



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 23rd February, 2022.

+ FAO-IPD 5/2022, C.Ms.8755/2022 (of appellant u/O XLI R-5 CPC for stay), 8756/2022 (of appellant u/O XLI R-33 CPC r/w O-XXXIX R-1&2 CPC for ad-interim injunction), 8757/2022 (of appellant u/O XXVI R-9 CPC, O-XXXIX R-7 CPC r/w Section 151 CPC for appointment of Local Commissioner), 8758/2022 (of appellant under Section 151 CPC for summoning of the subject matter suit bearing CS DJ No.96/2022), 8759/2022 (for exemption) & 8760/2022 (of appellant under Section 151 CPC for exemption from advance service to the respondent)

**HUGO BOSS TRADE MARK MANAGEMENT
GMBH AND CO. KG**

..... Appellant

Through: Mr. Sudarshan Kumar Bansal, Mr. Rahul Sharma, Mr. Nikhil Sonker, Mr. Dharendra Singh and Mr. Saurabh Arora, Advs.

Versus

ASHOK KUMAR

..... Respondent

Through: None.

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

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. This appeal has been filed by the plaintiff before the learned Trial Court against its order dated 7th February, 2022 whereby the learned Trial Court declined to grant *ex-parte* ad interim injunction against the respondent/defendant.



2. Mr. Sudarshan Kumar Bansal, learned counsel for the appellant submitted that the learned Trial Court had wrongly relied on the order of a Coordinate Bench of this court in ***Januki Kumari J.B. Rana v. Ashok Kumar***, 2017 SCC OnLine Del 7533. Vide the same order, the learned Trial Court had also directed summons to be issued to the defendant. The learned counsel for the appellant submitted that when the identity of the infringers of the registered trademarks of the appellant, viz. ‘HUGO BOSS’, ‘BOSS’, ‘HUGO’ and other BOSS/HUGO formative marks for its clothing/apparels, accessories, perfumes, lifestyle goods, watches, shoes, belts, bags, was unknown, there was no occasion for the learned Trial Court to have directed issuance of summons. Rather an injunction against infringement ought to have been granted.

3. The learned counsel explained that the suit was in the nature of a “John Doe” litigation and the defendant(s) is/are unknown person(s) which was why the name “Ashok Kumar” has been used, and till the Local Commissioner went to the addresses given, the identity of the infringers would not be known and it is only once the person(s) from whose premises counterfeit products were seized would come to the court, the suit would proceed against them and summons served to them. It is further submitted that the learned Trial Court has erred in not appointing a Local Commissioner and it was prayed that in view of the fact that not only in the prayer in the appeal but separately by way of CM No.8757/2022 under Order XVI Rule 9 of the Code of Civil Procedure, 1908 (‘CPC’ in short), a prayer has been made to appoint a Local Commissioner, this Court may so



appoint the Local Commissioner to go to the premises mentioned at the address to seize counterfeit products.

4. The learned counsel for the appellant has forwarded to the Court Master by email the orders passed in ***Januki Kumari J.B. Rana (supra)*** along with orders passed by Coordinate Benches of this Court in ***Luxottica Group S.P.A & Anr. vs. Saad Nasim & Ors.*** [order dated 16th April, 2010 in CS(OS) 688/2010], ***Societe Des Produits Nestle, S.A & Anr. Vs. Mohd Zahid And Sons & Ors.*** [order dated 28th November, 2014 in CS(OS) 3629/2014], ***Espn Software India Private Ltd. v. Tudu Enterprise***, 2011 SCC OnLine Del 5710 and ***Doctutorials Edutech Private Limited Vs. Telegram Fz-Llc & Ors.*** [Order dated 25th January, 2022 in CS(COMM) 60/2022] The Court has considered these cited cases as well as the submissions of the learned counsel for the appellant.

5. This appeal is directed fundamentally against the refusal of the learned Trial Court to exercise its discretion to grant *ex-parte* ad-interim injunction, placing reliance on the decision in ***Januki Kumari J.B. Rana (supra)***. Where a view is possible on the material on the record, without sound cause, a superior court would be reluctant to supplant its own view in appeal. The learned Trial Court has relied on the order in ***Januki Kumari J.B. Rana (supra)***. This Court has considered the said judgment and finds that the learned Trial Court has rightly relied on the said judgment.

6. In the present case, admittedly there is no known respondent/defendant. The respondent/defendant sued is “Ashok Kumar”. In ***Januki Kumari J.B. Rana (supra)***, relief was declined precisely for this



reason that *ex-parte* ad-interim injunction was sought against the unknown persons named as “Ashok Kumar”. The court distinguished other cases by noting that where this court had granted such *ex-parte* “Ashok Kumar” injunctions, there were other known defendant or defendants and one of the defendants was named as “Ashok Kumar” to represent all other unknown infringers of trademark. The court had considered several other judgements including *Laxmishankar Harishankar Bhatt v. Yashram Vasta*, (1993) 3 SCC 49, *SBL Ltd. v. Himalaya Drug Co.*, (1998) 2 AP LJ 6 (DNC) (Del), *Ardath Tobacco Company Ltd. v. Munna Bhai*, 2009 SCC OnLine Del 29, *Indian Performing Right Society Ltd v. Badal Dhar Chowdhry*, 2010 SCC OnLine Del 1361, to conclude in para No.27 as below:

“27. The Court has to ensure that the obligations imposed upon it by this provision of law are complied with. In a case where the ex-parte ad interim injunction is granted, the opposite party against whom an order of injunction is passed is required to be served with the copy of the order along with the other relevant documents on same day or next day and the plaintiff has to file such an affidavit of compliance in the Court. On an ex-parte ad interim injunction being granted against John Doe or Ashok Kumar i.e. unknown defendant, this Court wonders how the applicant would fulfill the conditions of this provision of law and if this Court cannot ensure the compliance it would be failing in its obligations conferred under the provisions of law. In the case H.H. Kamaluddin (supra), the Supreme Court has cautioned that an ineffective injunction should not be granted and the Court shall never pass an order for the “fun of passing it”. Learned counsel for plaintiffs has failed to point out any manner in which the ex-parte injunction order against the unknown defendants be made known to them or the way in which the compliance of Order 39 Rule 3 of CPC can be done. Grant of ex-parte injunction in this case, court



feels like issuing a blank civil search warrant against unknown/unnamed infringers and thereby allowing the plaintiffs to enter any premises, any shop in search of the counterfeit articles, either personally or through court commissioners under Order 26 Rule 9 of CPC. The court wonders if this is the object of this provision. It is not that the plaintiffs are remediless against unknown persons i.e. the infringers in case of mass infringement of trademark. When wide scale of violation or infringement of trademarks are found, the remedy is available in the Trademark Act itself by way of criminal complaint against those unknown infringers of the trademark and the offences are cognizable offences under Section 115 of the Trademark Act.”

This Court finds the exact same fact situation in the present case. It is well-nigh impossible to take a different course.

7. In the other cases cited by the appellant, namely, ***Luxottica Group S.P.A & ANR. (supra)***, ***Societe Des Produits Nestle, S.A & Anr. (supra)***, ***Espn Software India Private Ltd. (supra)*** and ***Doctutorials Edutech Private Limited. (supra)***, it was amongst named and specific defendants that “Ashok Kumar” was also named. In the present case, there is no such known respondent/defendant. The judgment in ***Januki Kumari J.B. Rana (supra)*** applies on all fours to the facts of the present case.

8. There is no error in the impugned order. The appeal is without merit and is dismissed *in limine*.

9. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

FEBRUARY 23, 2022/‘bs’