

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1404/2016 & IAs No.12640/2016 (u/O XXXIX R-1&2 CPC) & 1185/2017 (u/O XXXIX R-2A CPC)

KENT RO SYSTEMS LTD & ANR Plaintiffs

Through: Ms. Rajeshwari H. and Mr. Kumar
Chitranshu, Advs.

Versus

BALAJI TRADERS & ORS Defendants

Through: Mr. Mohan Vidhani and Mr. Ashish
Singh, Advs. for D-3.
Mr. Sudeep Chatterjee and Ms.
Surbhi Singh, Advs. for D-15.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

12.12.2018

1. The plaintiffs have instituted this suit for permanent injunction restraining infringement of design and for ancillary reliefs.

2. The suit was entertained and vide ad-interim order dated 7th October, 2016, the defendants No.1 to 14 namely (i) Balaji Traders; (ii) R.K. Enterprises; (iii) SKS Aqua Appliances; (iv) Samta Electronics World; (v) D.S.M. Appliances; (vi) Aqua Super RO Sales & Services; (vii) Shree Nakoda Sales; (viii) Smart Enterprises; (ix) Super Tech Print & Printers; (x) Trade Deal Kunda; (xi) Earth Agriculture; (xii) Sunshine Neer Solutions; (xiii) Best of Deal; and, (xiv) Sagar Home Appliances, were restrained from infringing the registered design Nos.219309, 224813, 252225, 261875 and

220727 of the plaintiffs and the defendant No.15, namely Jasper Infotech Pvt. Ltd., was directed to take immediate steps to take down/block all URLs containing advertisements of water purifiers infringing the plaintiffs' registered design Nos.224813, 219309, 224813, 252225 and 230893. The said interim order has continued till now.

3. The suit is ripe for framing of issues.

4. The counsel for the plaintiffs states, (a) that the defendants No.1,2, 4 to 9 & 12 to 14, despite service failed to file their written statement and vide order dated 9th January, 2018, their right to file written statement was closed; (b) that the defendant No.10&11 also failed to file written statements despite service and vide orders dated 27th April, 2018 and 20th March, 2018 respectively the right of the defendant No.10&11 to file written statement was also closed; (c) that now only the defendants No.3 & 15 are contesting the suit; and, (d) that the suit, insofar as against the defendants who have failed to file written statement, can be decreed for permanent injunction forthwith in terms of ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC OnLine Del 508 and the plaintiffs in such a case will not press for ancillary reliefs against the said defendants.

5. The defendants No.1,2, 4 to 9 & 12 to 14 are proceeded against *ex-parte*.

6. The counsel for the defendant No.15 states that the suit as filed is not maintainable being a composite suit for infringement of design as well as passing off and which in ***Mohan Lal, Proprietor of Mourya Industries Vs. Sona Paint and Hardwares*** (2013) 200 DLT 322 (FB) has been held to be not maintainable. Attention in this regard is drawn to prayer paragraphs (b)

& (d) of the plaint 4th October, 2016.

7. The counsel for the plaintiffs states that the suit is only for infringement and not for passing off.

8. Though there is some ambiguity in the prayer clauses in the plaint pointed out by the counsel for the defendant No.15 but binding the plaintiffs to the statement of the counsel made today, the suit is not liable to be dismissed on the said ground.

9. The counsel for the defendant No.3, on enquiry states that though the defendant No.3 is also agreeable to suffering a decree for permanent injunction, if all other reliefs are given up but the plaintiffs though have filed a suit only for restraining infringement of design Nos.219309, 224813, 252225, 225523 and 230893 but have filed certificates of registration only of 219309, 224813 and 252225 and have not filed certificate of registration of design Nos.225523 and 230893, within the time prescribed therefor.

10. The counsel for the plaintiffs states that the plaintiffs are agreeable to a decree for permanent injunction with respect to design Nos.219309, 224813 and 252225 only.

11. Accordingly, a decree is passed, of permanent injunction, in favour of the plaintiffs and against the defendants No.1 to 14 restraining the said defendants from infringing design Nos.219309, 224813 and 252225, leaving the parties to bear their own costs.

12. Decree sheet be drawn up.

13. Needles to state that with respect to other designs, the plaintiffs shall have liberty to sue again.

14. The counsel for the plaintiffs and the counsel for the defendant No.15 have been heard as to the nature of the relief if any to be granted against defendant No.15.

15. It is agreed, that the suit insofar as against the defendant No.15 is concerned, be decreed, recording that the defendant No.15, within 48-72 hours of the plaintiffs communicating to the defendant No.15 of violation if any by any of the defendants No.1 to 14 of the decree for permanent injunction today passed against them, shall remove the URL on the platform of the defendant No.15 with respect to which such communication has been addressed by the plaintiffs.

16. The counsel for the defendant No.15 to, within three days, supply to the counsel for the plaintiffs, the address for such communication.

17. It is ordered accordingly.

18. Decree sheet be prepared, leaving the parties to bear their own costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 12, 2018

‘bs’..