

\$~3 to 5

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

CS(COMM) 1384/2016 & IAs No.13755/2017 (u/O VI R-17 CPC) &
13756/2017 (u/O XI R-1(5) CPC)

HSIL LIMITED Plaintiff

Through: Mr. Manav Gupta, Ms. Prabhsahay
Kaur, Ms. Esha Dutta, Mr. Sahil Garg
and Mr. Devang Kumar, Adv.

Versus

STAR CERAMIC INDUSTRIES AND ANR Defendants

Through: Mr. Atul Pandey, Adv. for Mr. Pawan
Kumar Mittal, Adv.

AND

CS(COMM) 1387/2016 & IAs No.13763/2017 (u/O VI R-17 CPC) &
13762/2017 (u/O XI R-1(5) CPC)

HSIL LIMITED Plaintiff

Through: Mr. Manav Gupta, Ms. Prabhsahay
Kaur, Ms. Esha Dutta, Mr. Sahil Garg
and Mr. Devang Kumar, Adv.

Versus

HINDUSTAN CERAMIC AND ORS Defendants

Through: Dr. Maurya Vijay Chandra, Adv. for
D-1&3.
Mr. Atul Pandey, Adv. for Mr. Pawan
Kumar Mittal, Adv. for D-2.

AND

+ CS(COMM) 1388/2016 & IAs No.14496/2017 (u/O VI R-17 CPC) &
13757/2017 (u/O XI R-1(5) CPC)

HSIL LIMITED Plaintiff

Through: Mr. Manav Gupta, Ms. Prabhsahay
Kaur, Ms. Esha Dutta, Mr. Sahil Garg
and Mr. Devang Kumar, Adv.

Versus

ACCORD CERAMIC AND ANR Defendants

Page 1 of 4

Through: Mr. Atul Pandey, Adv. for Mr. Pawan
Kumar Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

30.11.2018

%

1. The counsel for both the defendants in CS(COMM) No.1384/2016, the counsel for defendants No.1&3 as well as the counsel for the defendant No.2 in CS(COMM) No.1387/2016 and the counsel for both the defendants in CS(COMM) No.1388/2016 state that the defendants have no objection to suffering a decree for permanent injunction as claimed by the plaintiff in these suits. The counsels however state that when the parties were referred to mediation, settlement could not be arrived at because the plaintiff also wanted the defendants to pay costs of the suit and for which the defendants were not willing.
2. The counsel for the plaintiff states that the Commissioners appointed in CS(COMM) 1384/2016 & CS(COMM) 1388/2016 all the three suits reported seizure of infringing goods from defendants in each of the suits and with respect to defendants in CS(COMM) No.1387/2016, it has also been reported that there was an attempt of concealment.
3. The counsel for the defendants No.1&3 in CS(COMM) No.1387/2016 denies that there was any seizure of infringing goods.
4. I have perused the report of the Commissioner in CS(COMM) No.1387/2016 and find seizure reported to be only of three pieces of infringing goods, though the Commissioner has suggested attempts at concealment.

5. The counsel for the plaintiff states that contempt petitions in CS(COMM) No.1387/2016 & CS(COMM) No.1388/2016 are also pending.

6. The counsel for the plaintiff thus contends that the plaintiff is entitled to costs of the suit from the defendants.

7. Since the only dispute between the parties is as to costs, the need to frame issues in the suit or to proceed further with the suit does not arise, as for awarding or not awarding or determining the quantum of costs, the Court has to pass the order and the consent of the parties is not required.

8. Accordingly,

(I) A decree is passed in favour of the plaintiff and jointly and severally against the two defendants, namely Star Ceramic Industries and Irfan Minapara, in CS(COMM) No.1384/2016, (i) of permanent injunction in terms of prayer paragraphs (a) & (b) of the plaint dated 3rd October, 2016; (ii) of delivery of infringing goods seized by the Commissioner in terms of prayer paragraph (d) of the plaint dated 3rd October, 2016; and, (iii) of recovery of costs equivalent to court fees paid on the suit, the fee paid to the Commissioner in terms of order of the Court and professional fee assessed at Rs.1.5 lakhs.

(II) A decree is also passed in favour of the plaintiff and jointly and severally against the three defendants, namely Hindustan Ceramic, Indian Ceramic and Kalpesh Prajapati, in CS(COMM) No.1387/2016, (i) of permanent injunction in terms of prayer paragraphs (a) & (b) of the plaint dated 3rd October, 2016; (ii) of delivery of infringing goods seized by the Commissioner in terms of prayer paragraph (d) of the plaint dated 3rd October, 2016; and, (iii) of recovery of costs

equivalent to court fees paid on the suit, the fee paid to the Commissioner in terms of order of the Court and professional fee assessed at Rs.1.5 lakhs.

(III) A decree is passed in favour of the plaintiff and jointly and severally against the two defendants, namely Accord Ceramic and Chatrapal Singh, in CS(COMM) No.1388/2016, (i) of permanent injunction in terms of prayer paragraphs (a) & (b) of the plaint dated 3rd October, 2016; (ii) of delivery of infringing goods seized by the Commissioner in terms of prayer paragraph (d) of the plaint dated 3rd October, 2016; and, (iii) of recovery of costs equivalent to court fees paid on the suit, the fee paid to the Commissioner in terms of order of the Court and professional fee assessed at Rs.1.5 lakhs.

9. Decree for delivery in each of the suits be executed, by the representative of the plaintiff visiting the premises of the defendants within fifteen days of today and by way of either destruction of the infringing goods or obliteration/removal from the infringing goods of the impugned mark, in the presence of the representative of the plaintiff.

10. The *Superdar*, in whose *superdari* the seized goods were kept, is directed to make available the seized goods on the day of the visit of the representative of the plaintiff for compliance of this order.

11. Decree sheets be drawn up.

12. With the aforesaid, the contempt petitions are also discharged.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 30, 2018

‘bs’..