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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 960/2018 & CrI. M.A. 42541/2019, IAs. 8018/2018, 16644/2018, 11248/2019, 17611/2019, 17612/2019 and 17613/2019

MR. ANIL RATHI & ORS.

..... Plaintiffs

Through: Mr.Sagar Chandra, Ms.Srijan Uppal,
Ms.Jyotsna Arora, Mr. R. K.
Rajwanshi and Mr.Amit Kumar
Sharma, Advs.

versus

RATNAKAR ISPAT INDIA PVT. LTD.

& ORS.

..... Defendants

Through: Mr.Asit Tewari, Adv. for D-1 with
Mr.Akhilesh Kumar, AR of D-1
Mr.Subhash Chawla, Adv for D-2, 3
& 7 to 10.
Ms.Pooja Dayal and Mr.Birender
Bhatt, Advs. for D-4, 5 & 6.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.12.2019

I.A. 17611/2019

1. This is an application under Order XI Rule 1(10) of the CPC1908 read with Section 16 (and its Schedule) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 filed by the defendant no.1 with the following prayer:

“The Defendant No. 1 most humbly pray that this Hon’ble Court be pleased to allow the Board Resolutions Dated 23-07-

2018 and Dated 04-11-2019 of the Defendant No. 1 to be taken on record and in that behalf be pleased to pass any other Order(s) under its inherent powers.”

2. Learned counsel for the plaintiffs has no objection if the prayer as in the application is granted. Accordingly, the Board Resolutions dated 23rd July, 2018 and 4th November, 2019 of the defendant no.1 are taken on record. The application is disposed of.

I.A. 17612/2019

3. This is an application under Section 151 of the CPC, 1908 for substitution of Authorized Representative filed by the defendant no.1 with the following prayer:-

“The Defendant No. 1 most humbly pray that this Hon’ble Court be pleased to substitute the previous Authorized Representative of the Defendant No.1 Company and in that behalf substitute Mr. Akhilesh Kumar Jha as a new Authorized Representative of the Defendant No. 1 Company and in that behalf be pleased to pass any other Order(s) under its inherent powers.”

4. Learned counsel for the plaintiffs has no objection if the Authorised Representative of the defendant no.1 is substituted by Mr.Akhilesh Kumar Jha as new Authorised Representative of defendant no.1. Ordered accordingly.

5. The application stands disposed of.

**CS(COMM) 960/2018, CrI. M.A. 42541/2019, IAs. 8018/2018,
16644/2018, 11248/2019 & 17613/2019**

6. Mr. Sagar Chandra, learned counsel for the plaintiffs, has drawn my attention to the written statement filed by the defendant no.1, more specifically para 15 which is a reply on merits to para 41 of the plaint, at page 209, which reads as under, to contend that in view of the stand, present suit can be disposed of. Even, the learned counsel for the defendant no.1 reiterates, on instruction from Mr.Akhilesh Kumar Jha, the said position.

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15. That the Contents of Para 41 of the Plaint are denied as wrong and incorrect. It is submitted that Defendant No.1 is manufacturing TMT Bars under its registered trade mark / brand name “RATNAKAR TMT 500”, which is not deceptively similar or same as that of mark “Rathi” as alleged by the Plaintiffs. It is denied that the Defendant No.1 has at any time used or is using any alleged trade name of “Rathi” or “Rathi Powertech” for the conduct and in relation to its business as alleged. All such allegations are totally false and incorrect and baseless. Please refer to submissions in the preceding Para's. It is submitted that since the Defendant No.1 has never used and is not using any such alleged trade name “Rathi” or “Rathi Powertech” for the conduct and in relation to its business activities in any manner whatsoever, the question of Defendant No.1 seeking any license or the lack of it from Defendant No.2 and 3 does not arise and is incorrect. All such contentions of the Plaintiffs are totally false, concocted, make belief, distorted, misconceived and without any basis. Therefore, any alleged reference by the Plaintiffs alleging that the Defendant No.1 ought to have a license from Defendant No.2 and 3 or the Plaintiffs / Defendants and any alleged reference of Defendant No.2 and 3 not having sought alleged consent of the Plaintiffs for allegedly giving any license to the Defendant No.1 is totally

distorted, incorrect, misconceived and based on mere assumptions, conjectures and surmises. It is further denied that there ought to be any trustee of the Plaintiffs on the board of Defendant No.1. It is submitted that the Plaintiffs is raising a false bogey of alleged license against the Defendant No.1, when neither the Defendant No. 1 is using any such alleged trade name "Rathi" or "Rathi Powertech", nor requires any license from the Plaintiffs for using its own registered trade mark "Ratnakar TMT 500". It is denied that the Defendant No. 1 has any trustee of the Plaintiffs on the board of its company. All such allegations are totally false, incorrect, misconceived, distorted and do not support case of the Plaintiffs."

7. Mr. Chandra has also drawn my attention to the reply on merits to para 3 of the plaint at page 41 of the written statement filed on behalf of the defendant nos. 2, 3 and 7 to 10, which reads as under, to contend that in view of the stand taken by the defendant nos.2, 3, and 7 to 10, the suit can be disposed of by taking their stand on record.

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3. That the contents of para, no.3 of the Plaint as stated are wrong, false and concocted and hence are denied. It is denied that the defendant no.1 is misusing the trade mark "RATHI" as alleged. It is denied that the defendants no. 2 and 3 have issued any license to the defendant no. 1 as falsely alleged, the false allegations are made without any basis and materials and also for ulterior motives to defame the defendants no. 2 and 3 the answering defendants are totally unaware as to who has issued license to defendant no. 1 and under what authority the defendant no. 1 is using this Trade mark "RATHI". It was duty of plaintiffs to have ascertained full facts before filling the present suit. No one is allowed to misuse the process of law by filling false Nad frivolous suit only on basis of his assumptions and presumptions, the suit as filed is thus not maintainable and same be dismissed with heavy exemplary costs as against the answering defendants 2, 3 and 7 to 10."

8. Learned counsels for the defendant nos.1, 2, 3, and 7 to 10 have no objection if the suit be disposed of in view of the stand taken by them, which have been reflected above.

9. Noting the submissions made by learned counsels for the parties and taking the stand, made by defendant no.1, 2, 3 and 7 to 10 in their written statement, on record, the suit is disposed of.

10. In view of the above order the pending applications are disposed of as such.

V. KAMESWAR RAO, J

DECEMBER 12, 2019/bh