

69

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 255/2018

SAMSUNG ELECTRONICS CO LTD & ANR Plaintiff

Through: Mr. Shobhit Agarwal, Advocate
with Mr. Ayush Sahay,
Advocate.

versus

LAKHAN A & ORS.

..... Defendants

Through Mr. Nishant Sharma, Proxy
counsel for defendant no.34 and
defendants no.8 and 21 are
exparte

%

Date of Decision: 28th February, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction, infringement of trademarks and copyrights, passing off, unfair competition, dilution, rendition of accounts, delivery up and recovery of damages etc.

2. In the plaint, it is stated that the plaintiffs are a part of Samsung Group of companies which is a South Korean multinational

70

conglomerate company established in Seoul, Korea under the house mark and trademark SAMSUNG. It is stated in the plaint that the plaintiff no.1 since its inception has grown to be one of the world's most reputed multinational conglomerates globally and has consistently maintained the number one position in the smart phone market since 2012.

3. It is averred in the plaint that the plaintiff no.1 is the registered proprietor of the trademarks SAMSUNG, SAMSUNG device/

SAMSUNG, SAMSUNG GALAXY S AND SAMSUNG GALAXY TAB. It is also averred that the plaintiff no.2 is the licensee of the SAMSUNG trademarks in India.

4. It is stated in the plaint that it came to the plaintiffs' knowledge that the defendants were unauthorisedly using the plaintiffs' SAMSUNG trademarks for and in relation to mobile phones, accessories and such allied goods.

5. It is stated in the plaint that the acts of the defendants amount to infringement of the plaintiffs' SAMSUNG trademarks, copyrights and passing off. It is stated that the plaintiffs are entitled to exclusive use of its SAMSUNG trademarks and any unauthorized use thereof amounts to a violation of the plaintiffs' statutory and common law rights.

6. Vide order dated 14th September, 2015, this court granted an *ex parte ad interim* injunction in favour of the plaintiffs and appointed Local Commissioners to visit the premises of the defendants on zone-wise basis. Accordingly, raids were conducted on the premises of the

71

defendants on 14th October, 2015 and large quantities of infringing goods were recovered from the said premises. The interim injunction dated 14th September, 2015 was confirmed vide order dated 25th October, 2017.

7. It is pertinent to mention that defendant no.8 has never entered appearance and no written statement has been filed by the said defendant.

8. The defendant no.21 had entered appearance and had also filed its written statement. However, the said defendant did not enter appearance on 19th December, 2017, 06th March, 2018, 23rd May, 2018, 19th September, 2018 and 15th November, 2018. Vide order dated 14th February, 2019, defendant nos.8 and 21, were proceeded *ex parte*.

9. In view of the undertakings given by defendant nos.1 to 7, 9 to 11, 12 to 20, 22 to 28 and 29 to 33, the present suit was decreed against the said defendants in accordance with prayers A(i), (ii), (iii) and (iv) of the plaint.

10. Today, learned counsel for defendant no.34 states that he has no objection if the present suit is decreed in accordance with prayers A(i), (ii), (iii) and (iv) of the plaint. He further states that the goods handed over to them on Superdari shall be handed over to an authorised representative of the plaintiffs for destruction purpose.

11. The statements/undertakings given by learned counsel for defendant no.34 are accepted by this Court and the said defendant is held bound by the same.

72✓

12. At this stage, learned counsel for the plaintiffs gives up prayers B, C, D and E of the prayer to the suit in respect of the remaining defendant nos.8 and 21. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

13. This Court is of the view that the present suit can be disposed of against defendant nos.8 and 21 without any further delay as the said defendants are not contesting the suit anymore. A Coordinate Bench of this Court in **Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd.**, 2013 SCC OnLine Del 508 has held as under:-

"I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

14. In the opinion of this Court, defendant no.8 has no real prospect of defending the plaintiffs claim, as it has neither entered appearance nor filed its written statement. Further, the defendant no.21 also has no prospect of defending the claim, as though it entered appearance and filed its written statement, it has not conducted admission denial and has now stopped appearing.

73

15. In fact, in paragraph 6 of the written statement the defendant no.21 had agreed to suffer a decree of permanent injunction in terms of Prayer A of the plaint. Moreover, the Local Commission conducted on the premises of defendant no.21 had also found several infringing products.

16. Further, the plaintiffs are the registered owners of the trade marks in question.

17. In view of the above, the present suit is decreed in favour of the plaintiffs and against the defendant nos.8, 21 and 34 in accordance with prayers A(i), (ii), (iii) and (iv) of the present plaint along with actual costs. Registry is directed to prepare a decree sheet accordingly.

18. With the aforesaid observations, present suit and pending application stand disposed of.


MANMOHAN, J

FEBRUARY 28, 2019

rs