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

Reserved on : 30th August, 2018

Date of decision : 7th September, 2018

+ **CS (COMM) 104/2018, I.As. 26029/2014 & 26030/2014**

M/S INTER IKEA SYSTEMS BV & ANR. Plaintiffs

Through: Ms. Shwetasree Majumdar, Ms.
Tanya Varma and Ms. Pritika Kohli,
Advocates. (M:9560012028)

versus

SHAM MURARI & ORS. Defendants

Through: Mr. Rahul Rajput and Mr. N. R.
Singh, Advocates with Defendant
No.2 in person. (M:8447826804)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Is the Defendants' adoption of the mark IKEA a 'mere idea' or is it much more?
2. The present suit for injunction and damages in respect of the mark 'IKEA' was instituted by the Plaintiffs. Vide order dated 13th December, 2017, a preliminary decree has already been passed in respect of the prayers seeking injunction in terms of paragraphs 31 (a) and (b). The matter remained pending in respect of the remaining prayers for rendition of accounts, delivery up and damages.
3. Learned counsel for the Plaintiffs made submissions on the aspect of damages on 28th August, 2018, and has filed a computation. On 30th August, 2018, partner of the Defendant No.3, IKEA Industries, appeared and his statement was recorded.
4. The brief case of the Plaintiffs is that Plaintiff No. 1 is a company

incorporated in the Netherlands. It has an Indian subsidiary, Ikea Trading (India) Pvt. Ltd – Plaintiff no.2.

5. The Plaintiffs deal with a wide range of affordable home furnishing products and have supplied several retailers, offering a full range of services. According to the Plaintiffs, the mark ‘IKEA’ was coined in the year 1943 from the names of the founder, Ingvar Kamprad and the first letters of Elmtaryd and Agunnaryd, the farm and village where he grew up. According to the Plaintiffs, the first ‘IKEA’ store was opened in 1958 in Sweden, and thereafter, expansion has taken place across the world. By 2009, the Plaintiffs had 267 stores in 25 countries. The mark ‘IKEA’ is a registered trademark in India, both in English, Hindi and in the logo form. The total sales revenue of the Plaintiff Group for the year 2013 was close to 29.2 billion euros.

6. The Plaintiffs came to know that the Defendants had started using the domain name www.ikeaindustries.com and had a partnership firm named Ikea Industries (Defendant No.3). The same was promoted by Defendant No.1 and 2 who are father and son, who also run the firm M/s. Shilpa Metal Industries, Defendant No.4. The Defendants deal in automobile spare parts. On the website of the Defendants, it was claimed as under: -

“Ikea Industries started with a dream in 2014----the dream to be the leaders in Auto parts and Non-Ferrous, Die castings components for the automotive industry.”

7. Accordingly, the present suit was filed seeking an injunction against the use of the mark ‘IKEA’ as a trade mark and part of the trading style, the domain name www.ikeaindustries.com, and for damages.

8. An *ex-parte ad interim* injunction was granted against the Defendants on 22nd December, 2014 and a Local Commissioner was also appointed to visit the Defendants' premises. The Local Commissioner seized a large stock of "IKEA" branded products. The inventory prepared by the Local Commissioner is as under: -

“ **DETAILED INVENTORY REPORT**

PRODUCT NAME

1. *Rear wheel New 2008 – 35 pieces in one carton- Total 14 cartons;*
2. *Slider Block set 4 cut white 312 pieces in one carton total 52 cartons.*
3. *Reverse Central gear 75 pieces in a carton – total 15 cartons*
4. *Fork Cone set New 205 cc – 100 pieces in a carton – total 4 cartons*
5. *Bevel gear small new -900 pieces in a carton – total 2 cartons,*
6. *Bevel gear Big new – 168 pieces in a carton – total 6 cartons*
7. *Magnate gear 91 teeth – 50 pieces in a carton – total 9 cartons*
8. *Magnate gear 80 teeth – 50 pieces in a carton – total 9 cartons*
9. *Flange 4 cut big – 64 pieces in a carton – total 39 cartons*
10. *Bevel gear Pinke New – 450 pieces in a carton – total one carton*
11. *Four cone set of 5 – 100 pieces in a carton - total 9 cartons*
12. *Propeller shaft small – 50 pieces in a carton – total 20 cartons*
13. *Front wheel Axel worm metre type – 45 pieces in a carton – total 12 cartons*
14. *Multiple gear shop new – 140 pieces in a carton – total 5 cartons*
15. *Propeller shaft big – 50 pieces in a carton total*

- 19 cartons*
- 16. Flanch 4 cut medium – 64 pieces in a carton – total 29 cartons*
 - 17. Cluster gear – 100 pieces in a carton – total 5 cartons*
 - 18. Front wheel Axel stroke – 45 pieces in a carton – total 10 cartons*
 - 19. Front wheel Axel special – 45 pieces in a carton – total 7 cartons*
 - 20. Double Gear – 36 pieces in a carton –total 33 cartons*
 - 21. Pivit Pin one – 144 pieces in a carton – total 3 cartons*
 - 22. Unleveled Box – 105 cartons*
 - 23. Loose Rolls – 9 cartons”*

9. The Defendants thereafter appeared and filed their written statement. The Defendants claimed that the partnership firm Ikea Industries was formed on 2nd May, 2014. Defendant No.1, Mr. Sham Murari, had started business under the name and style of M/s. Shilpa Metal Industries on 22nd January, 1987 and was engaged in the business of hardware goods. Thereafter the Defendants decided to expand into the business of auto parts. The plea of the Defendants is that the mark ‘IKEA’ was coined from the word ‘IDEA’. The relevant averment in the written statement is extracted below: -

“That the defendant No. 2 started partnership firm with the name and style M/S IKEA Industries to manufacture and trading of auto parts. It is pertinent to mention here that name as well as trademark IKEA was adopted from work IDEA by the defendant no 2. The defendant No. 3 has a modernized manufacturing plant as also a well research and development section where continuous efforts are undertaken to improve the product.”

10. It was also claimed that not a single product was sold by the firm Ikea Industries, as per the VAT returns, which have been filed. Mediation was attempted in the matter. However, there was no settlement. This Court on 13th December, 2017, decreed the suit insofar as the prayers for injunction are concerned, in an application for summary judgment I.A.6430/2017 filed by the Plaintiffs.

11. The parties have been heard on the issue of computation of damages. Learned counsel for the Plaintiffs, Ms. Majumdar submits that the Defendants had filed an affidavit of use before the trademark office, in which it was claimed that the turnover of Defendant No.3 under the mark 'IKEA' was to the tune of Rs. 1.25 crores in the year 2010-11, Rs. 1.30 crores in the year 2011-12 and Rs. 1.34 crores in the year 2012-13. The said affidavit of use filed before the Registrar of Trade Marks reads as under:

***“BEFORE THE REGISTRAR OF TRADE MARKS
TRADE MARK REGISTRY
NEW DELHI-110075***

EVIDENCE OF DISTINCTIVENESS

*IN THE MATTER OF: Application No. _____
 In Class 12*

*Affidavit of : Sham Murari
Resident of : Ludhiana (PB.)*

*I, the above named deponent, do hereby solemnly
declare affirm as under:-*

- 1) That by virtue of my position aforesaid, I am well
aware of above Trade Mark application and also I
have full access to the records of my firm and this*

competent to make this affidavit.

- 2) *That the Trade Mark Ikea in Respect of Parts & fittings for use in Autos & Motor Land vehicles is being used in India by my above firm openly and extensively since 01-06-2010.*
- 3) *Sales of the said goods in India by my Firm have been considerable and I give below the details there of:-*

<u>YEAR</u>	<u>SALES (in Rs)</u>
2010-2011	1.25 CRORE
2011-2012	1.30 CRORE
2012-2013	1.34 CRORE

- 4) *That due to long standing use and publicity the Trade Mark IKEA has become distinctive of the goods manufactured by my Firm and I sincerely Feel that my Firm is entitled to the registration of Trade Mark IKEA in favour.”*

For SHILPA METAL IND.

Sd/-
(Auth. Sign)
DEPONENT”

12. Thus, according to Ms. Majumdar, the turnover of the Defendants, as per their admission in the trademark office being approximately Rs. 4 crores for the mark ‘IKEA’, at least 20% of the said turnover, is liable to be paid by the Defendants as damages. She further relies upon the seizure made by the Local Commissioner and claims that the above stock is worth at least Rs.67,44,800/- even if each piece is valued at Rs.200/-. Thus, the total damages claimed are Rs.1,45,44,800/-, along with the legal costs. The total

costs claimed are Rs.10,51,375/-, the break-up of which is as below: -

Cost of investigation	Rs.98,116/-
Cost of filing of suit including court fee	Rs.3,82,675/-
Fee of the Local Commissioner and cost of execution of Local Commission in Ludhiana	Rs.4,29,106/-
Counsel fee for affidavit and non-effective hearings and expenses for mediation centre	Rs.1,41,475/-
Total	Rs.10,51,375/-

13. Learned counsel for the Plaintiffs submits that complete damages ought to be awarded to the Plaintiffs, inasmuch as the adoption by the Defendants, is completely dishonest. The mark 'IKEA' has acquired a huge reputation and there ought to be some deterrence from using well-known marks by unscrupulous parties. She relies upon the judgments of this Court in *Sandisk LLC & Anr. vs. Transton, C.S. (COMM) 695/2017 (Decided on 10th May, 2018)*, *Cisco Technology vs. Yameen & Another 2011 (45) PTC 269 (Del)* and *Lachhman Das Behari Lal vs. Ghanshyam Das Jetha Nand & Others 2007 (35) PTC 693 (Del)*.

14. On the other hand, learned counsel for the Defendants, and Defendant No.2, who appeared in Court submit that the user affidavit was wrongly filed. The turnover, which is set out in the user affidavit is that of M/s Shilpa Metal Industries and not of Ikea Industries. According to the Defendants, Ikea Industries got its VAT registration only in September, 2014 and the present suit was filed in December, 2014. Thus, there was no use of the mark IKEA. The first set of products, which were packed for sale,

was seized at the time when the local commission was executed. Since immediately upon the grant of the injunction, the Defendants did not contest the matter, no damages ought to be awarded.

15. Before going into the merits of the case, this Court on 30th August, 2018 had recorded the statement of Defendant No.2 in respect of use of the mark 'IKEA'. Defendant No.2 stated as under: -

"I am Defendant No.2 in the present matter. I am the son of Defendant No.1 Mr. Sham Murari, and a partner in IKEA Industries i.e. Defendant No.3. Defendant No.4, Shilpa Metal Industries is my family's business, which deals in door hardware. In the year 2014, we decided to diversify our business into automobile parts, and I approached my trademark agent M/s. Mahtta & Co., which advised me to adopt the trademark IKEA, as the Plaintiff does not deal in auto parts. On their advice, I adopted the mark IKEA in 2014. The partnership firm IKEA Industries was formed on 2nd May, 2014. VAT registration was obtained on 11th September, 2014 and the Import Export code was issued by the Government on 10th June, 2014. Trademark application was filed on 15th January, 2014 prior to the formation of IKEA Industries. The user detail claimed in the trademark application i.e. 1st June, 2010 is incorrect. Even the turnover stated therein is incorrect, as the said turnover belongs to Shilpa Metal Industries and not to IKEA industries. I was advised to give the sales turnover of Shilpa Metal Industries in the user affidavit filed before the Trademark Registry.

Immediately when we adopted the trademark IKEA as a trading style and mark, the present suit came to be filed and an ex-parte ad interim injunction was granted on 22nd December, 2014. The products, which were lying in the premises at the time when the Local Commissioner had visited the premises, were the only

products which had been procured by me from the market. The packaging of the products was affixed by us, including the trademark IKEA. The domain name ikeaindustries.com was registered by me on 7th May, 2014. Thus, at the time when the suit was filed, there was not much sales, except the products which were lying in the premises when the Local Commissioner visited. I have already withdrawn the trademark application for the mark IKEA and have already surrendered the domain name www.ikeaindustries.com to the Plaintiff. Domain name www.ikeaindustries.org has also been surrendered to the Plaintiff. I shall abide by the permanent injunction already granted by this Court. I unconditionally apologise for wrong statements made in the user affidavit filed before the Trademark Registry, which I had done only on legal advice.”

16. Thus, contrary to what is pleaded in the Written Statement, the Defendants sought to blame their lawyers for adoption of the mark IKEA. Thus, the idea for adoption of the mark ‘IKEA’ is one that remains suspended between the defendants and their trade mark agents. The truth is far to seek. Either way, the derivation of the word ‘IKEA’ from the word IDEA is not natural or explicable.

17. Insofar as the Plaintiff’s priority in adoption and ownership of the mark ‘IKEA’ is concerned, the Defendants do not even dispute the same. On 6th August, 2015, the Defendants had agreed to pay a sum of Rs.1.5 lakhs as costs in the suit, which was not acceptable to the learned counsel for the Plaintiffs. The decree for injunction thereafter came to be passed in respect of the mark/name and the domain name. The only issue, therefore, is in respect of damages and delivery up of the products. The Defendants also accept that Defendant No.3 was formed to manufacture and trade in auto

parts. What is, however, inexplicable on the part of the Defendants is the user affidavit, which has been filed by them before the Registrar of Trademarks. In the said affidavit, it has been categorically averred by Defendant No.1 that the mark 'IKEA' has been used extensively since 1st June, 2010, and the sales turnover has been thereafter mentioned. This user affidavit has been filed in support of the trademark application for the mark 'IKEA' filed by Defendant No.1 trading as M/s. Shilpa Metal Industries, Defendant No.4. The date of the application is 15th January, 2014 and the user claimed is 1st June, 2010. Thus the Defendants did make a conscious and deliberate attempt -

- To use the mark 'IKEA' for the name of their firm
- To register the domain name www.ikeaindustries.com.
- To apply for registration of the mark in class 12 on 15th January, 2014 with a claim of user from 1st June, 2010.
- To file a user affidavit claiming use and stating that the turnover since 2010 ran into almost Rs.4 crores.

18. The Defendant No.2, however, who appeared before the Court sought to blame his counsel/trademark agent for advising him in favour of adopting the mark 'IKEA' and filing the affidavit of use. He clearly stated that the user name in the trademark application is incorrect and the turnover stated therein is also incorrect.

19. The Defendants have clearly not been scrupulous in their conduct. The mark 'IKEA' being an established brand, the adoption of the same and the registering of the domain name clearly shows that the Defendants were quite familiar with internet use. The explanation that the word 'IKEA' is

derived from word 'idea' is wholly unacceptable and further reinforces that the adoption was dishonest. The illegality is further compounded by the fact that a false user affidavit was filed before the trademark registry, as claimed by Defendant No.2. It is possible that since the firm obtained its VAT registration only in September, 2014, it may have just started trading under the brand name 'IKEA'. The stock, which was seized was also substantial. The Local Commissioner's report also shows the clear adoption of the mark 'IKEA' on the packaging of the Defendants' products. Considering the large amount of seizure made from the Defendants, it is clear that the Defendants were very serious about the use of the mark 'IKEA', and its use by them was not an innocent or an isolated adoption. It was meant to be continuous, extensive and broad-based including on the internet.

20. In ***Hindustan Unilever Limited v Reckitt Benckiser India Limited***, ***ILR (2014) II Delhi 1288***, a Division Bench of this Court has laid down the tests for award of damages, though in the context of disparaging advertisements. The Court has specifically upheld the procedure of using "*rough and ready calculations*" for award of damages. The relevant observation of the court is as under:

"63. In the present case, the plaintiff (Reckitt) has been able to prove, successfully, that HUL telecast the impugned 30 second advertisement on a large number of occasions (2763 times, to be precise, according to Ex. PW-1/19). The innuendo was cleverly designed to suggest that Reckitt's Dettol Original caused damage to the skin. The advertiser, i.e. HUL, was conscious that it was crossing the boundary between permissible "puffing" and what was prohibited in law. The evidence on record, in the form of HUL's witnesses' testimony, is that Rs. 2.5 crores was spent in July 2007 alone for

advertising its product. HUL also admitted during the trial that the Dettol Original brand was worth Rs. 200 crores. Such being the case, this Court holds that the Single Judge's reluctance to award general damages was not justified. It would be necessary to mention in this context that it may not be possible for an otherwise successful plaintiff, in a disparagement or slander of goods action to always quantify the extent of loss; there would necessarily be an element of dynamism in this, because of the nature of the product, the season it is sold in, the possible future or long term impact that may arise on account of the advertisement, etc. Therefore, courts the world over have resorted to some rough and ready calculations."

Thus the Court holds that general damages can be granted on the basis of rough and ready calculations. Insofar as punitive damages are concerned, the Court observed as under: -

67. *In India, the Supreme Court has affirmed the principles in Rookes (supra) and Cassel (supra). Interestingly, however, the application in those cases has been in the context of abuse of authority leading to infringement of Constitutional rights or by public authorities (ref. Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 6; Lucknow Development Authority v. M.K. Gupta, 1994 SCC (1) 243). As yet, however, the Supreme Court has not indicated the standards which are to be applied while awarding punitive or exemplary damages in libel, tortuous claims with economic overtones such as slander of goods, or in respect of intellectual property matters. The peculiarities of such cases would be the courts need to evolve proper standards to ensure proportionality in the award of such exemplary or punitive damages. The caution in Cassel that "[d]amages remain a civil, not a criminal, remedy, even where an exemplary award is appropriate, and juries should not be encouraged to lose sight of the fact*

that in making such an award they are putting money into a plaintiffs pocket.... " can never be lost sight of. Furthermore-and perhaps most crucially-the punitive element of the damages should follow the damages assessed otherwise (or general) damages; exemplary damages can be awarded only if the Court is "satisfied that the punitive or exemplary element is not sufficiently met within the figure which they have arrived at for the plaintiffs solatium". In other words, punitive damages should invariably follow the award of general damages (by that the Court meant that it could be an element in the determination of damages, or a separate head altogether, but never completely without determination of general damages).

68. *This court is of the opinion that the impugned judgment fell into error in relying on the decision in Times Incorporated v. Lokesh Srivastava 116 (2005) DLT 569. A Single Judge articulated, in his ex parte judgment in a trademark infringement action, as follows:*

"This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade-marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. In Mathias v. Accor Economy Lodging, Inc. reported in 347

F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”

With due respect, this Court is unable to subscribe to that reasoning, which flies on the face of the circumstances spelt out in Rookes and later affirmed in

Cassel. Both those judgments have received approval by the Supreme Court and are the law of the land. The reasoning of the House of Lords in those decisions is categorical about the circumstances under which punitive damages can be awarded. An added difficulty in holding that every violation of statute can result in punitive damages and proceeding to apply it in cases involving economic or commercial causes, such as intellectual property and not in other such matters, would be that even though statutes might provide penalties, prison sentences and fines (like under the Trademarks Act, the Copyrights Act, Designs Act, etc) and such provisions invariably cap the amount of fine, sentence or statutory compensation, civil courts can nevertheless proceed unhindered, on the assumption that such causes involve criminal propensity, and award "punitive" damages despite the plaintiffs inability to prove any general damage. Further, the reasoning that "one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes" is plainly wrong, because where the law provides that a crime is committed, it indicates the punishment. No statute authorizes the punishment of anyone for a libel-or infringement of trademark with a huge monetary fine-which goes not to the public exchequer, but to private coffers. Moreover, penalties and offences wherever prescribed require the prosecution to prove them without reasonable doubt. Therefore, to say that civil alternative to an overloaded criminal justice system is in public interest would be in fact to sanction violation of the law. This can also lead to undesirable results such as casual and unprincipled and eventually disproportionate awards. Consequently, this court declares that the reasoning and formulation of law enabling courts to determine punitive damages, based on the ruling in Lokesh Srivastava and Microsoft

Corporation v. Yogesh Papat and Another, 2005 (30) PTC 245 (Del) is without authority. Those decisions are accordingly overruled. To award punitive damages, the courts should follow the categorization indicated in Rookes (supra) and further grant such damages only after being satisfied that the damages awarded for the wrongdoing is inadequate in the circumstances, having regard to the three categories in Rookes and also following the five principles in Cassel. The danger of not following this step by step reasoning would be ad hoc judge centric award of damages, without discussion of the extent of harm or injury suffered by the plaintiff, on a mere whim that the defendant's action is so wrong that it has a "criminal" propensity or the case merely falls in one of the three categories mentioned in Rookes (to quote Cassel again-such event "does not of itself entitle the jury to award damages purely exemplary in character")."

21. Thus, the learned Division Bench has held that the tests laid down in ***Rookes*** and ***Cassell*** govern the field of the award of punitive damages. In ***Rookes vs. Barnard [1964] 1 All E. R. 367***, the House of Lords laid down that aggravated or punitive damages could be granted in the following three circumstances: -

- “(a) Oppressive, arbitrary or unconstitutional action any the servants of the government;*
- (b) Wrongful conduct by the defendant which has been calculated by him for himself which may well exceed the compensation payable to the claimant; and*
- (c) Any case where exemplary damages are authorised by the statute.”*

22. It was further clarified in ***Cassell & Co. Ltd. vs. Broome, 1972 AC***

1027, that punitive damages can be awarded only when the amount awarded as general damages does not offer solatium to the Plaintiffs. **Cassell** further held that damages remained a civil remedy and the Court should bear in mind that the money is being awarded to the Plaintiffs.

23. In the present case, the Plaintiffs do not claim direct damages on account of any actual losses suffered by them. The losses claimed by the Plaintiffs are intangible loss, dilution, loss of confidence and trust of customers and exemplary damages due to disregard of the principle of fair trading. Under Section 73 of the Indian Contract Act, 1872, damages can be both direct and indirect. However, the nature of damages claimed in the present case, are for violation of trademark rights. While this Court does not wish to encourage any party, which misleads the trademark authorities, the question is whether a false affidavit filed before the trademark office can by itself form the basis of grant of exemplary damages. The documents placed on record point to the fact that the Defendants had actually registered the domain name www.ikeaindustries.com only on 7th May, 2014. The Defendant No.3 firm was formed on 2nd May, 2014 and the VAT registration was obtained on 11th September, 2014. Clearly, the user claimed by the Plaintiffs in its trademark application filed by Defendant No.4, Shilpa Metal Industries was completely incorrect. Thus as on the date when the ex-parte injunction was granted, i.e., 22nd December, 2014, the Defendants may have merely used the mark for a few months. Thus, on the basis of the inventory prepared by the Local Commissioner, which according to the Plaintiffs is worth Rs. 67,44,800/- and according to the Defendants is worth approximately Rs. 25,00,000/-, the Court takes the value of the said products to be in the range of Rs. 25 lakhs to Rs. 30 lakhs, as the said products were

not sold. Even treating the said stock to be the stock of one month, the total turnover of the Defendants for three months from September to December 2014, could not have been more than Rs.1 crore. This is a rough and ready estimate on the basis of the seizure made. Since the Defendants would have had to sell these products with proper dealer/retailer margins, the profit is estimated at 15% of the total value of the products, which comes to about Rs.15 lakhs. In view of the tests laid down in *Rookes* and *Cassell*, the present is not a case for award of punitive damages.

24. The Defendants' conduct has been far from bonafide. The manner in which misleading statements have been made and a false affidavit has been filed before the trademark registry also calls for the award of exemplary costs, as the trademark authority is a quasi-judicial authority and any party filing an affidavit before the said authority should do so with a complete sense of responsibility. Under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018, actual costs can be awarded to the party. The cost sheet has been placed on record by the Plaintiff. This Court is of the opinion that costs of Rs. 10 lakhs are liable to be imposed upon the Defendants. Half of the said sum would be paid to the Plaintiff and the other half shall be deposited in favour of the 'Controller General of Patents, Designs and Trade marks'. The amount of Rs. 5 lakhs shall be retained in a fund by the Controller General and shall be utilised for providing legal assistance for those trade mark applicants and patent applicants who require legal aid or assistance for paying official fees or other fees.

25. The suit is thus decreed for damages of Rs. 15,00,000/- and costs of

Rs. 10,00,000/-. Out of the cost of Rs.10,00,000/-, Rs.5,00,000/- would be payable to the Plaintiffs. Remaining amount of Rs.5,00,000/- shall be deposited with the Controller General of Patents, Designs and Trademarks. Thus the Plaintiffs are entitled to a sum of Rs.20,00,000/- towards general damages and costs.

26. The decree of delivery up is also granted to the Plaintiffs, directing the Defendants to destroy all the packagings, cartons, publicity material etc. bearing the mark 'IKEA' in the presence of the representative of the Plaintiffs. All the material bearing the mark 'IKEA' shall be handed over to the Plaintiffs. However, if the auto parts themselves, which are packed do not bear the mark 'IKEA', the same shall be released to the Defendants, and only the packaging cartons and printed materials shall be delivered up to the Plaintiffs. The Defendants are permitted to dispose of the auto parts themselves, without using the mark IKEA in respect of the said products.

27. Suit is decreed. Decree sheet be drawn in the above terms. All pending IAs also stand disposed of.

28. The payment in favour of the 'Controller General of Patents, Designs and Trade marks' to be made within 8 weeks from today.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 7, 2018

Rekha