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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th January, 2023*

+ **RFA(OS)(COMM) 10/2019**

ELOFIC INDUSTRIES LIMITED & ANR **Petitioners**

Through: Mr. Rajshekar Rao, Sr. Adv. with
Mr. Rijuta Mohanty, Mr. Sankalp
Brahma & Mr. Areeb, Advs.

Versus

MOBIS INDIA LIMITED & ANR **Respondents**

Through: Mr. Manish Biala & Mr. Ashutosh
Upadhyaya, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning a judgement dated 25.10.2018 passed by the learned Single Judge in CS(COMM) No. 17/2016. The said suit was preferred by the appellant (plaintiff), *inter alia*, claiming various reliefs including a declaration that the threat issued by the respondent (defendant) regarding infringement of trademarks and copyrights were groundless. The appellant further sought a decree of permanent injunction restraining the respondent from continuing groundless threats of legal proceedings against the appellant as well as the dealers, wholesalers, stockists etc.

2. The appellant claims that its use of the marks 'HYUNDAI', 'SONATA', 'ACCENT', 'i10', 'i20' and 'SANTRO', which are the registered trademarks of the respondent, is fair use within the meaning

of Section 30(2)(d) of the Trademarks Act, 1999.

3. It appears that in the said suit, an application was filed by the respondent (defendant) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereafter 'the CPC'). However, it does not appear that a final decision was rendered in the said application although certain observations made in the impugned judgement do have bearing on the averments made in the said application. The learned Single Judge proceeded to examine the larger controversy as arising in the suit and passed the impugned judgment, *inter alia*, directing as under:-

“(I) The plaintiffs, on their products shall use the trade mark/brand name of the defendants only in the manner as in Ex.C-1 to C-6 i.e. at the same place on the packaging where the names of the manufacturers, particulars of products etc. are stated and in the same font as in Ex.C-1 to C-6 and not in any bigger font and substituting the words "Suitable for" with the words "Adapted to form part of.

(II) However, the plaintiffs, immediately below the words "Adapted to form part of" preceding the trade mark/trade name and/or brand of the defendants shall endorse in the same font “WE HAVE NO TRADE CONNECTION WITH HYUNDAI”;

(III) Upon the plaintiffs so using the trade mark of the defendants, the defendants shall not mete out any threats of infringement of their trade mark and not communicate so to the public at large or to the agents or dealers of the plaintiffs.”

4. Mr. Rajshekhar Rao, learned counsel appearing for the appellant, submits that the court had no jurisdiction to issue further direction

against the appellant (plaintiff) in its suit, which was essentially filed to restrain the respondent from pursuing its threats. He also submits that there is no definite finding that the use of the marks by the appellant did not amount to fair use under Section 30(2)(d) of Trademarks Act, 1999 or that it infringed the respondent's trademarks.

5. He also points out that neither party had filed any application for summary judgment and the procedure under Order XIII A of the CPC as introduced by the Commercial Courts Act, 2015 was also not followed.

6. He submits that provision of Chapter XA of the Delhi High Court Original Side Rules, 2018, which contemplates a *suo moto* summary judgment by the court, is contrary to the Order XIII A of the CPC as introduced by the Commercial Courts Act, 2015. In terms of Section 16(3) of the Commercial Courts Act, 2015, the provision of Order XIII A of the CPC would override any rule framed by the High Court or any State Government. In any event, Chapter XA of the Delhi High Court Original Side Rules, 2018 came into force after the impugned judgment was rendered.

7. Rule 4 of the Order XIII A of the CPC reads as under:-

“4. Procedure. –(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

- (a) the application must contain a statement that it is an application for summary judgment made under this Order;
- (b) the application must precisely disclose all material facts and identify the point of law, if any;

- (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies;
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;
- (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.
- (2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—
 - (a) the date fixed for the hearing; and
 - (b) the claim that is proposed to be decided by the Court at such hearing.
- (3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—
 - (a) the reply must precisely—
 - (i) disclose all material facts;
 - (ii) identify the point of law, if any; and

- (iii) state the reasons why the relief sought by the applicant should not be granted
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) the reply must concisely state the issues that should be framed for trial;
- (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and
- (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.”

8. It is clear from the above that the summary judgement can be rendered by a court in commercial disputes only on an application moved by any of the parties which conforms to the procedure as set out in Rule 4 of Order XIII A of the CPC. Such an application must contain a statement that the applicant seeks a summary judgment; it must

precisely disclose all material facts and identify the point of law; it should also include the documentary evidence which the applicant seeks to rely on; it must state the relief sought by the applicant; and more importantly, it must state the reason why there is no real prospect of the respondent to succeed in its claim or defend the same. The respondent/non-applicant is required to be afforded thirty-days prior notice for hearing such an application. None of the aforesaid procedures were followed in the present case.

9. The suit was at the threshold stage. This Court is informed that even admission and denial of documents had not been conducted. No issues were framed by the court.

10. In view of the above, the learned counsel for the parties jointly request that the impugned order and judgement be set aside and the matter be remanded to the learned Single Judge for consideration afresh.

11. With the consent of the parties, the impugned judgement is set aside. We remand the matter to the learned Single Judge to continue the proceedings from the same stage as were on the date when the impugned judgement was passed.

12. All rights and contentions of the parties are reserved.

13. List the suit before the learned Single Judge on 23.01.2023

14. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 10, 2023/Ch