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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 472/2018 & IA No.13017/2018 (u/O XXXIX R-1&2 CPC)**
HAVELLS INDIA LIMITED Plaintiff

Through: Ms. Julien George, Ms. Anu Parcha &
Mr. Arjun Gadhoke, Advs.

Versus

R R KABEL LIMITED AND ANR. Defendants

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with
Ms. Rajeshwari H., Ms. Swapnil Gaur
& Ms. Nupur Goswami, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.02.2020**

1. The plaintiff instituted this suit against R.R. Kabel Limited and its Marketing Head Shishir Sharma, for perpetual injunction to restrain the defendants from telecasting, displaying, showing, broadcasting the advertisement of the defendants as described in paragraph 1.3 of the plaint dated 19th September, 2018.
2. The suit accompanied with an application for interim relief came up first before this Court on 24th September, 2018 and thereafter on 26th September, 2018 when though summons / notice were issued, but no *ex parte* relief sought granted.
3. The plaintiff preferred FAO(OS) No.146/2018 against non-grant of *ex parte* order and which was disposed of vide order dated 27th September, 2018 with a request to the Single Judge to hear the application for interim relief on 3rd October, 2018 itself.

4. Arguments on the interim application however could not be heard though the pleadings in the suit were completed.

5. The matter came up before this Court on 16th January, 2020 when after hearing the counsel for the plaintiff, the parties were referred to mediation. Mediation remained unsuccessful.

6. On 31st January, 2020, the counsel for the plaintiff stated that though the defendant no.2 Shishir Sharma, in the blog by Abid Hussain Barlaskar, was attributed to have stated that the impugned advertisement was to mock the advertisement of the plaintiff and by way of an ‘ambush’ or rather a ‘myth buster’ but the defendants no.1 and 2 in their written statement dated 28th September, 2018 in paragraph 1(A) of the Preliminary Submissions pleaded that the statements in the impugned advertisement were simply a statement of common fact, applying equally to the defendants and that there was no disparagement as there was no comparison between the products of the defendants with that of the plaintiff nor there was any reference to the product of the plaintiff nor was the product of the plaintiff shown in poor light. It was further stated that the defendants, in paragraph 8 of the Reply on Merits of their written statement pleaded that the impugned advertisement made no reference whatsoever to the plaintiff’s product nor commented on the type of fumes emitted or the ability thereof to propagate fire. It was thus the contention of the counsel for the plaintiff on 31st January, 2020, that in view of the stand in paragraph 1(A) of the Preliminary Submissions and in paragraph 8 of Reply on Merits of the written statement of the defendants and subject to none of the employees or agents of the defendants claiming contrary thereto, the plaintiff was willing to have the

suit disposed of.

7. It was the contention of the counsel for the defendants on 31st January, 2020, that the pleadings in paragraph 1(A) of the Preliminary Submissions and paragraph 8 of reply on merits of the written statement of the defendants were not in relation to the blog aforesaid and were in relation to the impugned advertisement and else it was the plea of the defendants in paragraph 10 of the Reply on Merits of the written statement that the blog was not created by the defendants or authored, owned or administered by the defendants and the contents thereof could not be attributed to the defendants.

8. The matter, on 31st January, 2020 was adjourned to today, directing the personal presence of defendant no.2 Shishir Sharma.

9. The senior counsel for the defendants today states that the defendant no.2 Shishir Sharma is present in the Court. It is also stated that the defendant no.2 Shishir Sharma, immediately after the blog aforesaid, had on 14th September, 2018 sent an e-mail dated 19th September, 2018 to Abid Hussain Barlaskar, stating that the views attributed in his blog to the defendant no.2 Shishir Sharma were not his or of his company and calling upon Abid Hussain Barlaskar to disable the said blog. Printout of the aforesaid e-mail is handed over in Court and taken on record and be tagged to Part-I file.

10. The counsel for the plaintiff states that the said document was not filed earlier.

11. However since the document has been shown in the context of what transpired in the hearing on 31st January, 2020, the said objection has no merit.

12. I have however enquired from the senior counsel for the defendants, the objection of the defendants to the disposal of the suit as sought by the plaintiffs and recorded on 31st January, 2020.

13. The senior counsel for the defendants has contended that the plaintiff cannot pick and choose portions from the written statement of the defendants and the written statement has to be read in entirety. Attention is drawn to, paragraph 5.6 of the plaint, where the plaintiff itself has pleaded the claim in the impugned advertisement to be generic and that the defendant no.1 cannot be permitted to market its own product under a media campaign providing misleading and contrary information or display its product in superior light, and to the reply thereto in paragraph 29 of the Reply on Merits of the written statement. It is argued that paragraph 1(A) of the Preliminary Submissions and paragraph 8 of the Reply on Merits of the written statement cannot be read in isolation and the written statement has to be read in entirety.

14. There can be no dispute with the aforesaid proposition. The plaintiff cannot pick and choose a paragraph or a sentence here or there in the written statement and seek disposal of the suit in terms thereof.

15. The counsel for the plaintiff is agreeable to disposal of the suit in the face of the written statement of the defendant and highlighting paragraph 1(A) of the Preliminary Submissions and paragraph 8 of the Reply on Merits therein and contends that the defendants should not make a claim contrary thereto.

16. The senior counsel for the defendants has argued that, (i) it is the case of the defendants that the advertisement of the plaintiff with the tag line

“Wires That Don’t Catch Fire” is false and the defendants in the suit are entitled to put the said claim of the plaintiff to challenge / test; (ii) disposal of the suit as sought by the plaintiff can lead to complications inasmuch as such order may be used in the context of any other advertisement brought by the defendants; and, (iii) the order as sought is likely to be misconstrued by the websites viz. ‘Live Law’ and ‘Bar and Bench’ which report on court proceedings and may convey an impression to the reader to the prejudice of the defendants.

17. I have considered the aforesaid contentions.

18. As far as the first of the aforesaid contentions is concerned, once the plaintiff, who is the *dominus litis*, is satisfied with the stand of the defendants in the written statement and states that the grievance with which the suit was filed, stands addressed from the written statement, the defendants, to challenge the claim of the plaintiff, whether be it in the plaint or in any advertisement of the plaintiff, cannot insist upon the suit being proceeded with or put to trial. If the defendants have any cause of action with respect to any of the actions of the plaintiff, particularly with respect to any advertisement of the plaintiff, the defendants have to take independent remedies therefor and cannot seek the same by continuance of the present suit.

19. As far as the second contention aforesaid is concerned, the same in my view is based on misapprehensions, inasmuch as this suit is concerned with the advertisement impugned therein only and not with any other advertisement and if the plaintiff is aggrieved by any other advertisement of the defendants, the plaintiff will have to take independent remedy therefor

and in which all contentions will be open to the parties.

20. As far as the last of the aforesaid contentions is concerned, merely because a third party may misconstrue an order or the order may be wrongly reported by the press/media, cannot be a reason from shying away with passing the order especially when the order is nothing but a disposal of the suit in view of the stand of the defendants in its written statement, and I emphasise, in entirety.

21. The counsel for the plaintiff has stated that in paragraph 29 of the written statement also, the defendants have pleaded that there is no reference to the plaintiff's product in the entire advertisement.

22. The senior counsel for the defendants has contended that the disposal of the suit may be by way of withdrawal thereof. It is also stated that the defendants are willing to make a statement that they will not publicize this order and the plaintiff should also be restrained from publicising this order.

23. The counsel for the plaintiff states that plaintiff should be entitled to inform the stand of the defendants in the written statement in this suit.

24. I have indicated to the senior counsel for the defendants during the hearing, that the disposal of the suit would be as proposed and as ordered hereinbelow.

25. As far as the suggestion of the senior counsel for the defendants, that the plaintiff should be restrained from publicising the order, is concerned, the court proceedings being in public domain and the proceedings being in the open Court, this is not found to be a fit case where any restraint should be put on such public nature of the court proceedings.

26. The suit is thus disposed of, by recording the statement of the counsel for the plaintiff that the plaintiff, in view of the written statement filed by the defendants particularly the contents of paragraph 1(A) of the Preliminary Submissions and paragraph 8 of the Reply on Merits thereof, is satisfied and the grievance with which this suit was filed stands redressed and by expressing that, it is expected that the defendants will abide by their written statement which is verified and supported by affidavits of the defendants.

27. The parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 13, 2020

‘gsr’..