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

+ **CS(COMM) 843/2016**

**HSIL LTD**

..... Plaintiff

Through: Mr. Manav Gupta, Ms. Prabhsahay  
Kaur, Ms. Esha Dutta & Mr. Sahil  
Garg, Advs.

Versus

**MULIA BROTHERS AND ORS**

..... Defendants

Through: Mr. Gagan Gupta, Adv.  
Ms. Meera Kaura Patel, Adv. for  
Non-applicant / Contemnor No.6&7.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**26.02.2018**

1. The counsel for the plaintiff states that this suit is otherwise covered by *HSIL Ltd. Vs. Imperial Ceramic* 2018 SCC OnLine 7185, returning the plaint therein but an application of the plaintiff under Order XXXIX Rule 2A of the CPC is pending consideration. He contends that the same be considered.

2. The counsel for the plaintiff draws attention to the order dated 18<sup>th</sup> July, 2016 vide which the five defendants in the suit viz. i) Mulia Brothers, ii) Kirit Bhai, iii) Kiran Bhai, iv) Anil Bhai, and, v) Prashant Bhai were restrained from using the mark 'HINDUSTAN VITREOUS' or any other mark which is deceptively similar to the plaintiff's trade mark 'H VITREOUS' or 'HINDUSTAN' in respect of sanitaryware products and Local Commissioner appointed to visit the premises of the defendants

without prior notice to them and to make an inventory, not only of goods bearing the impugned trade mark but also of Stock Register as well as Sales Register and Account Books lying in the premises of the defendants and to take into custody the said material and to seal the same and to return the same to the defendants on Superdari.

3. Attention is next drawn to the following paragraphs of the report dated 9<sup>th</sup> August, 2016 of the Commissioner:

“7. That as per the directions of this Hon’ble court, the account books, sales registers and stock registers were demanded from defendant no.2, Mr. Kirit Bhai. It was stated by him that he will not be able to provide the same as he does not have the keys of the cupboard in which the same are kept. The same were not made available by him to me. Hence, the same could neither be inspected, nor signed on the first and last page.

9. That around the time we were going to leave the premises, certain unknown persons approached me and represented themselves to be members of some Union formed by the manufacturers and factory owners in the area. Though peaceful, they argued for a long time regarding sealing of the goods. They were shown the court order and told to make their submissions before this Hon’ble court. They attempted to offer inducements for facilitation. They were told not to interfere in the matter and we left the premises of the defendants at 6:25 PM.”

4. The aforesaid pleas do not amount to violation of the order under Order XXXIX Rules 1 &2 or amount to interference by the defendants in the Commission issued by this Court.

5. The application under Order XXXIX Rule 2A of the CPC, besides against defendant no.2, is also directed against Ramjibhai Maru and Kathubhai Vaskurbhai Dhandhal, being the President and Vice-President respectively of Panchal Ceramic Association Vikas Trust i.e. the association mentioned in para no.9 of the report aforesaid of the Commissioner.

6. The counsel for the said Ramjibhai Maru and Kathubhai Vaskurbhai Dhandhal states that application under Order XXXIX Rule 2A of the CPC does not lie against them as the order was not directed against them.

7. I have already hereinabove observed that the application on the averments aforesaid does not lie under Order XXXIX Rule 2A of the CPC. However, this Court is certainly entitled to proceed against persons who interfere with the process of the Court and which would include the Commission issued by this Court.

8. Thus there is no merit in the contention of the counsel for Ramjibhai Maru and Kathubhai Vaskurbhai Dhandhal of the application being not maintainable against them. Merely because the application has been filed citing a wrong provision of law, would not come in the way of this Court taking action which it is otherwise empowered to take.

9. The counsel for the defendants states that the account books were not available on the date of Commission and for which reason could not be shown to the Commissioner.

10. I have perused the order dated 18<sup>th</sup> July, 2016 appointing the Commission and do not find the same to contain any direction to the defendants to, on the asking of the Commissioner, produce the account books. The order is for the Local Commissioner to make an inventory of all account books “lying in the respective premises”. Thus, it cannot be said that the defendant no.2 is in any violation.

11. As far as the report of the Commissioner with respect to “certain unknown persons ..... represented themselves to be members of some Union formed by the manufacturers and factory owners in the area” is concerned, the counsel for Ramjibhai Maru and Kathubha Vaskurbhai Dhandhal states that they are 83 and 65 years old respectively and had resigned from the office of the Presidentship and Vice-Presidentship of Panchal Ceramic Association Vikas Trust on 18<sup>th</sup> November, 2013 and the plaintiff appears to have named the said persons on the basis of website of the said Association which has not been changed since 2004 as is evident from the document filed by the plaintiff with the rejoinder.

12. In the aforesaid facts, no case for this Court initiating any proceedings against the said two persons also is made out.

13. Accordingly, in terms of *HSIL Ltd.* supra the plaint in this suit also is ordered to be returned to the plaintiff.

14. The suit is disposed of.
15. The date already given of 7<sup>th</sup> March, 2018 before the Joint Registrar is cancelled.

**FEBRUARY 26, 2018**  
'gsr'..

**RAJIV SAHAI ENDLAW, J**