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FMAT 468 of 2020
IA No. CAN 1/2020

B Sirkar Johuree Pvt Ltd.

-vs-

A Sirkar & Co Jewellers Pvt. Ltd.

With

FMAT 469 of 2020

IA No. CAN 1 of 2020 and CAN 2 of 2020

B Sirkar Johuree Pvt Ltd.

-vs-

A Sirkar & Co Jewellers Pvt. Ltd.

(Via Video Conference)

Mr. Surajit Nath Mitra

Mr. Reetobroto Mitra

Mr. Anirban Kar

Ms. Nibedita Mukherjee

Mr. Promit Kumar Shee

Mr. V. Bhattacharyya

..... for the appellant/petitioner.

Mr. Ranjan Bachawat

Mr. Debnath Ghosh

Mr. Sayan Roychowdhuri

Mr. Souma Sen

Mr. Meghajit Mukherjee

Mr. Suhoita Mukherjee

Mr. K. Majumdar

..... for the Respondent.

Party/parties is/are represented in the order of their
name/names as printed above in the cause title.

Mr. Mitra, learned Senior Counsel, appears in support
of both the appeals respectively being FMAT 468 of 2020
and FMAT 469 of 2020.

The appeals respectively challenge orders dated 14th October, 2020 and 21st October, 2020 in Title Suit No. 29 of 2020 passed by the learned Commercial Court at Alipore (hereinafter referred to for short as the learned Trial Court). By the order dated 14th October, 2020, the present respondent, who is the petitioner before the learned trial Court, was granted an ad interim order of injunction in the following manner:-

In view of the above, the Respondent and others acting on its behalf are restrained in terms of prayers(a) and (d) read with prayer (e) of the instant application till 21.10.2020.

It is relevant to state at this point that both the appellant and the respondent/plaintiff before the learned trial Court are jewellers and the Title Suit has been filed by the respondent/plaintiff claiming copyright for specific artistic works which, the respondent submits, belong completely to its business.

On behalf of the appellants/defendants, Mr. Mitra, learned Senior Counsel, points out that both the orders impugned dated 14th October, 2020 and 21st October, 2020 are unreasoned inasmuch as the said orders only speak of the conclusion reached by the learned trial Court and, not of the reasons which may enable the conclusion. It is submitted that the orders show non-application of mind to issues raised before the learned Trial Court.

It is argued that there can be no copyright over generic jewellery designs which may trace their sources to Temple, Bridal forms of jewellery etc. Mr. Mitra submits that the effect of the order of ad interim order injunction is harsh upon the appellant since its business during the present festive season stands severely curtailed. In support of the proposition that only a reasoned order be allowed to stand, Mr. Mitra relies upon the authority of *2010(3)SCC 732* at *paragraph 40*.

Per contra, Mr. Bachawat, learned Senior Counsel appearing for the respondent/plaintiff, submits that the order of ad interim order injunction dated 14th October, 2020 is specific in its reasoning and aims to protect eleven (11) customised limited edition artistic works of the respondent/plaintiff out of which seven stand already registered for copyright and applications have been filed for the remaining two whereas the rest two designs are not registered.

Mr. Bachawat points out that the law on copyright is forthright inasmuch as only on the basis of prior customised limited edition user of artistic works by the respondent/plaintiff, it is solely the respondent/plaintiff who can make copies of the same as well as prevent others making copies. It is submitted that the appellant failed to take a positive stand on affidavit before the learned Trial Court inspite of being given an opportunity to do so. It is

further submitted that the appellant did not urge the issue of lack of similarity in the artistic works created for business by either of them.

Heard the parties.

Considered the materials placed.

This Court is not impervious to the proposition placed by Mr. Mitra that generic design in jewellery tracing its source to Temple, Bridal and Italian jewellery forms etc. are free for use in business without being subject to any copyright restrictions and, the ad interim order of injunction cannot limit the appellant from using such generic designs in its business.

This Court is also not impervious to the proposition placed by Mr. Bachawat that the ad interim order of injunction protects eleven specific artistic works which are placed on a comparative scale before this Court through pages 262 to 272 of the application being CAN 2 of 2020 connected FMAT 469 of 2020.

This Court also notices that the learned Trial Court granted the respondent/plaintiff an opportunity to file an Affidavit-in-Opposition to the petition for injunction filed by the respondent/plaintiff. However, no material on affidavit was placed before the learned Trial Court on the next date fixed, i.e. 21st October, 2020, which could enable the learned Trial Court to expand its consideration of the issues involved on the basis of hard evidence.

This Court is also not unmindful of the fact that the learned Trial Court has fixed a schedule of hearing of the injunction application which, however is yet to progress.

In the backdrop of the above discussion, this Court is persuaded to clarify the order of ad interim injunction to the effect and extent of protecting the eleven (11) artistic works in respect of which copyright protection has been sought by the respondent/plaintiff. Such protection shall continue until the disposal of the injunction application by the Ld. Trial Court.

At the same time, this Court reiterates that the Ld. Trial Court shall be entitled to consider all issues on merits and shall maintain the time schedule as reflected at Paragraph 13 of its Order No. 3 dated 21st October, 2020.

FMAT 468 of 2020 along with IA No. CAN 1 of 2020 and **FMAT 469 of 2020** along with **IA No. CAN 1 of 2020** and **CAN 2 of 2020** stand accordingly **disposed of**.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for be supplied to the parties on usual undertaking.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)