

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 24TH DAY OF JANUARY 2020

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

A.No.8111 of 2019

IN

C.S.No.555 of 2019

M/s.Neels Enterprises Private Limited,
Rep. by its Managing Director Mr.A.K.Neelakrishnan
Basement Floor, No.38/40, North Boag Road,
T.Nagar, Chennai 600 017,
and having its registered address at
37,State Bank Colony Road,
Pazhavanthangal, Chennai-600 114. ...Plaintiff

/Vs./

M/s.Taranga Technologies
Plot No.59, 4th Line, Syamalanagar,
Guntur- 522 006, Andhra Pradesh. ...Defendant

A.No.8111 of 2019:

M/s.Taranga Technologies
Plot No.59, 4th Line, Syamalanagar,
Guntur 522 006, Andhra Pradesh. ...Applicant/Defendant

सत्यमेव जयते
Vs

M/s.Neels Enterprises Private Limited,
Represented by its Managing Director
Mr.A.K.Neelakrishnan
Basement Floor, No.38/40, North Boag Road,
T.Nagar, Chennai 600 017. ...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased
to vacate the ex-parte ad interim injunction granted by
this Hon'ble Court vide order dated 23.09.2019.

This Application coming on this day before this Court
for hearing, the Court made the following order:

This application is filed praying to vacate the exparte ad-interim injunction granted by this Court vide order dated 23.09.2019.

2. The plaintiff herein has laid the suit for permanent injunction and damages alleging infringement of its registered design and passing off by the defendant.

3. Along with the plaint, the plaintiff has also taken out an application for interim injunction restraining the respondent/defendant from infringing the registered design and passing off. This Court on hearing the learned counsel for the applicant therein and perusing the records has passed the following order in O.A.Nos.870 and 871 of 2019 on 23.09.2019. Thereafter, the defendant has filed the present application in A.No.8111 of 2019 in C.S.No.555 of 2019 to vacate the interim order already granted. Pending consideration of this application, this Court taking note of the inconvenience expressed by the defendant, has passed the following order on 25.10.2019.

"This Court already granted interim injunction in favour of the plaintiff.

2.It appears that the main issue involved in this suit is with regard to the usage of the cover (chamber copy) in the outlets of petrol bunk by infringing the designs of the plaintiff

and in view of the interim orders passed by this Court, the tanks of Petrol bunks have not been closed in many places.

3. Having regard to the fact this if the defendant is prohibited from covering the tanks, it will lead to serious consequences during the monsoon, this Court permitted the respondent/defendant to close the tanks of the petrol bunk with the cover, within the jurisdiction of this Court."

4. Today, the learned counsel appearing for both parties have submitted their arguments in the interim injunction and vacate interim injunction.

5. Heard the learned counsel appearing for the applicant as well as the respondent.

6. It is the case of infringement of design. The suit is filed on the premise that the registered design of the plaintiff has been infringed by the defendant and had successfully participated in the tender floated by BPCL for supply of Advanced Hydraulic Manhole Cover.

7. The learned counsel appearing for the applicant/plaintiff as well as the respondent/defendant have submitted their submissions in their respective applications seeking injunction and vacate injunction.

8. According to the applicant/plaintiff, one Mr.T.S.Ramasamy obtained design registration on 21.12.2012 for specific shape and configuration in respect of manhole hydraulic cover with novelty. The registered proprietors of the design was assigned to the plaintiff his right on 17.04.2015. Later, the plaintiff also obtained registration for the surface pattern of the manhole cover on 20.07.2016. While so, it is alleged that the defendant has imitated the plaintiff design and manufacturing Hydraulic Manhole Cover supplying to petroleum corporations to cover the fuel tanks in the outlets.

9. The crux of the dispute is that MATC supplied by the defendant to BPCL at Chennai is identically similar to the design of the plaintiff product. Therefore, injunction has to be granted restraining the defendant from fabricating manhole identical to the registered design of the plaintiff. Whereas, it is contended by the respondent that the alleged claim on the design and specification in respect of the manhole cover supplied by the respondent is only a prior art and there is no novelty in the design. In fact, they have supplied the manhole cover as per the specification mentioned by the BPCL.

10. Thus, the issue between the parties gets zero down to the fact, whether the BPCL has invited the tender

for supply of Hydraulic Manhole Cover based on a particular specification and whether such specification will give any right for the bidders to manufacture on their own such MATC. For that purpose, this Court perused the tender specification floated by BPCL, which clearly states that hydraulic cylinder make SKG Germany or equivalent approved by BPCL and the covers shall confirm by the following standards:

"5.The cover shall confirm to DIN EN 124 standards, the cover shall be fabricated using heavy duty outer frame and checkered top cover plate. The covers are fabricated using graded mild steel chequered plates conforming to IS3500-1994 and base metal conforming to IS 2062-2006. The cover shall confirm to class D 400 testing standards for minimum deflection due to constant movement of heavy loads. (LOAD TEST certificate (as per DIC EN 124 standards) from a government recognized test Laboratory to be provided at the time of technical bid opening)."

11. While the plaintiff is able to show that the product of the plaintiff is S.K.G. Germany equivalent and approved by BPCL and have a patent for the said product; merely because the specification given by the tenderer has

<https://hcservices.ecobiz.gov.in/hcservices/> provided by the defendant, he cannot take advantage of the specification and manufacture the cover and claim that

there is no infringement of the plaintiff design.

12. The learned counsel appearing for the defendant would submit that BPCL being the procurer without impleading BPCL, the plaintiff cannot sustain the suit.

13. This Court is not in agreement with the said submission. This is a specific case of the infringement of design by the defendant. Whereas BPCL is only the procurer. Non-impleading the procurer will not give protection to the defendant for his act of infringement. Likewise, the minor variations in the handle and the few parts of the design of hydraulic manhole cover will also not take away the major imitation found in the defendant's product.

14. One of a very crucial points which has been brought to the notice of this Court by the learned counsel appearing for the plaintiff is that, till the confirmation of the tender, the defendant had not manufactured the manhole cover. As a pre-condition, the participant in the tender ought to have testified the tenderer about their products quality. How the defendant had satisfied the tenderer without having the product manufactured by their own is questionable when admittedly, they have started manufacturing only after the confirmation of the tender. It appears showing the plaintiff's product the defendant had got the tender that apart, when the tenderer has given a

particular specification and that particular design of the said specification of the product is exclusively held by the plaintiff, just because, being a successful bidder the defendant cannot manufacture the product on its own, unless and until he had manufactured some product earlier and that has been approved by BPCL as equivalent of SKG Germany make.

15. In such circumstances, this Court is of the view that there is sufficient reasons and grounds to restrain the defendant from manufacturing MATC imitating the registered design of the plaintiff. Therefore, the interim order passed on 23.09.2019 is confirmed and accordingly, this application is dismissed.

16. Post the civil suit on 10.03.2020 for further proceedings.

Sd./-G.J.J
24.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 05/02/2020

COURT OFFICER(O.S.)

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