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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ EX.P. 81/2017
FORD MOTOR COMPANY & ANR

..... Decree Holder

Represented by: Mr. Pravin Anand, Mr. Shrawan
Chopra, Mr. Vibhav Mittal, Mr.
Bobby Jain, Advs.

versus

MRS CR BORMAN & ANR

..... Judgement Debtor

Represented by: Mr. Chander M. Lall, Sr. Adv. with
Mr. Ankur Sangal, Ms. Sucheta Roy,
Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
04.12.2019

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1. By the present petition, the decree holder prays for execution of the decree dated 22nd April 2014 whereby defendants were prohibited from carrying out any fresh production under the impugned mark "FORD" and were directed to dispose of the residual stock of shoes within eighteen months from the date of order.
2. Decree holder in the suit being CS (OS) No. 1710 filed by the plaintiff sought permanent injunction restraining infringement the defendants from infringing the plaintiff's trademark, passing off the goods of defendant as that of the plaintiff, rendition of accounts of profits, delivery up, damages etc. The judgement debtors/ defendants filed an application under Order VII

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Rule 11 of CPC, which was allowed and the plaint was rejected. Thereafter the decree holders/ plaintiffs preferred an appeal before the Division Bench of this court being FAO (OS) No. 9/2008 whereby vide order dated 7th November 2008 the order of learned Single Judge was set aside directing that the suit be progressed from the stage immediately prior to the order of Learned Single Judge. The suit was decreed on 22nd April 2014 on the basis of undertaking given by the defendants and the trademark "FORD" of the decree holder was declared to be an extremely "well-known" mark amongst the members of the trade and public under Section 2(zg) of the Trademarks Act. The SLP being SLP (C) No. 3903 of 2009 preferred by the judgement debtors/ defendants against the order of the Division Bench was dismissed by the Supreme Court on 22nd January 2016.

3. The decree holders engaged an investigator in the month of June 2016 to ensure whether or not the judgment debtors were still manufacturing or selling goods under the impugned mark as the period of eighteen months mentioned in the decree had already expired. The investigator Nripendra Kashyap conducted investigation at Half & Half Co. and Half & Half Shoes both located in Kolkata and found in violation of order dated 22nd April 2014 Half & Half Co. were manufacturing ladies footwear under the mark "TEDFORD" and men's footwear under the name of "LEXFORT" whereas, Half & Half Shoes were manufacturing ladies footwear under the mark "TEDFORD" which marks were deceptively similar to the trademark "FORD" of the plaintiff. In this regard, the decree holders sent a legal notice dated 30th August 2016 through its legal representatives to the judgement debtors regarding the violation. In their reply dated 28th September 2018, the judgement debtors stated that they have duly complied with the order dated

22nd April 2014 and have not been using the mark "TEDFORD". Further, they also stated that judgement debtor No. 1 is no longer carrying on the business due to her age and has also surrendered her trade license and VAT registration certificate.

4. In the month of October 2016, the decree holders/ plaintiffs again engaged the investigator to determine whether judgement debtor No.1 was still the proprietor of judgement debtor No. 2 and whether the judgement debtors were carrying out business under the mark "TEDFORD". On conducting the investigation at Half & Half Co., the investigator found out Mr. Arup Roy Burman son of judgment debtor No.1 to be the owner of Half & Half Co./judgement debtor No. 2 and Half & Half Shoes both of which are associated entities and are managed by him along with his brother Mr. Atanu Roy Burman and his mother C.R. Burman, judgment debtor No.1. Further, Mr. Arup Roy Burman informed the investigator that initially they were manufacturing their products under the name "TEDFORD" and now they have stopped the same. However, 150 to 200 pairs of footwear kept in shop premises of Half and Half shoes came into notice of the investigator and upon enquiry, Mr. Arup Roy Burman informed that it was the old stock and they are clearing the same. Even, the business card shared by Mr. Arup Roy Burman reflected the use of trademark "FORD". Further on carrying out investigation at Half & Half Shoes, the investigator noticed around 30-40 pairs of footwear with the mark "TEDFORD" in the premises.

5. Through general internet search decree holders came to know that Half & Half shoes which is a sister concern of judgement debtor No. 2 is a private limited company and Anup Roy Burman and Mousumi Roy Burman are its directors. The said company's master data page on Ministry of

Corporate Affairs official website reflects the email id as ford_shoes@yahoo.co.in.

6. Affidavits have been filed by the sons of judgment debtor No.1 namely Arup Roy Burman and Anup Roy Burman who continued doing the business firstly in the name of "FORD" and thereafter under the mark "TEDFORD".

7. To purge his activity, post the decree, Arup Roy Burman undertakes to pay a sum of ₹3 lakhs as damages to the decree holder within two weeks.

8. Learned counsel for the decree holder states that the sum of ₹3 lakhs which would be received by the decree holder as damages will be deposited by the decree holder in the account of 'Delhi High Court Staff Welfare Fund' within two weeks of the receipt of the same.

9. Execution petition is thus disposed of.


MUKTA GUPTA, J.

DECEMBER 04, 2019
'ga/sk'