

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Cont.P.Nos.280 & 281 of 2010

1. Aqua Pump Industries,
represented by its Managing Partner,
Mr. Ramaswamy Kumaravelu

2. Aqua Sub Engineering,
represented by its Managing Partner,
Mr. Ramaswamy Kumaravelu
1 & 2 are at Thudiyalur Post,
Coimbatore 641 034,
Having their branch office at
No.156 Poonamallee High Road,
Vanagaram,
Chennai - 600 095.

.... Petitioners in
Cont.P.Nos.280 & 281 of 2010

Vs

1. Sanjay Agarwal

2. Reshmi Agarwal

3. Vijay Prasad Papu

4. Mohanlal Shah

5. Rajesh Agarwal

6. Ananda Nago Umale
All Directors of Texmo Pipes
and Products Ltd.

Having office at Bhadarpur Road,

Mohamed Pura, Burhanpur,
Madhya Pradesh

... Respondents in
Cont.P.Nos.280 & 281 of 2010

Prayer in Cont.P.Nos.280 & 281 of 2010: Petition filed under Contempt of Courts Act 1971 praying to punish the respondents for willful and deliberate disobedience of the order passed on 14.08.2009 & 28.08.2009 by this Hon'ble Court in OA.Nos.464 of 2009 in CS.No.395 of 2009 on the file of the original side of this Hon'ble Court.

For Petitioners : MS. Gladys Daniel
For Respondents : Mr. Arun C. Mohan

COMMON ORDER

These two contempt petitions emanate from two interlocutory orders passed in CS.No.395 of 2009. Contempt petition 280 of 2010 is directed against the non compliance of the orders in OA.No.464 of 2009 and Contempt Petition No.281 of 2010 is against the flouting of the orders in OA.No.465 of 2009.

2. A brief introduction to the issue on hand is required for passing orders in the Contempt Petitions.

The petitioner herein, claiming to be the registered proprietors of the Trade Mark TEXMO, had moved the suit CS.No.395 of 2009 against the Company

TEXMO Pipes and Products Limited for the following reliefs:

a) granting a permanent injunction, restraining the defendant by itself, its servant, agents, distributors, or anyone claiming through them from using the plaintiff's registered Trade Mark TEXMO as prefix or suffix or the company name, or in any media and use the same in public issue, invoices, letter heads and visiting cards, goods or any other trade literature or by using any other Trade Mark which is in any way phonetically or deceptively similar to the plaintiffs Registered Trade Marks TEXMO or in any manner infringing the Plaintiffs Registered Trade Mark Nos.315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II).

b) granting a permanent injunction, restraining the defendant, by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale all types of Pipes and Products released from the defendant's Company in the name of the Plaintiff's registered Trade Mark 'TEXMO' or similar sounding names in the course of their business

and pass off their goods.

c) For a preliminary decree in, favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the plaintiff's registered Trade Mark as the company name and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts.

d) directing the defendant to pay to the plaintiffs the costs of the suit.

3. Pending the suit, the applicant had taken out two interlocutory applications in OA.No.464 and 465 of 2009. OA.No.464 of 2009 was filed for an ad interim injunction with reference to the first relief claimed in the suit and OA.No.465 of 2009 was filed for an ad interim injunction with reference to the second prayer in the suit. Interim orders were initially granted and ultimately after the respondents/defendants had entered appearance, the following order came to be passed in OA.No.464 of 2009. This Court by order dated 14.08.2009, had passed the following order:

" I would like not to grant injunction but a

direction to the following effect:

" The defendant is directed to print or project in a prominent manner in the publications or advertisements, etc. concerning the public issue of Rs.50 lakhs equity shares of Rs.10/- each that the defendants company, viz., TEXMO PIPES AND PRODUCTS LTD., and its right to use the Trade Mark " TEXMO" is having nothing to do with the plaintiff's firm, viz., AQUA PUMP INDUSTRIES or its trade mark TEXMO AQUA."

4. Thereafter on a clarification sought for by the respondent further orders were passed on 28.08.2009. When the application was posted under the caption for being mentioned, this Court had clarified as follows:

" 5. I am of the considered view that only in the advertisements necessarily the respondent /defendant should make such an indication referred to in the order dated 14.08.2009 passed in OA.Nos.464 and 465 of 2009."

5. The petitioner has filed the above Contempt Petitions stating that the respondents have flouted the orders of this Court by not displaying in a prominent manner in their public issue that the Company TEXMO Pipes and Products Limited had no connection with the Aqua Group of the petitioners and their Trade name TEXMO in the offer document for Public issue. Therefore the petitioner had initiated contempt proceedings against the Directors. The contemnors have entered appearance and filed their counters.

6. Ms. Gladys Daniel, learned counsel appearing on behalf of the petitioner would reiterate the contentions in the Petition and she would draw the attention of this Court to the bid application form of the defendant's company namely TEXMO Pipes and Products Limited. She would contend that nowhere in this application the words as stated in the interim orders of this Court have been incorporated. She would therefore submit that although the suit has been withdrawn and now pending on the file of the High Court of Judicature at Bombay, however, the act of Contempt relates to flouting of orders of this Court and therefore the Contempt Petitions are very much maintainable.

7. Per contra, Mr. Arun C. Mohan, learned counsel appearing on behalf of the Contemnors would contend that the respondents have the utmost respect for the Rule of Law and they had complied with the orders of this Court dated 14.08.2009 as clarified by orders dated 28.08.2009 and that they have not committed any act of contempt. He would draw the attention of this Court to the advertisements published by the respondents in the month of February 2010 concerning the public issue.

8. A perusal of the same would indicate that at the end of the advertisement, the Company has prominently displayed the following:

***"TEXMO PIPES AND PRODUCTS LIMITED HAS
THE RIGHT TO USE THE TRADEMARK
"TEXMO" AND HAS NOTHING TO DO WITH
AQUA PUMP INDUSTRIES OR ITS TRADEMARK
" TEXMO AQUA" INVESTORS PLEASE NOTE"***

He would submit that such a statement has been made in all the advertisements as well as offer documents.

9. He would therefore submit that there has been no contumacious act on the part of the respondents.

10. Heard the counsels and perused the papers.

11. The order of this Court passed in the above applications had directed the respondent to print/project in a prominent manner in the publications or advertisements concerning the public issue that they have nothing to do with the petitioner's firm namely Aqua Pump Industries. A clarification as sought for by the respondent and by order dated 28.08.2009, the clarification has also been issued by the Court wherein it is reiterated that only in the advertisement such an indication has to be given.

12. A perusal of the prospectus would indicate that Section 6 relates to the legal and regulatory information. The company in question namely the TEXMO Pipes and Products Limited has informed the general public about the interim order passed in CS.No.395 of 2009, that is the order which is now the subject matter of the contempt and in the advertisement concerning the public issue the Company has clearly indicated that the Company has the right to use the Trade mark TEXMO and it has nothing to do with Aqua Pump Industries or

its Trademark. Therefore, it is clearly evident that the respondents have not committed any act of contempt and have complied with the orders of this Court in letter and spirit. Consequently the Contempt Petitions stand dismissed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

mrn

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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GS/31/03/2021

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