide the application at the earliest convenience.

5. The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 24, 2018

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