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

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**FAO 204/2018 & C.M.Nos.18709-11/2018**

M/S STP TLD

..... Appellant

Through: Mr. Gaurav Beri and Mr. Jenis  
Fancis, Advocates.

Versus

RAFI BROTHERS & ORS

..... Respondents

Through: Mr. Mobin Akhtar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**25.05.2018**

The learned counsel for the respondents submits that the respondent No. 1 is a *bona fide* purchaser of products from M/s Arihant Sales Corporation - respondents No. 2 to 4 on the basis of their communications dated 30.09.2014 and 21.01.2017. In each of these communications, the respondents have represented themselves to be the authorized stockists and dealers of Shalimar Tar Products Limited. These products include water proofing material, which was used on the roof of the building, which had to be repaired. The products were purchased by respondent No. 1 from respondent No.2 and if the latter had supplied any product which infringed the trademark of the appellant, the cause of action would lie against respondent No. 2 and not against respondent No.1.

The appellant-plaintiff has averred in para 21 of the plaint as under:-

*“21. On further investigation, the Plaintiff found that the*

*Defendant no.5 had engaged the Defendant no.1 on the belief that the Defendant no.1 was using genuine Plaintiffs (STP) material which was purchased from the Defendant no.2. Further the Defendant no.5 was misled into believing that the Defendant no.2 are the authorized dealer of the Plaintiff.”*

The learned counsel for respondent No.1/defendant No.1 states that the latter is only a consumer and not a manufacturer or trader in the goods. He has purchased the goods from respondent No.2 on his aforementioned representation of being an authorized dealer of the appellant's products. Therefore, for any doubt about the quality of the product only the seller of the goods would be liable and not the consumer. He submits that insofar as respondent No.1 is an innocent consumer, he cannot be held liable for any action under the Intellectual Property Laws; therefore, no case of passing-off is made out against him and there is no error in the impugned order.

The impugned order has reasoned as under:-

*“4.6 In the facts indicated above, it is apparently that the defendant no.1 who is in the category of aggrieved persons for the inaction and/or non-action by the plaintiff to curtail the infringing activities; plaintiff has failed to keep check and balance on its authorised dealers/ representatives to sell the duplicate/ inferior spurious products by misrepresentations and thereby cheating the ordinary customers. It is also clear from the records that as soon as the inferior quality of the good came to the applicant, all the necessary action including informing the plaintiff was taken by him. No malafides can be attributed to the applicant.*

*4.7 The case of the applicant / D-1 is also covered under the provision of **Section 30 (a) & (b) Trade Mark Act 1999** 'When the goods bearing a registered trade mark are lawfully*

*acquired and sold in the market or otherwise dealing in those goods by that person or anyone else claiming under or through him is not infringement when assigned to some other person after acquisition of those goods or the goods having been put in the market by the proprietor or with his consent'.*

*4.8 In light of the facts and provision of law discussed above I am of the considered opinion that since D-1 is not the manufacturer, nor the seller nor the distributor, therefore, D-1 is neither a necessary nor a proper party to the present dispute. The status of D-1 remain as a customer/ consumer. At best he could be a star witness to the case of the plaintiff. The applications accordingly stands allowed.”*

In view of the preceding discussion, the Court is of the view that insofar as the consumer states that he has purchased the product from M/s Arihant Sales Corporation and annexed documents in support of the case supplied by the latter and used the product in the repair work of the building, a passing-off action would not lie against an innocent consumer. If any, an action could be pursued against the manufacturer and trader of the goods.

The Court is not persuaded by the arguments of the appellant. No error is found in the impugned order. The appeal is without merit. It is dismissed. The pending applications also stand dismissed.

**NAJMI WAZIRI, J.**

**MAY 25, 2018**

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