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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1094/2018, IA No.11662/2018 (u/O XXXIX R-1&2 CPC), IA No.12586/2018 (u/O XXXIX R-4 CPC), IA No.13705/2018 (u/O XXXIX R-4 CPC) & IA No.17130/2018 (u/O XXXIX R-1&2 CPC)

KENT RO SYSTEMS LTD. Plaintiff
Through: Ms. Rajeshwari H, Mr. Chitranshu Kumar & Mr. Saif Rahman Ansari, Advs.

Versus

JEEVAN NARULA & ORS. Defendants
Through: Mr. Hemant Singh, Ms. M.R. Jha, Mr. W.S. Ahmed & Mr. Sambhav Jain, Advs. for D-1,2,5&6.

AND

CS(OS) 342/2019 & IA No.9109/2019 (u/O XXXIX R-1&2 CPC)
LG ELECTRONICS INDIA PVT. LTD. Plaintiff
Through: Mr. Hemant Singh, Ms. M.R. Jha, Mr. W.S. Ahmed & Mr. Sambhav Jain, Advs.

Versus

KENT RO SYSTEMS LTD. & ORS. Defendants
Through: Ms. Rajeshwari H, Mr. Chitranshu Kumar & Mr. Saif Rahman Ansari, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.01.2020**

1. Both suits have been filed to restrain the defendants therein from disparaging the competing products of the plaintiff in each of the suits.
2. The suits were entertained and summons thereof ordered to be issued.
3. While pleadings in CS(COMM) No.1094/2018 are stated to be complete, the

counsel for the plaintiff in CS(OS) No.342/2019 states that the defendants therein have failed to file the written statement within the maximum period of 120 days and the right of the defendants therein to file written statement is to be closed.

4. I have had the occasion to hear the counsels on 23rd July, 2019 and though the suits are listed today for framing of issues and for consideration of pending applications but I have enquired from the counsels, the need to put the suits to trial, considering the nature thereof and further of the opinion that though in each of the suit damages have also been claimed but there being no specific plea of any reduction in sale or other losses by the actions alleged, there is no real prospect of succeeding on the claim for damages.

4. The counsel for the plaintiff in CS(OS) No.342/2019 [hereinafter referred to as 'LG'] states that LG, in paragraph 27 of its plaint, has pleaded that the product of LG has been defamed by the actions of the defendants. The same is the plea in the plaint in CS(COMM) No.1094/2018 [plaintiff wherein is hereinafter referred to as 'KENT']. The same do not amount to plea of any loss. It is felt that putting the suits to trial on such plea of defamation and during which trial only self-serving witnesses are to be examined, serves no purpose.

5. The counsel for LG, with reference to the prayer paragraph 34(a) of his plaint dated 8th July, 2019, on being asked to disclose what are the specific statements which are sought to be enjoined (inasmuch there can be no general injunction), has drawn attention to paragraph 16 of the plaint in CS(OS) No.342/2019 where the specific statements from making whereof KENT is sought to be enjoined are listed out.

6. The counsel for KENT states that KENT has never made the subject statements or authorized any of its dealers or agents to make the same and has no intention even to make the same.
7. With respect to the injunction claimed in paragraph 34(b) of the plaint of LG in CS(OS) No.342/2019, the counsel for the KENT has already on 23rd July, 2019 and as recorded in paragraph 11 order of that date, stated that KENT does not claim to be the first company to introduce UV technology for water purifier in India and will not claim so in future also.
8. The counsel for LG however contends that notwithstanding the said statement of the counsel, as of 28th January, 2020 also the same statement appears on the website of KENT i.e. kent.co.in/water-purifiers/ro/kent-ace-star with respect to 'Kent Ace Star' water purifier and has in Court handed over the download made at 2:32 PM on 28th January, 2020. It is also stated that similar statement also appears on the platform of Amazon through which KENT is selling its water purifiers, in relation to 'Grand Star' make water purifier of KENT.
9. The counsel for KENT states that immediately after 23rd July, 2019 all such statements were removed and if any remained with respect to 'Ace Star' make water purifier, the same shall also be removed immediately.
10. It is also stated that though KENT has written to Amazon, but Amazon has not removed the statements.
11. It is made clear that it is the responsibility of KENT to have such statements removed from all platforms wheresoever its products are being sold and if need be, by taking legal measures.

12. As far as the plaint dated 28th August, 2018 of KENT in CS(COMM) No.1094/2018 is concerned, the counsel for KENT, on enquiry of the statements with respect to which grievance is made, has drawn attention to paragraph 17 of the plaint at serial No.(a) to (h), wherein grievance is made with respect to the alleged disparaging statements made by LG.

13. The counsel for LG states that it is the plea of LG in its written statement in the KENT suit i.e. CS(COMM) No.1094/2018, that no such statement has been made and / or authorized to be made and the case of KENT also is that the shopkeepers are making such statements and who are beyond the control of LG.

14. The counsel for LG states that LG has already issued written instructions to all its distributors and dealers not to make any such statements and it has been so categorically stated in prayer paragraph 7(B) of IA No.12586/2018 under Order XXXIX Rule 4 of the CPC filed by LG in the KENT suit i.e. CS(COMM) No.1094/2018.

15. The counsel for KENT states that KENT is satisfied if the said statement is abided by.

16. The counsel for LG states that there can be no injunction against LG inasmuch as there is no cause of action shown.

17. I am of the view that while disposing of the suits together, the parties should be at par and there is no need to go to trial to determine whether statement allegedly made by the other was in fact made or not when in any case no entitlement to make such statements is claimed.

18. CS(COMM) No.1094/2018 is thus disposed of by passing a decree for permanent injunction in favour of KENT and against LG, restraining LG in

terms of prayer paragraph 31 of the plaint dated 28th August, 2018 therein read with paras 17(b) to (i) thereof. However, it is clarified in reference to paragraph 17(d) that LG, if makes the statement therein, will not make the same with respect to any model of Kent which has a mineral cartridge.

19. CS(OS) No.342/2019 is disposed of by passing a decree in favour of LG and against KENT, in terms of prayer paragraph 34(a) of the plaint read with paragraph 16 of the plaint and in terms of prayer paragraph 34(b) of the plaint dated 8th July, 2019 therein read with paragraph 17 of the plaint.

20. Parties to bear their own costs.

21. Decree sheets be drawn up.

22. To avoid executions being unnecessarily filed, it is further ordered that on either party finding any action of the other in violation of the order, on the platform of a third party, shall before filing for execution, bring the same to the notice of the other and would file the execution only if the matter / content in violation of the decree is not removed within 72 hours.

RAJIV SAHAI ENDLAW, J

JANUARY 29, 2020

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