

OCD-13

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

CS/102/2018

SAMBHU NATH & BROTHERS & ORS.
-VS-
IMRAN KHAN

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : December 12, 2023.

Appearance:

Mr. Sourav Jana, Adv.
Mr. Gopal Das, Adv.
Mr. Tinkari Jana, Adv.
... for the plaintiffs

Ms. Sushmita Ghosh, Adv.
Mr. Balarko Sen, Adv.
... for the defendant

The Court : Mr. Sourav Jana, learned counsel, is appearing for the plaintiffs. Ms. Sushmita Ghosh, learned counsel, is appearing for the defendant.

The plaintiffs have filed the suit praying for the following reliefs:-

“a) A decree for perpetual injunction restraining the defendant and his men, servants, agents, assigns, dealers, distributors from manufacturing, selling, marketing, advertising, distributing or advertising in print or electronic media or internet in India and/or otherwise dealing in fans or electrical goods or goods falling under class 11 and/or any other goods under the offending mark “SNJ TOOFAN” or “TOOFAN” or under any other mark which is identical with or deceptively similar to the plaintiffs’ registered trademark “TOOFAN” in any manner whatsoever ;

- b) A decree for perpetual injunction restraining the defendant and his men, servants, agents, assigns, dealers, distributors from passing off his fans under the offending mark "SNJ TOOFAN" or "TOOFAN" by manufacturing, selling, marketing, advertising in print or electronic media or internet or distributing or otherwise dealing with fans or electrical goods or goods falling under class 11 and/or any other goods under the offending mark "SNJ TOOFAN" or "TOOFAN" or under any other mark which is identical and/or deceptively similar to the plaintiffs' mark "TOOFAN" in any manner whatsoever ;
- c) A decree for perpetual injunction restraining the defendant and his men, servants, agents, assigns, dealers, distributors and/or anyone claiming through them from infringing the plaintiffs' registered trademark "TOOFAN" by manufacturing, selling, marketing, advertising in print or electronic media or internet or distributing or otherwise dealing with off its fans or electrical goods or goods falling under class 11 and/or any other goods under the offending mark "SNJ TOOFAN" or "TOOFAN" under any other mark which is identical and/or deceptively similar to the plaintiff's registered trademark "TOOFAN" in any manner whatsoever ;
- d) An enquiry into the loss and damages suffered by the plaintiff be directed for wrongful use and adoption of the mark "SNJ TOOFAN" or "TOOFAN" by the defendants and use of the said mark by the defendant in relation to Fan and allied products and a decree be made for the said sum in favour of the plaintiff upon such enquiry be made ;
- e) A decree for delivery up and cancellation of all the cash memos, bills, challans, vouchers, brochures, wrappers, cartons, packaging materials, publicity materials and all other documents and/or papers bearing the mark "SNJ

TOOFAN” or “TOOFAN” and the artistic representation thereof or any other mark which is either identical with and/or deceptively similar to the plaintiffs’ trademark “TOOFAN” and the artistic representation thereof and destruction thereof;”

Initially, the plaintiffs have also filed an application being GA/1267/2018 praying for injunction and accordingly, by an order dated 3rd October, 2018, this Court has allowed the injunction application by restraining the defendant and his men, servants, agents, assigns, dealer, distributors from manufacturing, selling, advertising, distributing or advertising in print or electronic media or internet in India and /or otherwise dealing in fans or electrical goods or goods falling under class 11 and/or any other goods under the offending mark “SNJ TOOFAN”.

Counsel for the defendant submits after the order of injunction passed by this Court, the defendant has stopped using the trademark of “SNJ TOOFAN”. Now, the defendant has filed affidavit on 16th November, 2023 stating as follows : -

“1. On or about 17th May, 2018, the plaintiff filed a suit for infringement and passing off with regard to the Trademark of the plaintiff “TOOFAN” falling under class 11 of the Trademark Mark, Act.

2. By an order dated 3.10.2018 passed in GA. No. 1267 of 2018 appearing along with CS. No. 102 of 2018, his Lordship Hon’ble Justice Soumen Sen was pleased to allow the application and thereby passed an order of injunction by allowing the prayer of the plaintiff and restraining the defendant and his men, servants, agents, assigns, dealer,

distributors from manufacturing, selling, advertising, distributing or advertising in print or electronic media or internet in India and /or otherwise dealing in fans or electrical goods or goods falling under class 11 and/or any other goods under the offending mark "SNJ TOOFAN".

3. Since then the defendant have stopped using the Trademark "SNJ TOOFAN" in compliance with the order passed on 3.10.2018 by Hon'ble Justice Soumen Sen.

4. The defendant has decided not to use the Trademark "SNJ TOOFAN" any further and as such has not filed any written statement, as such andecree may be passed finalizing the order dated 3.10.2018.

5. That the statements made in paragraphs 1 to 4 are true to my knowledge.

Counsel for the respective parties submit that the defendant has given undertaking that the defendant will not use the Trademark "SNJ TOOFAN" henceforth and pray for decree in terms of prayers (a), (b) and (c) of the plaint.

In view of the above, CS/102/2018 is disposed of in terms of prayers (a), (b) and (c) of the plaint.

Decree be drawn accordingly and the affidavit filed by the defendant be made part of the decree.

(KRISHNA RAO, J.)