



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 22nd February, 2022.

+ CM(M)-IPD 4/2022 & CM APPL. 8379/2022 (for stay)

**BLACK DIAMOND TRACKPARTS PRIVATE LIMITED
AND ORS** **Petitioners**

Through: Mr. Praveen Chaturvedi, Adv.

Versus

**BLACK DIAMOND MOTORS
PRIVATE LIMITED** **Respondent**

Through: Ms. Malvika Trivedi, Sr. Adv. with
Mr. Nipun Katyal, Adv.

**CORAM:
HON'BLE MS. JUSTICE ASHA MENON**

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India by the petitioners/defendants against the order dated 10th January, 2022 of the Commercial Court, South District, Saket, New Delhi.

2. Mr. Praveen Chaturvedi, learned counsel for the petitioners/defendants has submitted that the impugned order was liable to be set aside as it contained directions contrary to “law of the land” and in contravention of the judgment dated 28th May, 2021 of this court in FAO (COMM) 41/2021 titled *Black Diamond Track Parts Private Limited and Ors. Vs. Black Diamond Motors Private Limited*. The learned counsel submitted that the Division Bench of this Court, while dealing with the First Appeal in question, has set aside interim injunction which had been granted *ex-parte* to the respondent/plaintiff. Thus on the date when the



impugned order was passed, there was no right left in the respondent/plaintiff which required protection. Such an observation in the impugned order was thus misplaced and against the orders of this court in the First Appeal. It is further submitted that under Section 136 of the Code of Civil Procedure, 1908 ('CPC' in short), the court could not have appointed a Court Commissioner beyond its jurisdictional limits. Thirdly, Section 34 of the Trade Marks Act, 1999 saved the vested rights of the petitioners/defendants as it was the predecessor-in-interest of the parties who had the Trademark 'BLACK DIAMOND' registered in their names. The family members being engaged in a dispute, the petitioners/defendants could not be prevented from using the trademark. It is also submitted that the learned Court could not have further directed the petitioners/defendants to deposit the sale proceeds in the court or furnish a bank guarantee, as such orders were beyond the jurisdiction vested in a court. Thus, it was prayed that the impugned order be set aside.

3. Ms. Malvika Trivedi, learned senior counsel on behalf of the respondent/plaintiff, appearing on advance notice, has submitted that the petition itself was not maintainable. Reliance in this regard has been placed on the judgment passed by the Division Bench of this court in CM(M) 132/2021 i.e. **Black Diamond Trackparts Pvt. Ltd. & Ors. Vs. Black Diamond Motors Pvt. Ltd.** It is argued that the scope of exercise of powers under Article 227 was very restricted and the petitioners/defendants have failed to disclose any error in the impugned orders. It is submitted that the suit was yet to be disposed of finally. Further, though the interim injunction granted to the respondent/plaintiff had been vacated by the Division Bench of this court, it had directed the



petitioners/defendants to remove the labels containing the trademark of the respondent/plaintiff and change into two different labels namely “Raminder Singh Bhatia Group” and "Parvinder Singh Bhatia Group" about which there is not a whisper in the petition. It was further submitted that since the suit was still pending, protection of the interests of the respondent/plaintiff was but natural, since they were the registered proprietors of the trade mark ‘BLACK DIAMOND’.

4. Arguments heard and the record and cited judgments perused.

5. Before proceeding further, it may be noted that the power under Article 227 of the Constitution of India being one of judicial superintendence cannot be exercised to upset conclusions, howsoever erroneous they may be, unless there was something grossly wrong or unjust in the impugned order shocking the court’s conscience or the conclusions were so perverse that it becomes absolutely necessary in the interest of justice for the court to interfere. The powers under Article 227 will be used sparingly. The Supreme Court has observed in *M/s India Pipe Fitting Co. Vs. Fakhruddin M.A. Baker And Anr* (1997) 4 SCC 587 and in *Mohd. Yunus Vs. Mohd. Mustaqim & Others* (1983) 4 SCC 566 that the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution of India is limited to overseeing that an inferior court or tribunal functions within the limits of its authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision without anything more is not enough to attract this jurisdiction. Even in the judgment relied upon by the learned senior counsel for the respondent/plaintiff, mentioned above, the Division Bench of this court has again cautioned that Article 227 of the Constitution of



India be used sparingly in such suits which under the CPC are revisable and which remedy has been taken away by the Commercial Courts Act, 2015, in order to preserve the legislative intent and give effect to the purpose behind the Commercial Courts Act, of expeditious disposal of commercial suits.

6. With these principles in mind, the impugned order and the submissions of the learned counsel for the petitioners/defendants thereupon need to be considered.

7. The learned counsel for the petitioners/defendants had a grievance in the use of the words *“in my view if the rights of plaintiff are adequately protected then the goods can be released to the applicant/defendant....”* The grievance is founded on the judgment of the Division Bench of this court dated 28th May, 2021 in FAO(COMM) 41/2021 which according to the learned counsel put paid to the claim of the respondent/plaintiff of a right in the Trademark ‘BLACK DIAMOND’. In actual fact, the court took note of the fact that the business had been commenced by the common predecessors and it was not “deemed appropriate at the interim stage to restrain one part of the family”. In other words, the right of both parties was taken into consideration.

8. The said judgment thus does not support the claim of the petitioners/defendants. When the First Appeal was first heard on 8th April, 2021, the Trial Court’s order restraining the petitioners/defendants in the suit, from using the trademark had been kept in abeyance and they were permitted to use the said trademark. Even if the application for release had been filed immediately after this interlocutory order was passed in the First Appeal, it would be incorrect to urge that the respondent/plaintiff’s right in



the Trademark stood dislodged. It only permitted the petitioners/defendants to also use the Trademark. At the time of final disposal of the First Appeal, the Division Bench of this court set aside the orders of the learned Commercial Court disposing the application under Order XXXIX Rules 1 & 2 of the CPC, on the ground that it did not meet the parameters of a judgment. The respondent/plaintiff was also found disentitled for interim relief on account of their conduct. Once again, the appeal does not hold that the respondent/plaintiffs had lost their rights to use the registered Trademark. In the circumstances to say that the impugned order was in violation of the view taken by the Division Bench would be incorrect. The mutual rights are yet to be determined in the suit and pending the suit, the interests of both sides have to be kept in mind and in the impugned order when the petitioners/defendants sought the release of the goods, while allowing that plea of the petitioners/defendants, the court chose to also take care of the interests of the respondent/plaintiffs. No error can be ascribed to the view taken.

9. Section 136 of the CPC deals with the procedure where a person is to be arrested or the property is to be attached outside the courts' jurisdiction and has no application to the present case, as the appointment of a Court Commissioner is governed by Order XXVI of the CPC and not by Section 136 of the CPC.

10. With regard to the application of Section 34 of the Trademarks Act, again, it has no bearing on the matter on hand, as the application disposed of by the learned Commercial Court was for the release of goods, on an application moved by the petitioners/defendants and it was not a



determination of mutual rights in respect of the registered trademark 'BLACK DIAMOND'.

11. Ms. Malvika Trivedi, learned senior counsel for the respondent/plaintiff, drew attention of this Court to para No.49 of the judgment dated 24th November, 2020 of the Division Bench of this court in FAO(COMM) 41/2021. It would be useful to reproduce paras No.49 & 50 of the judgment dated 28th May, 2021, which are as follows:

“49. The counsel for the appellants/defendants, after obtaining instructions, stated that the appellants/defendants were willing to write "Raminder Singh Bhatia Group" on the label mark of the appellant/defendant No.1 Black Diamond Track Parts Pvt. Ltd. and the words "Parvinder Singh Bhatia Group" on the label mark of the appellant/defendant No.2 Black Diamond Equipments Pvt. Ltd., while dealing in the subject goods falling in Class 12.

50. The appellants/defendants are bound down to their aforesaid statement, till the disposal of the suit before the Commercial Court. The readiness with which the appellants/defendants accepted the said proposal also reflects on lack of any mala fides on the part of the appellants/defendants or of any intent to pass off their Class 12 goods as those of the respondent/plaintiff.”

The court bound the petitioners/defendants who are petitioners before this court to this statement/undertaking and were directed *“while dealing in the Class 12/subject goods, on their trade mark / label mark, indicate the source thereof as undertaken above.”*

12. For this reason, again no error in the impugned order is found merely on account of the observation that the rights of the



respondent/plaintiff would be adequately protected, if certain directions were to be issued.

13. As regards the directions themselves, the counsel for the petitioners/defendants submitted that the suit having been filed by the respondent/plaintiff, the costs of the Court Commissioner ought to be borne by the respondent/plaintiff which is misplaced, as the release of the goods were sought by the petitioners/defendants, which were taken into custody by the Court Commissioner who had also prepared an Inventory List dated 27th July, 2020 and would have had to be released only through the Court Commissioner in whose custody the goods are. The learned counsel is also aggrieved that the proceeds of the sale should be deposited in the court within four weeks of the sale in the form of a Fixed Deposit Receipt (FDR) or by way of a bank guarantee. There is no merit in the contention raised that such an order is beyond the ken of any court. In fact, in umpteen number of cases, the courts have balanced interests by issuing similar orders or even requiring the furnishing of security before release of money to the one who claimed to be entitled to it, pending disposal of the suit or the appeal as the case may be.

14. In the circumstances, there is no merit in the present petition, which is dismissed *in limine*.

15. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

FEBRUARY 22, 2022
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