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

+ EFA(COMM) 1/2024, CM APPLs.4929/2024 & 9044/2024

SUSHIL GOEL

.....Appellant

Through: Mr. P. D. Gupta, Sr. Advocate
along with Mr. Atul Gupta,
Advocate.

versus

PIONEER CORPORATION

.....Respondent

Through: Mr. Samar Bansal, Mr. Sumit
Wadhwa and Ms. Vanshika
Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

07.10.2024

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1. The present appeal has been filed under Order XXI Rule 58 CPC read with Section 13 of the Commercial Courts Act against the order dated 20.01.2024, whereby, the objections to the Execution Petition filed by the Appellant/Judgment Debtor ["JD"] were dismissed by the learned District Judge (Commercial Court).

2. Shorn of all unnecessary details, the facts as relevant for the disposal of the present appeal are that DH filed a Commercial Suit, seeking permanent injunction for infringement of trademark and copyright, passing off, dilution, unfair competition, rendition of accounts and damages. In the said Suit, a Local Commissioner ["LC"] was appointed, who submitted the Report dated 04.10.2018. Thereafter, the parties entered into an amicable settlement in mediation proceedings. The case was decreed in terms of the said settlement.

3. As per Clause 6(a) of the Settlement Agreement, JD



acknowledged that DH has exclusive right to use trademark “PIONEER” and agreed to the grant of permanent injunction in favour of the DH in respect of trade mark “PIONEER” and its trade dress. Vide Clause (d), JD agreed to the destruction of the goods and articles seized by the LC on 13.06.2018 as also any other goods and articles bearing the said trademark of the DH within two weeks from the date of execution of the settlement. As per Clause 6(f), JD agreed that he will completely change the current packaging/trade dress used by him for its products under the trademark “PREMIER”, which is identical to the packaging/trade dress used by the DH for its products.

4. DH filed yet another Suit against the JD on fresh cause of action. LC appointed by the Court, visited the premises of the JD and submitted his Report dated 22.11.2022.

5. Thereafter, the DH filed an Execution Petition against JD for violation of the Settlement Agreement. JD filed objections under Section 47 CPC. However, the same were dismissed by the learned District Judge vide order dated 20.01.2024, which have been assailed in appeal.

6. Learned counsel for JD has submitted that there is no material on record to establish that JD has in any manner violated the Settlement Agreement in terms of which the decree was passed. He submits that LC had seized speakers of make “PIONEER”, which are the genuine products of the DH and are not counterfeit and there is no prohibition to keep the genuine products. It is further submitted that JD is no more running the business of selling speakers. It is argued that there is no evidence that JD has violated the dress code used by the DH in respect of its products. With regard to the recovery of the boxes, it has been submitted that such boxes were old boxes lying in



the premises of the JD and were not got printed afresh after the settlement with the DH.

7. Learned counsel for DH, however, submits that JD has violated the Settlement Agreement, as is evident from the recovery of packaging material i.e. boxes bearing the trademark “PREMIER” but similar to “PIONEER”. It is further submitted that the packaging material found at the time of first visit of the LC has since been destroyed pursuant to the settlement and therefore packaging material recovered at the time of second visit of LC were newly manufactured for packing the counterfeit products.

8. We take note that the good seized by the LC were produced before this Court on 07.02.2024. It was found that certain speakers seized by the LC were the original products and not counterfeit, while there were other speakers which were identical to the original “PIONEER” products. Such identical products were not bearing the stickers referring to the product ID number and were rather bearing the sticker indicating that they were manufactured in Vietnam.

9. Learned District Judge while dismissing the objections of the JD noted that the trade dress on the packaging material of the JD was deceptively similar to the trade dress of the packaging material of the DH. Argument that the said packaging material were old boxes lying in the premises were turned town in view of clause (d) of Settlement Agreement which provided that all the goods and articles in possession of the JD were to be destroyed within two weeks from the date of the settlement.

10. On comparison of the pictures of the trade dress/packaging material used by the DH and JD in the Settlement Agreement with the pictures taken by the LC, the trial court concluded that the boxes/trade



dress used by the JD were not the same and thus inferred that the boxes/trade dress were got made and printed subsequent to the Settlement Agreement.

11. In Para-17 of the impugned order, the Court recorded that JD has not been able to explain as to how and when he came into possession of those speakers. JD had failed to produce the bills of purchase of speakers, and therefore in the absence of any plausible explanation, it was inferred by the Executing Court that JD was manufacturing/counterfeiting the products of DH in violation of the Settlement Agreement and accordingly dismissed the objections.

12. Even though, JD claims that the speakers recovered were not counterfeit but were the genuine 'PIONEER' speakers, the court order dated 07.02.2024 notes that there were some speakers which were identical to original products. JD claimed that he was having the bills of purchase of the said speakers but failed to place them on record.

13. In view of the position which has been taken note by the District Judge in its order, we find that the same is logical and based on sound reasoning. The impugned order can neither be said to be wholly perverse or nor unsustainable. We, accordingly, find no merit in the present appeal. The appeal is accordingly dismissed. However, JD is at liberty to produce evidence before the executing court in order to prove that there is no violation of the settlement agreement.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

October 07, 2024

RM