

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

% **Date of decision: 20th February, 2019.**

+ **CS(COMM) 899/2016**

KENT RO SYSTEMS LTD & ANR **Plaintiffs**
Through: Ms. Rajeshwari H. with Mr. Kumar
Chitranshu, Adv.

Versus

NAVEEN MAHAJAN & ANR **Defendants**
Through: Mr. Abhai Pandey with Mr. Varun Sharma
& Mr. Gautam Kumar, Adv.

AND

+ **CS(COMM) 900/2016**

KENT RO SYSTEMS LTD & ANR **Plaintiffs**
Through: Ms. Rajeshwari H. with Mr. Kumar
Chitranshu, Adv.

Versus

NAVEEN MAHAJAN & ANR **Defendants**
Through: Mr. Abhai Pandey with Mr. Varun Sharma
& Mr. Gautam Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiffs instituted these two suits, against the same defendants, for permanent injunction restraining the defendants from infringing registered designs no.219309, 224813, 252225, 230893 & 262661 of the

plaintiff and from passing off their goods as those of the plaintiffs and for ancillary reliefs.

2. The suits were entertained and summons thereof and notices of the applications for interim injunction issued and vide *ex parte* order dated 22nd July, 2016 in CS(COMM) 900/2016, the defendants restrained from infringing the aforesaid designs of the plaintiffs.

3. The defendants, though filed written statements in both suits, but on 20th March, 2017 stated that they had no objection to the suits, insofar as the relief of permanent injunction, being allowed. On the said statement of the counsel for the defendants, a decree of permanent injunction was passed, in favour of the plaintiffs and against the defendants, in terms of prayer paragraph 48 (a) and (b) of plaint dated 19.07.2016 in CS(COMM) 899/2016 and in terms of prayer paragraph 44 (a) of plaint dated 16.07.2016 in CS(COMM) 900/2016.

4. The suits, thereafter continued only qua the claim of the plaintiffs for ancillary reliefs of rendition of accounts and recovery of damages.

5. Vide subsequent order dated 4th July, 2017, the following common issues were framed in two suits and the parties relegated to evidence:

- “1. Whether the plaintiff is entitled to a decree for rendition of account of profits earned by the defendants on account of sale of the infringing products?OPP
2. Whether the plaintiff is entitled to a decree for delivery by the defendants of the alleged counterfeit materials?OPP
3. Whether the plaintiff is entitled to a decree of damages, if so of what amount?OPP

4. *Whether the defendants have continued to pass off the goods of the defendants as goods of the plaintiff even after the order dated 22.07.2016, if so, its effect?OPP*
5. *Relief.”*

6. The plaintiffs have examined one witness; the defendants also have examined one witness, and closed their evidence. The suit is ripe for final hearing and the counsels have been heard.

7. The plaintiffs, in the affidavit by way of examination-in-chief of their sole witness, have proved nothing except repeating the contents of the plaint.

8. Though the counsel for the plaintiffs has drawn attention to paras 9 & 10 of the affidavit by way of examination-in-chief of the said witness but the deposition therein is with respect to the defendants, in spite of the decree for injunction, having continued to infringe the subject designs of the plaintiffs and having continued to pass off their goods as those of the plaintiffs and which could not have been the subject matter of the suit, after the decree for injunction had been passed. The violation, if any by the defendants of the decree for permanent injunction, could only have been the subject matter of execution of the said decree. The counsel for plaintiffs, on enquiry states that there was no application under Order XXXIX Rule 2A of the CPC also. The evidence with respect to violation by the defendants of the decree for permanent injunction, claimed to have been led by the plaintiffs, is beyond pleadings. The plaintiffs, on the issues framed, were required to lead evidence of infringement by the defendants, of prior to the institution of suit and till the time of order/decreed of interim/permanent injunction.

9. The plaintiffs have utterly failed to lead any such evidence and have not even examined any technical witness and the sole witness examined is the legal head of the plaintiffs and bare perusal of his cross-examination shows that he had no personal knowledge about the case.

10. Without the plaintiffs having proved violation of the registered designs of the plaintiffs and/or having proved that the designs of the product of the defendants were in infringement thereof, the question of the plaintiffs being entitled to the reliefs of rendition of accounts and/or recovery of damages and/or of delivery of infringing goods does not arise.

11. The plaintiffs, though sought trial on the said aspects, but have utterly failed to lead the evidence so much so that the sole witness has deposed of the infringement by the defendants on the basis of “advice received by him”. It is not even deposed as to who rendered such advice and why the witness accepted the advice.

12. The suit for the ancillary reliefs, on which alone the parties were relegated to evidence, thus has to fail due to the failure of the plaintiffs themselves and need to refer to the evidence of the defendants is not felt.

13. The counsel for the plaintiffs, at this stage, states that IA No.13373/2016 under Order XXXIX Rule 2A CPC was filed in CS(COMM) 900/2016 but herself states that same was disposed of on 17th February, 2017. A perusal of the order dated 17th February, 2017 in IA No.13373/2016 shows that the Court was satisfied that the defendants had not violated the interim order. The plaintiffs thereafter did not agitate the issue further.

14. Suffice it is to state that defendant No.1, being the Director of defendant No.2, examined as the sole witness of the defendants, has denied

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any infringement or passing off and the suit, insofar as for the ancillary relief, fails.

15. The counsel for the plaintiffs has pressed for costs.

16. The plaintiffs having not proved infringement/passing off and the defendants having at the outset only, without trial, consented to a decree for permanent injunction, the plaintiffs are not found entitled to any costs.

17. Counsel for the defendants presses for costs.

18. The plaintiffs having compelled the defendants to be relegated to evidence in spite of defendants having consented to a decree for permanent injunction, are liable for costs of the defendants and also for wasting the time of this Court for the last over one and a half years, when no technical witness of the plaintiffs to prove infringement of design, even was to be examined and only the legal head was to depose on the basis of advice received by him.

19. However, taking lenient view of the matter and cautioning the plaintiffs, I am this time refraining from burdening the plaintiffs with costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 20, 2019

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