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

% *Date of Judgment: 01st May, 2019*

+ **FAO(OS) (COMM) 77/2019, C.M.16043/2019**

JATIN PARIKH Appellant

Through: **Mr.Rahul Chitnis and Mr.Atul
Mehandru, Advocates**

versus

WHATMAN INTERNATIONAL LTD & ORS. Respondents

Through: **Mr.Pravin Anand, Mr.Saif Khan and
Mr.Shobhit Agrawal, Advocates for
R-1.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 01.02.2019 passed on an application being I.A.5235/2018 filed by the plaintiff (respondent herein) under the provisions of Order XXXIX Rule 2A of the Code of Civil Procedure (CPC). The defendants in the suit including appellant, who was arrayed as defendant no.4 in the suit, stand convicted. The matter stands adjourned by the learned Single Judge for 02.05.2019 for hearing on the punishment to be awarded.
2. The present appeal has been instituted by the appellant, who was defendant no.4 in the suit.

3. Learned counsel for the appellant submits that the learned Single Judge has completely lost track of the fact that defendant no.4 carried on business in the name and style of M/s. Nimisha Trading Company engaged in the business of manufacturing, marketing, advertising etc., of filter paper under the trade mark LABSMAN. He submitted that defendant No. 4 has nothing to do with the business of M/s Vidhi Traders, which is a sole proprietorship concern of Mr.Rakesh Gandhi. He contends that the appellant has not in any way violated the order dated 23.05.2014. In fact, according to him the respondent who was a plaintiff in the suit, had set up their entire case against the other defendants. According to the learned counsel, there is no specific allegation or averment made in the application filed under Order XXXIX Rule 2A of CPC against the appellant (defendant no.4 in the suit). It is contended that the plaintiff had made a general averment that the defendants are related to each other and they have acted in concert. Counsel further submits that while the learned Single Judge took into consideration the fact that local commissioners were appointed, premises of the defendants were raided and goods were found, but lost track of the fact that the plaintiff did not seek appointment of any local commissioner with respect to the premises of the appellant (defendant no.4 in the suit). Counsel for the appellant also submits that during the pendency of the matter, the other defendants (not appellant) were directed to remain present in the Court and their statements were recorded, which have been extracted in the impugned order. It is on the basis of these statements, that the learned Single Judge concluded that despite the statements before the Court, the defendants showed scant

regard to the orders passed by the Court. Learned counsels submits that this yardstick could not be applied to the appellant as his statement was never recorded and so there was no question of his having disregarded any order of the Court. Additionally, the counsel contends that a composite reading of the application filed under Order XXXIX Rule 2A CPC would leave no room for doubt that even as per the plaintiff (respondent No. 1 herein), defendant no.4 did not violate any order much less the order dated 23.05.2014 of which violation is alleged. Counsel submits that to seek relief under Order XXXIX Rule 2A CPC, it was mandatory for the applicant to show precisely as to which of the alleged contemnors had committed contempt and in what manner the order was violated. A general statement to the effect that the parties acted in concert and that they are related to each other cannot be a ground by itself to invoke the stringent provisions of Order XXXIX Rule 2A CPC and Contempt of Court Act, 1971.

4. Mr.Pravin Anand, learned counsel appearing for the respondent, submits that the stand of the appellant that he has nothing to do with the business of M/s Vidhi Traders is completely false and even his claim that he is at best a mentor of the said firm is incorrect. He submits that it is undisputed that the parties are related to each other. He submits that this has been so recorded even in the FIRs, which have been earlier registered against the appellant. According to Mr. Anand, the appellant is not a mere mentor, as claimed by him but is in fact, the kingpin and has played an active role in the business of M/s. Vidhi Traders. He submits that the role of the appellant stands established by a bare look at the website of M/s. Vidhi Traders and additionally submits that even

today if the website is seen, the name of the appellant appears as, “contact person” for M/s. Vidhi Traders. Hence it is argued that this is enough proof that the appellant has not come before the court with clean hands and has not disclosed his true connection with M/s Vidhi Traders. Reliance is also placed by Mr. Anand on the written statement that was filed in the suit to argue that a common written statement had been filed by the defendants and even the counsel engaged to represent them all was one counsel. Therefore, for the appellant to claim that he had no connection in the transactions concerned, and that he was not guilty of violating the court order is absolutely incorrect. It is submitted that the appellant cannot escape the liability and being guilty of contempt would have to suffer the punishment for a willful violation of a court order.

5. We have heard the learned counsel for the parties and considered their rival submissions.
6. The learned Single Judge in the impugned judgment has taken note of the fact that the plaintiff having learnt that the defendants were violating the interim injunction order dated 23.05.2014, lodged an FIR No. 8 of 2018 and two premises i.e. (1) Sanghvi Scientific Corporation located at 113, Link Street, Gulal Wadi, Paidhuni (W), Mumbai and (2) Shri Maruti Chem Enterprise Private Limited located at B-1, Om Shiv Kripa Building, Opposite Lakshmi Narayan Temple, Mathuradas Road, Kandivali West, Mumbai, were raided. The order also extracts the addresses where the raids were conducted. The learned Single Judge has also taken note of the fact that from the above premises, filter paper bearing the mark WHATMAN was recovered by the Police. M/s.

Maruti Chem Enterprise Pvt. Ltd. – defendant No. 7 was promoted by Mr. Paresh Mehta’s wife, Mrs. Jagruti Mehta and his son Mr. Mohit Mehta. The premises of M/s. Maruti Chem is owned by Mr. Paresh Mehta.

7. The learned Single Judge has also taken note of the fact that defendants are habitual infringers as even in the past in the year 1993, two complaints were filed before the ACMM, Esplanade, Bombay, being case Nos. 655/S/1993 and 656/S/1993. In those proceedings, undertakings were given by Mr. Paresh Mehta, Mr. Bharat Patel and Mr. Rajesh Patel that they would not *“manufacture, import, export, store, distribute, sell or offer for sale any products including filter paper with the mark WHATMAN or any other mark or work/get up or design containing the mark WHATMAN or any other mark or work deceptively or remotely similar to the trade mark, get up, design and overall trade dress or the WHATMAN product packaging.”*
8. The learned Single Judge has also taken note of the fact that an FIR No. II-33/2005 was lodged on 30.12.2005 against defendant No. 4/appellant, Mr. Jatin Parekh. Taking note of the past, the learned Single Judge noted that despite the criminal proceedings, the defendants continued their infringing activities, which led to the filing of the suit. The learned Single Judge has taken note of the Panchnama dated 07.03.2018 which records that the police party visited the premises of defendant No. 8 and 40 boxes of WHATMAN paper were seized. The premises of defendant No. 7 were also raided, where Mr. Mohit Mehta, defendant No. 3, was present. On a search of the premises, 20 boxes of WHATMAN paper were seized.

9. In para 26 of the impugned order, the learned Single Judge has noted that considering the allegation in the contempt on 10.08.2018, Mr. Paresh Mehta, Mr. Bharat Patel and Mr. Mohit Mehta were directed to appear before the Court for recording of their statements. On the said date, interim order dated 23.05.2014 was extended qua all the defendants including defendant No. 7 and 8, who were impleaded. On 04.10.2018, statements of Mr. Paresh Mehta, Mr. Bharat Patel and Mr. Mohit Mehta were recorded. Thereafter on 25.10.2018, statement of Mr. Ketan Ramnik Lal Sanghvi, defendant No. 8, was also recorded. In fact, in para 28, the learned Single Judge has recorded that on 25.10.2018, the learned counsel for the parties submitted that no oral evidence would be required in the matter. The counsel for the defendants, in fact, stated that the defendants were willing to suffer a permanent injunction.
10. Insofar as the role of the appellant/defendant No. 4 is concerned, the learned Single Judge has noted in para 49 that he had made misleading, incorrect and false statements. He was the main person running the business of Vidhi Traders, though he completely denied the same in his written statement. In para 50, the learned Single Judge has extracted a portion from the website of Vidhi Traders showing that on the website itself, it was claimed that Mr. Jatin Parikh was the mentor of Vidhi Traders. Despite noting the stand of defendant No. 4 in his written statement that he was not selling any filter paper under the mark SUN, LABSMAN and U-CHEM, the Single Judge concluded that the website of Vidhi Traders promotes the filter paper brands LABSMAN & U-CHEM and therefore, defendant No. 4 has made false statements on

affidavit of denial of these sales.

11. Again in para 66 of the judgment, the Single Judge notes that defendant No. 4 has made false statements before Court inasmuch as he is clearly connected with Vidhi Traders. The learned Single Judge relying on the reports of the Local Commissioner, the seizure reports and the statements made by the defendants in the Court came to a conclusion that all the defendants worked in a concert and violated the orders of the Court as well as made false statements and thus held defendants Nos. 1 to 5 and 7 to 8 guilty of contempt.
12. The short question which arises for our consideration is as to whether there is any specific allegation made by the plaintiff/respondent regarding violation of the interim order by defendant No. 4, the appellant herein.
13. We have carefully examined the application made by the respondent under Order XXXIX Rule 2A of CPC.
14. Reading of this application would show that besides general allegations, no specific allegation has been made against defendant No. 4, the appellant herein. The application is general in nature and reads that the plaintiff received information from market sources that defendants in concert with each other were still manufacturing, selling and/or offering for sale counterfeit waterman filter papers of different grades in violation of the ad interim injunction order dated 23.05.2014.
15. A complaint was made to the police on 07.03.2018, FIR No. 8/2018 was lodged. Two premises namely (1) Sanghvi Scientific Corporation located at 113, Link Street Gulal Wadi, Paidhuni (W), Mumbai and (2) Shri Maruti Chem Enterprise Private Limited located at B-1, Om

Shiv Kripa Building, Opposite Lakshmi Narayan Temple, Mathuradas Road, Kandivali West, Mumbai, were raided. Counterfeit products were recovered from the premises as detailed below:

Sr.no.	Names and addresses of the shops raided	Particulars of the confiscated goods
1.	Sanghvi Scientific Corporation located at 113, Link Street Gulal Wadi, Paidhuni (W), Mumbai	Duplicate products of WIPRO GE Healthcare Pvt. Ltd., under the brand 'Whatman' Cat No.1001 110 x 10 items, 1440 110 x 10 items 1441 110 x 10 items 1442 110 x 10 items = 40 items of Whatman filter paper of total value Rs. 90, 100/-.
2.	Shri Maruti Chem Enterprise Private Limited located at B-1, Om Shiv Kripa Building, Opposite Lakshmi Narayan Temple, Mathuradas Road, Kandivali West, Mumbai	Duplicate products of WIPRO GE Healthcare Pvt. Ltd., under the brand Whatman Cat No.1001 125 x 10 Items, 40 Cat No. 1440 125 x 05 Items, 41 Cat No. 1441 125 x 05 Items, in this way in total 20 items of Whatman filter paper worth in total Rs. 36,400 have been confiscated

16. A copy of the FIR has been filed. In the column relating to the 'details of known accused persons', two entities have been named, (1) Ketan Ramniklal Sanghvi, age 52 years Occu: Business, 403, IV Floor, A/2, Safire Nilkanth Regent, Pantnagar, MIG Co-operative Housing Society, Ghatkopar, Mumbai, 75. (2) Mohit Paresh Mehta, Age 30 years Occ: Business r/o 4/302, Sangeeta Apartment, Kandivali (W), Mumbai. A complaint dated 7.3.2018 was filed by one Shri Kashyap, authorized representative, WIPRO, alleging unauthorized copying of the WHATMAN filter paper and sale of the goods as well. In the complaint again, the two names were mentioned viz. (1) Ketan Ramniklal

Sanghvi and (2) Mohit Paresh Mehta. Thus, we find that neither in the complaint nor in the FIR defendant No. 4 has been named as an accused person.

17. As far as the role of defendant No. 4/appellant is concerned, the same has been discussed in paras 49, 50 and 66 by the learned Single Judge and we quote the relevant paras as under:

“49. Mr. Jatin Parekh, Defendant No.4, has also made completely misleading, incorrect and false statements. He is the main person running the business under the name Vidhi Traders. However, in his written statement he, unabashedly denied the same. The extracts from his written statement are set out herein below: -

“17...It is denied that Defendant No. 4 is carrying on business through an entity namely “Vidhi Traders as alleged and/or at the address as given in the para under reply. ...

20..e. That the contents of the para under reply are denied. The defendant No. 4 does not operate any business under the name and style of Vidhi Traders.”

50. A perusal of the print out from the website of Vidhi Traders www.vidhitraders.in at page 63 clearly shows that the website itself claims that Mr. Jatin Parekh is the mentor of the organization. The website of Vidhi Traders states as under: -

“Our mentors Mr. Jatin Parekh and Mr. Rakesh Gandhi support us as the major strength of our organization, who have enabled us to serve the clients in the best possible manner. They hold thorough knowledge of the domain, which proves to be helpful in our operations.

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66. Defendant No. 4, Mr. Jatin Parekh has also been completely cavalier and has brazenly made false statements before Court. He is clearly connected with Vidhi Traders as is evident from the website of Vidhi Traders itself.”

18. The learned Single Judge has been persuaded to hold against defendant No. 4 on the basis of the website of Vidhi Traders, where he is shown

as a mentor of the organization. What has further weighed with the learned Single Judge is that while on one hand defendant No. 4 denied selling filter paper under the mark WHATMAN, on the other hand he is actually the mentor of Vidhi Traders and therefore an incorrect and false statement was made before the Court on an affidavit. The learned Single Judge has also relied on the report of the Local Commissioner as well as the raids conducted on the premises, from where the goods were seized. However, we find from a perusal of the report of the Local Commissioner and which is also referred to by the learned Single Judge in paras 12 to 13 of the judgment, that the Local Commissioners had visited the premises of defendant No. 2, defendant No. 6, defendant No. 5 only. The addresses mentioned are the addresses of defendant Nos. 2, 5 and 6 and therefore, the Local Commissioners did not as a matter of fact visit the premise of defendant No. 4 and neither is there any report qua him.

19. Insofar as the observation that defendants had made a false statement, suffice it is to mention that the statement of defendant No. 4 was never recorded by the Court. In fact, the court had never even directed the presence of defendant No. 4 for recording of the statement. More importantly a perusal of the application under Order XXXIX Rule 2A CPC shows that there was no specific allegation against defendant No. 4 and the plaintiff in fact in its wisdom had not even sought the appointment of a Local Commissioner with respect to the premises of defendant No. 4. In these circumstances, we cannot agree with the learned Single Judge that defendant No. 4 was guilty of violation of the injunction order of the Court. In our view, the learned Single Judge has

overemphasized the name of defendant No. 4 being shown as a mentor on the site of Vidhi Traders. Merely because defendant No.4 had reflected himself as a mentor of Vidhi Traders, cannot be a reason to hold a person guilty of contempt, which has very serious and adverse consequences in law. We cannot lose sight of the fact that the appellant (Defendant No.4) was never directed to remain present for recording his statement; Local Commissioner was not appointed for visiting his premises; there was no averment against the appellants in the application under Order XXXIX Rule 2A CPC and nor was the appellant named in the FIR.

20. Resultantly, the present appeal is allowed. The order passed by the learned Single Judge in I.A.5235/2018 against the appellant/defendant No. 4 is set aside. We make it clear that we have not expressed our opinion on the merits of the matter. We also make it clear that any observation made by us is only for the purpose of deciding the appeal, which arises out of a matter under Order XXXIX Rule 2A as the scope for deciding an application under Order XXXIX Rule 2A read with Contempt of Courts Act is very narrow considering the consequences of such breach.
21. The appeal is disposed of in the above terms.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 01, 2019

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