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

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Date of decision: November 16, 2023

+ CONT.CAS.(CRL) 7/2022

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. N. Hariharan, Sr. Adv. (Amicus Curiae) with Mr. Sharian Mukherji, Ms. Rekha Punya Angara and Mr. Mueed Shah, Adv.
Mr. Vineet Dhanda, Adv.

Versus

VICKY AGGARWAL AND ORS.

..... Respondents

Through: Mr. Prashant Mehta, Adv. for R- 1& 4.
Mr. Raghav Marwah, Adv. for R-2 and 5 to 8.
Mr. Vidit Gupta, Adv. for R- 3& 9.

J U D G M E N T (oral)

1. The present contempt petition has been listed in pursuance of the order dated 14.12.2022 passed by learned Single Judge in CS(COMM) 810/2022.
2. The plaintiff filed the said suit against the respondent/contemnors seeking following reliefs:-

“A. a decree for permanent injunction restraining the Defendants, their partners or proprietor, as the case may be, assigns in business, associates, employees, members of the family, licensees or anyone connected therewith from directly or indirectly securing registration or using the mark TOWER as a trade mark / trade name / domain name / hashtag / social media handle / email address or as a part thereof in relation to goods in classes 29 or 30 or any other trade mark deceptively similar to Plaintiff's registered trade mark TOWER or logo pertaining thereto



amounting to infringement;

B. a decree for permanent injunction restraining the Defendants, their partners or proprietor, as the case may be, assigns in business, associates, employees, members of the family, licensees or anyone connected therewith from directly or indirectly securing registration or using the mark TOWER as a trade mark / trade name / domain name / hashtag / social media handle / email address or as a part thereof in relation to providing goods included in classes 29 and 30 or any other trade mark deceptively similar to the Plaintiff's trade mark TOWER or logo pertaining thereto as is likely to lead to confusion and deception amounting to passing off the Defendants goods as those of the Plaintiff or unfair competition;

C. an order for rendition of accounts of profits illegally earned by the Defendants and a decree for an amount so found due or in the alternative, a decree for Rupees Two Crores (Rs.2,00,00,000/- towards compensatory and penal damages may be passed in favour of the Plaintiff and against the Defendants;

D. an order for exemplary costs of the present proceedings in favour of the Plaintiff and against the Defendants; and

E. Pass any other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The said suit came to be listed before the learned Single Judge on 23.11.2022. On the said date of hearing, the respondent handed over a compilation of documents to the learned Single Judge. As a result the learned Single Judge was pleased to direct the answering respondents to place the said document on record during the course of the day. In compilation of the documents handed over by the answering respondents, the document dated 02.03.2016 which was, at the relevant point in time, believed to be a copy of an order passed by the learned Intellectual Property Appellate Board ('IPAB') on 02.03.2016 was also placed on record.

4. The present proceedings have emanated from filing of the said document i.e., order dated 02.03.2016 passed by learned IPAB. In the



compilation of the documents, apart from the document dated 02.03.2016, various other documents were also handed over. These *inter alia* included a list of respondent's pending and registered Trademarks, applications for registrations filed by the respondents, status of various applications, etc.

5. The matter was taken up on 24.11.2022 and in compliance of the order dated 23.11.2022, the respondents filed the said compilation of documents on record of this Court vide Diary No. 1935402/2022. On the said date of hearing, an issue was raised with respect to the authenticity of the said document dated 02.03.2016. Since respondent No.1 believed that at the relevant time the said document was authentic, the learned Senior Counsel engaged by the answering respondents gave its no-objection in case the authenticity of the said document was investigated which itself shows that neither the Senior Counsel appearing on the said date of hearing nor the respondents were aware about the authenticity of the said document at that time. As a result, vide order dated 24.11.2022, the learned Single Judge was pleased to direct the Registrar (Vigilance) along with Registrar (Original Side) to conduct an inquiry into the matter pertaining to the authenticity of the said document and file a report in a sealed cover. In the meanwhile, the respondent No. 2 gave an undertaking before the learned Single Judge not to manufacture, sell or offer for sale any product under the impugned mark "TOWER", till the next date of hearing i.e., 02.12.2022. However, subsequently, vide order dated 10.01.2023, the learned Single Judge permitted the respondent (defendant in the said suit) to amend the undertaking since the said undertaking could not extend to goods in respect of which the right of the defendants (in the suit) to use the mark was not contested by the plaintiff therein.



6. Thereafter on 02.12.2022, learned Single Judge recorded in its order that the learned Registrar (Vigilance) had filed its report in sealed cover. The learned Single Judge was pleased to open the sealed cover and peruse the report in the presence of the parties. However, the report was not shared with the respondent no. 1. After having perused the said report, the learned Single Judge came to the conclusion that no records were available in which so called order dated 02.03.2016 of which the said document appeared to be a copy, was passed. In view thereof, the learned Single Judge exercised powers under Section 18 of the Contempt of Courts Act, 1971 and placed the matter before Hon'ble the Chief Justice for reference to the appropriate Division Bench. Consequently, the present matter was posted before this Court.

7. An unconditional apology affidavit has been tendered by respondent No. 1 which contains the circumstances under which the respondent no. 1 herein came in possession of the copy of the document in question. It is stated by respondent no. 1 that for the services of "Indian Trademarks Co.", a Solicitor was engaged in the year 2008 and since then, the said firm, through its partner, Mr. Sanjay Aggarwal, Advocate represented the answering respondents before the Trademark Registry and the IPAB, wherever required. In October 2015, the respondent No. 1 was informed by above named Mr. Sanjay Aggarwal, that a petition had been filed before the IPAB and the said Advocate informed respondent No. 1 that he would appear and represent the said respondent in the said matter. He further suggested that apart from him, he would be requiring a Senior Counsel for the matter and demanded the fee, accordingly. Upon being informed about the above, a total sum of Rs. 5,00,000/- (Rupees Five Lacs only) was paid to



Mr. Sanjay Aggarwal, Advocate and out of the said amount Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand only) was paid from the personal account of respondent No. 1 and the remaining sum of Rs. 2,50,000/- (Rupees Two Lacs and Fifty Thousand only) was paid from the personal account of his brother, Mr. Atule Aggarwal, respondent No. 2 on 27.10.2015, on his instructions. Thereafter, Mr. Sanjay Aggarwal informed respondent No. 1 that through his firm he would represent the said respondent before the IPAB.

8. It is further stated that around end February/Early March, 2016, Mr. Sanjay Aggarwal, Advocate called respondent No. 1 to his office and asked him for more money to engage few other people for the matter which was informed to be listed the next day. Believing the said Advocate, since he had been working for the respondents for a considerable period of time, i.e., since 2008, and without any doubt or suspicion, he paid a further fee of Rs. 3,00,000/- in cash. Approximately one month from the said date, in early April 2016, Mr. Sanjay Aggarwal called respondent No. 1 to his office and upon reaching, he handed over the document of which the said document is a copy, which he said was a copy of the order passed by IPAB on 02.03.2016. No other documents were handed over by Mr. Sanjay Aggarwal to respondent No. 1 which was stated to be pending before the IPAB. Thereafter, he took the balance payment of Rs. 2,00,000/- (Rupees Two Lacs only) from the said respondent, in cash.

9. It is further averred that after coming to know that the said document was manufactured, respondent no. 1 filed a complaint before the Bar Council of Delhi against Mr. Sanjay Aggarwal, Advocate, which is pending consideration. Learned counsel for the respondents submits that even



otherwise filing of that document was of no help in any manner to the respondents as they were defendant in the suit filed by the plaintiff. Nonetheless, the said document was believed to be true and genuine as handed over by the said Advocate, therefore, the same was filed before the Court.

10. In the unconditional apology affidavit, it is also submitted that contempt was not intentional or deliberate, however, it was due to the copy of the order provided by Mr. Sanjay Aggarwal, Advocate. Accordingly, the respondents sought unconditional apology for any inconvenience caused to this Court and have undertaken that in future they shall be careful while filing any document before any Court or in judicial proceedings or otherwise.

11. Keeping in view the unconditional apology, tendered by respondents by way of affidavit, we hereby discharge the respondents from these proceedings. However, we hereby direct the Bar Council of Delhi to take appropriate action, as per law against the said Mr. Sanjay Aggarwal, Advocate, if, he is found guilty of manufacturing the order dated 02.03.2016 purported to be by IPAB.

12. In view of the above, the petition is disposed of.

SURESH KUMAR KAIT, J.

SHALINDER KAUR, J.

NOVEMBER 16, 2023/SU