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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 384/2019 & IA No.10155/2019 (u/O XXXIX R-1&2 CPC)**
KEI INDUSTRIES LIMITED Plaintiff
Through: Mr. Pallav Palit and Mr. Lalitendra Gulani, Advs.

Versus

MANOJ JAIN & ORS. Defendants
Through: Mr. Shaad Anwar and Mr. Suroosh Anwar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.02.2020

1. The plaintiff KEI Industries Limited instituted this suit against defendants No.1 to 7 viz. (a) Manoj Jain, (b) Rinku Jain, (c) Santoshi Lal Jain & Sons, (d) Sudesh Kumar, (e) Mayank Electricals, (f) Alok Pangoria and (g) Pangaoria Submersible Spare Parts, for permanent injunction to restrain the defendants from (i) infringing the trademarks 'KEI' and



of the plaintiff; (ii) infringing the copyright of the plaintiff in the artistic work applied on the packaging of 'KEI POLY WINDING WIRE' product; and, (iii) for ancillary reliefs.

2. The suit came up before this Court first on 29th July, 2019 when while issuing summons of the suit / notice of the application for interim relief, vide *ex-parte* order the defendants were restrained from infringing the mark 'KEI' of the plaintiff and from dealing with any goods under the mark 'KEI' and commissions issued as sought.

3. The counsel for the defendants 4 and 5 appeared before this Court on 4th December, 2019 and stated that the name of the defendant no.5 was not Mayank Electricals but Mayank Enterprises. On that date, the counsel for plaintiff also informed that Alok Gupta, proprietor of defendant no.7 Pangoria Submersible Spare Parts was present in person. The said Alok Gupta, on enquiry stated that there was no Alok Pangoria as impleaded as defendant no. 6 in the suit. The counsel for the plaintiff also agreed and stated that defendant no.6 had been wrongly impleaded as Alok Pangoria instead of Alok Gupta in his capacity as proprietor of defendant no.7 Pangoria Submersible Spare Parts. The counsel for the plaintiff on 4th December, 2019 also pointed out to another person present in the Court namely Rinku Jain, proprietor of defendant no.3 Santoshi Lal Jain and Sons. The said Rinku Jain on enquiry stated that defendant no.1 Manoj Jain, though earlier an employee of defendant no.3 Santoshi Lal Jain and Sons, had left employment. Mr. Alok Gupta and Mr. Rinku Jain on 4th December, 2019 stated that they were distributors of the plaintiff.

4. The plaintiff to, by tomorrow i.e. 20th February, 2020 file amended memo of parties deleting defendant no.1 Manoj Jain and correctly describing defendant no.5 as Mayank Enterprises and correctly describing the defendant no. 6 as Alok Gupta.

5. Today, the counsel for defendants no.4 and 5 states that whatever goods were seized from the premises of defendants no.4 and 5 had been purchased by the defendants no.4 and 5 from defendant no. 3 Santoshi Lal Jain and Sons who claim to be the authorised distributors of the plaintiff.

6. The counsel for the plaintiff states that the defendant no. 3 Santoshi Lal Jain and the defendant no. 7 Pangoria Submersible Spare Parts are authorised distributors of the plaintiff.
7. The defendants 2 and 3 and the defendants 6 and 7 have not filed any written statement and have not appeared. They are proceeded against ex-parte.
8. I have enquired from the counsel for the plaintiff, whether defendant no.3 Santoshi Lal Jain & Sons and defendant no.7 Pangoria Submersible Spare Parts continue to be the authorised distributors of the plaintiff.
9. The counsel for the plaintiff replies in the affirmative and states that they are however not selling owing to the interim order in this suit.
10. The counsel for the plaintiff, on enquiry whether wants to proceed against the said distributors, answers in the affirmative.
11. It is not understandable why the plaintiff has sued its distributors and is interested in continuing with the suit against its distributors.
12. The counsel for the plaintiff states that the suit against the distributors was filed since they were also selling counterfeit goods.
13. The counsel for the defendants no.4 and 5 states that the defendants no.4 and 5 have no objection to suffering a decree for injunction as sought, subject to the plaintiff not pressing any other claim. On enquiry, whether the seized goods can be destroyed by the plaintiff, the counsel for defendants no.4 and 5 states that 10% of the seized goods are genuine.

14. The plaintiff, on the basis of averments in the plaint, and documents filed therewith is found to be entitled to the relief sought of permanent injunction and the need to proceed with the suit against the defendants for the other relief claimed, of damages, is not felt.

15. A decree is accordingly passed, in favour of the plaintiff and against the defendants, as per the amended memo of the parties ordered to be filed, of (i) permanent injunction in terms of prayer paragraphs 'A' and 'B' of the plaint dated 22nd July, 2019; (ii) delivery of goods seized in the commissions executed, to the plaintiff, for destruction by the plaintiff; however at the time when the representative of the plaintiff visits the premises where the seized goods are kept on superdari, if the plaintiff is of the view that any of the seized goods are genuine, the said goods shall be handed over to the person from whom they were seized; and, (iii) recovery of costs from the defendants, save defendant no.4, computed at the court fees paid plus legal fee and expenses including of commission, assessed at Rs.6 lacs.

16. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 19, 2020

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