



\$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 65/2024 & CM APPL. 21504-05/2024**
PARDEEP KUMAR PROPRIETOR OF T.G. SOLAR PUMP

..... Appellant

Through: Mr.Harish Kumar, Ms.Shreya
Gagneja, Mr.Mukund Yadav, and
Ms.Meenakshi, Advocates.

versus

PRAKASH ENTERPRISES & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

10.04.2024

%

1. The appellant has filed the present appeal impugning an order dated 19.03.2024 (hereafter the *impugned order*) passed by the learned Commercial Court in CS (COMM) No.184/2024 captioned *Pradeep Kumar v. Prakash Enterprises*.

2. In terms of the impugned order, the learned Commercial Court had declined the request of passing *ad interim* injunction restraining the respondents (arrayed as defendants in the suit) from infringing its registered designs as set out in the plaint. The appellant's application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereafter the *CPC*) has not been rejected, however his request for *ad interim* order to the aforesaid effect was not acceded to. The appellant had also filed the application for appointment of the local commissioner under Order 26 Rule 9 of the *CPC*. Although, the impugned order indicates that the arguments on the said application were heard, however, the same was not considered in the impugned order.



3. The appellant had filed the above captioned suit alleging infringement of his registered designs in respect of Solar Panel Trolleys (hereafter *SPT*). The appellant claimed that it had nine registered designs in respect of SPTs and the respondents were fabricating SPTs, which are similar to the said registered designs. In his plaint, the appellant also set out the images of his SPT constructed in accordance with the registered design as well as those, which were allegedly fabricated by the respondents.

4. It is also alleged by the appellant that on earlier occasion respondent no.1 was found to be infringing the appellant's design and a police complaint in this regard was also filed against respondent no.1. In the said proceedings, respondent no.1 had given an undertaking that he would not infringe the appellant's registered designs.

5. The learned Commercial Court had noted that apart from respondent no.1 furnishing undertaking to the appellant, none of the other respondents had furnished any such undertaking. The learned Commercial Court had noted that no cease-and-desist notice was issued to respondent no.2.

6. The *ad interim* order sought by the appellant was denied principally on the ground that the appellant had not placed anything on record to establish that the designs of SPTs allegedly manufactured and sold by respondent no.2 to 6 are not registered. The learned Commercial Court has also noticed that the invoices placed on record by the appellant in respect of the SPTs sold by the respondents did not mention the design or details. Additionally, the learned Commercial Court also noted that no photographs of SPT allegedly sold by respondent no.1 placed on record.

7. We are unable to accept that the *ad interim* order could be denied only



on the aforesaid basis. The appellant had provided details of his registered designs. There is no material to indicate that any of the SPTs manufactured by the respondents were based on the design registered in their favour.

8. More importantly, the learned Commercial Court had not considered the appellant's request for appointment of the local commissioner. It is contended by the learned counsel for the appellant that if a notice of the application is issued to the respondents, they would secret the goods manufactured by them and neither the goods nor the respondents would be traceable thereafter.

9. In view of the above, we consider it apposite to set aside the impugned order and remand the matter to the learned Commercial Court to consider afresh and in particular the application of the appellant for appointment of the local commissioner without issuing any notice to the respondents.

10. The matter be placed before the learned Commercial Court on 23.04.2024. The appellant shall appear before the learned Commercial Court on the said date of hearing.

11. The appeal stands disposed of in the above terms. Pending applications also stand disposed of.

12. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 10, 2024

M