



2024:DHC:8074



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 16th October, 2024**+ **CS(COMM) 423/2023 & I.A. 11343/2023, I.A. 11344/2023****HAVELLS INDIA LIMITED**

.....Plaintiff

Through: Mr. Sudeep Chatterjee, Mr. Kunal Vats and Mr. Jaydeep Roy, Advocates (M:9106650461)
Email: kunal@singhandsingh.com

versus

ELECTROMECH INDIA PRIVATE LIMITED & ANR.

.....Defendants

Through: Ms. Rajeshwari H., Mr. Chitranshu Kumar, and Ms. Nikita, Advocates.
Mob: 9588174061

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed for permanent injunction restraining the defendants from infringing the registered design of the plaintiff for its ceiling fan, bearing No. 277328, on the ground that the defendants have imitated the said design of the plaintiff for its identical products, being ceiling fans, which amounts to violation of plaintiff's statutory rights.
2. When the matter was listed for hearing for the first time, learned counsel appearing for the defendants had submitted that the impugned product had not been launched in the market, and undertook that till the next date of hearing, defendants will maintain the said status.
3. Subsequently, it was noted vide order dated 23rd February, 2024 that the defendants do not wish to file any written statement. Thus, the right of



the defendants to file written statement was closed.

4. Upon the statement of the defendants that the impugned products are not being manufactured any more by the defendants, an affidavit was directed to be filed by this Court. Thereafter, an affidavit dated 07th October, 2024 has been filed by the defendants, wherein, the defendants have deposed that they have neither commercially launched nor sold the products bearing the plaintiff's design in question.

5.1 Learned counsel for the plaintiff has expressed satisfaction over the undertaking given by the defendants. However, he presses for costs and has filed statement of cost on an affidavit, which has been disputed by learned counsel appearing for the defendants, vehemently.

5.2 In support of his prayer for cost, learned counsel appearing for the plaintiff submits that the defendant no. 2 is a habitual and a chronic infringer, who has been repeatedly infringing the plaintiff's marks and passing off its goods, as that of the plaintiff. In the year 2020, the plaintiff company learnt that the said defendant had been manufacturing, marketing and selling distribution boards under the brand Altech/Pro Altech/Havel's, which was nothing but a fraudulent imitation of the plaintiff's distribution boards, *inter alia* the designs, overall getup, layout, etc.

5.3 It is submitted that being aggrieved, the plaintiff had filed an earlier suit, being *CS(COMM) 555/2020*. Vide order dated 17th December, 2020, this Court had passed an *ad interim ex parte* injunction restraining the defendants therein, from manufacturing and selling the impugned designs, or any other product deceptively similar to the designs of the plaintiff. By the said order, this Court had also appointed Local Commissioners to visit the premises of the defendant for ascertaining the quantum of infringement.



5.4. It is submitted that during the commission conducted pursuant to the above directions, it was revealed that in addition to the aforementioned infringement by the defendant with regard to the plaintiff's designs, the defendant was also copying the well-known trademark of the plaintiff, being



‘STANDARD’/ **STANDARD**, by adopting an identical mark ‘STANGUARD’. The said suit filed by the plaintiff, i.e., *CS(COMM) 555/2020*, is pending adjudication before this Court.

5.5 It is further submitted that another suit being *CS(COMM) 283/2020*, has been filed by the plaintiff alleging infringement of its marks by a third party. However, it transpired that defendant no. 2 herein, was supplying goods to the said third party. Thus, an application for impleadment of defendant no. 2 herein, as defendant in the said suit, has been filed.

5.6 It is submitted that the present is a third round of litigation against the defendant. Thus, it is submitted that the plaintiff is entitled to costs in the present case, though an undertaking has been given by the defendants before this Court.

6.1 Per contra, learned counsel appearing for the defendants submits that on the very first date of listing of the present suit, an undertaking had been given by the defendants that the impugned products have not been launched in the market and that the defendants will maintain the status, till the next date of hearing. She submits that the defendants have never contested the present matter. There is no delay in filing the affidavit of undertaking, as the occasion for filing the same arose, only when directions in this regard were given by this Court.

6.2 She further submits that cost in a case is imposed only where



vexatious and frivolous defence is taken. However, in the present case the defendants have not taken any vexatious stand. Rather, the defendants have taken no stand at all, as the matter has remained uncontested. Thus, she submits that if costs are to be imposed, the same ought to be very nominal.

6.3 She further submits that the defendant herein wish to mediate in the other pending suits also. However, the plaintiff is not ready for mediation in the said case. As regards the third suit, the defendant is yet to be impleaded therein, and the application of the plaintiff for impleading the present defendant in the said suit, is still pending.

6.4 She further submits that the present suit has been filed on the basis that the defendants are likely to infringe the mark of the plaintiff, and not on account of an actual infringement. She submits that only dummy fans had been displayed by the defendants in an exhibition, and no actual manufacturing of the ceiling fans with the infringing design, had been undertaken by the defendants.

6.5 She relies upon the following judgments in support of her submissions:

I. Uflex Limited Versus Government of Tamil Nadu and Others, (2022) 1 SCC 165

II. Vinod Seth Versus Devinder Bajaj and Another, (2010) 8 SCC 1

7. In rejoinder, learned counsel for the plaintiff has drawn the attention of this Court to the various documents and orders of this Court, to show that the defendants had actually commenced manufacturing of ceiling fans, with the infringing design and had every intention to market and commercially deal with the same. Thus, it is submitted that the plaintiff is justified in praying for cost.



8. Having heard learned counsels for the parties and having perused the record, this Court notes that the parties in the present suit are involved in multiple litigations, on account of allegations of infringement of different marks of the plaintiff herein, by the defendants. Thus, the defendants cannot be said to be innocent persons who had intended to carry on their business *bonafidely*, without being aware of the products of the plaintiff.

9. It is to be noted that the present suit is in the nature of a pre-emptive suit, so that the defendants do not launch their products infringing the registered design of the plaintiff. This Court notes the submission made by the plaintiff that in and around February, 2023, the plaintiff was informed by its dealers/distributors, that the defendants are about to launch their new series of ceiling fans, which are identical to the well-known fan of the plaintiff, being 'AARIA'. The plaintiff engaged the services of an independent investigation agency, which conducted an independent survey in respect of the said impugned fans of the defendant *inter-alia* on 22nd February, 2023 by visiting the world's largest Electrical and Allied Electronic Show – ELECRAMA 2023, held at India Expo Mart, Greater Noida, Uttar Pradesh. The report of the said independent investigator, as filed along with the plaint, is reproduced as under:

INTRODUCTION

Pursuant to the instructions received from the client, an investigation was conducted on the target entity 'ELECTROMECH INDUSTRIES' located in Haridwar to check for fans that were found to be infringing the Intellectual Property of client.

FIELD INVESTIGATION TO ELECRAMA 2023

According to the instructions received from the client, a visit was planned to the ELECRAMA 2023 expo.

Date of visit: 22nd February 2023.

ELECRAMA

ADDRESS:

INDIA EXPO MART, GREATER NOIDA, NCR, INDIA



The IO visited the ELECRAMA expo and noticed that the target entity 'Electromech Industries' has exhibited their stall in Hall number 14 at the Stall no. H14A29.

The IO met Mr. Mohit Talwar, who introduced himself as the Director of the target entity. The IO noticed banners of fans and distribution boards displayed on the stall.

The IO inquired about the nature of the business and products they deal in, to which Mr. Mohit provided the following information:

- They are manufacturers of electrical goods like distribution boards and fans.
- The entity exports its fans to African countries and is willing to sell its goods within India and abroad.
- They have a manufacturing facility in Haridwar.

The IO clicked a few photographs, collected the product brochure, business card, and exited the premises.

PHOTOGRAPHS





2024:DHC:8074



FANS DISPLAYED AT ELECRAMA



BUSINESS CARD



E-MAIL & TELEPHONIC INVESTIGATION

In order to obtain more information about the fans (Designs and Models) that the target entity deals in, an e-mail and telephonic investigation was conducted. The Following information was obtained:

E – MAIL INVESTIGATION:

On 12th April 2023, an e-mail requesting the price of the Fans (that were shortlisted - two models from the product catalogue and two models that were displayed at ELECRAMA 2023), was sent to the e-mail ID 'mohit@altechindia.in' and 'sandeep.kalia@altechindia.in'. However, no response has been received for the same.

Screenshot affixed:

TABLE FOR FAN DESIGN:

FAN DESIGN	SOURCE OF PRODUCT	PRICE (INR)	MINIMUM ORDER QUANTITY
	Product Catalogue		
	Product Catalogue		
	Displayed at ELECRAMA 2023		
	Displayed at ELECRAMA 2023		

SCREENSHOT DISPLAYING FANS MODELS

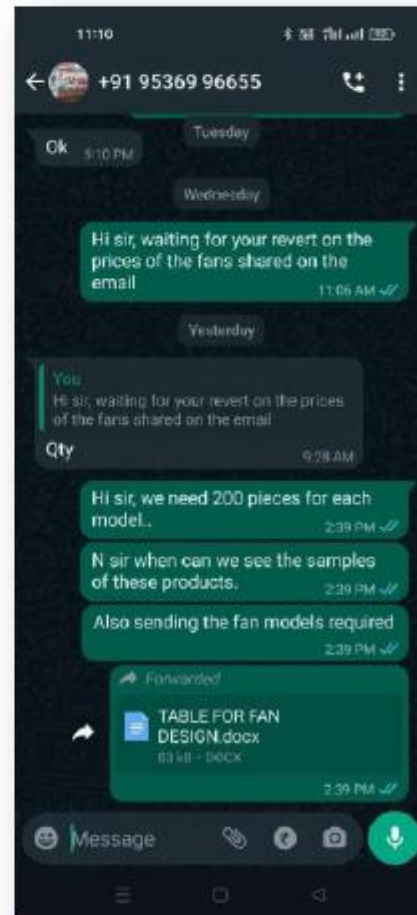


WHATSAPP CONVERSATION

Since all the calls placed to Mr. Mohit remained unanswered, the IO dropped a WhatsApp message to inform him about the e-mail sent to him requesting the fan prices.

- On 18th April 2023, Mr. Mohit responded to the WhatsApp message asking about the particular fan models.
- On 19th April 2023, again a WhatsApp message was sent to Mr. Mohit requesting a response.
- On 20th April 2023, Mr. Mohit responded to the WhatsApp message asking about the number of fans to be ordered. The IO responded to the quantity and also shared a Word document containing details about the fan models on WhatsApp.

Following are the screenshots of the conversation:





Note: Upon receiving no response to the above conversation multiple calls were placed to Mr. Talwar. During one of the conversation Mr. Talwar informed the IO that he is currently traveling and shall revert upon return. He agreed that he is capable of providing fans as per the IO's requirement anywhere in India and for Export.

-----End of report-----

10. Perusal of the aforesaid report, manifests that the defendants had not only displayed the ceiling fan with the infringing design at the Exhibition, but were also capable of supplying the said ceiling fans. Therefore, it is apparent that the intention of the defendants was to sell the products with the infringing design of the plaintiff. Thus, the submissions made by learned counsel for the defendants to the contrary, cannot be accepted by this Court.

11. Further, the intent of the defendants to commercially deal with the products, with the infringing design of the plaintiff, is evident from the various statements made on behalf of the defendants before this Court and duly recorded in various orders. Thus, in the order dated 02nd June, 2023, the statement of the defendants has been recorded, as follows:

“xxx xxx xxx

18. Ms. Rajeshwari H., on instructions, and without prejudice to her rights and contentions, states that the **Impugned Product has not been launched in the market and till the next date of hearing, Defendants will maintain this status.** Her statement is taken on record and shall bind the Defendants.

xxx xxx xxx”

(Emphasis Supplied)

12. Further, vide order dated 23rd February, 2024, the statement of the defendants has been recorded, in the following manner:

“xxx xxx xxx



The counsel for the defendants further states that she has instructions to give an undertaking that the defendants will not indulge in any further manufacturing of the impugned products.

xxx xxx xxx”

(Emphasis Supplied)

13. Likewise, in the order dated 23rd April, 2024, the stand of the defendants has been noted, as follows:

“1. Counsel for defendants states on instructions that the impugned products are not being manufactured any more by defendants.

xxx xxx xxx”

(Emphasis Supplied)

14. Perusal of the aforesaid orders, clearly demonstrate that the defendants had taken steps towards manufacturing of the ceiling fans with the infringing design, and being faced with the present litigation, gave an undertaking before this court that the impugned products were not being manufactured any more, by them.

15. This Court also takes note of the fact that this is not the first time that the plaintiff was constrained to initiate legal proceedings against the defendants. The defendants have been involved in committing acts of infringement of the plaintiff’s marks and designs, in the past also. Submissions made in the plaint, in this regard, are reproduced hereunder:

“xxx xxx xxx

27. It is submitted that Defendant No.2 – Mohit Talwar is a habitual defaulter, who has time and again indulged in blatant infringement of Plaintiff’s registered designs as well as trademark. That in the year 2020, the Plaintiff herein, gained knowledge that Defendant No.2 is manufacturing and selling distribution boards under the brand ‘Altech/Pro Altech’ which however, were nothing but an obvious imitation of Plaintiff’s series of distribution boards bearing no. ‘203297’ and ‘203298’. In fact, the Defendant No.2 copied the entire design, overall get-up, lay-out, trade dress, etc. of the said Plaintiff’s products.



28. In addition to the above, the Plaintiff also learnt that Defendant No.2 has been exporting/supplying various electronic products to Nigeria bearing an identical/deceptively similar trademark as that of the Plaintiff. That the Plaintiff had strong reasons to believe that in order to deceive the public and pass off its product as that of the Plaintiff, the Defendant No.2 dishonestly adopted the marks 'HAVELS' and 'HARVELS' in the same color combination along with

the  logo, leaving virtually no difference between the Plaintiff's  logo and the Defendant's logo .

29. Being aggrieved by the above illegality of the Defendant No.2 and in order to protect the rights of the Plaintiff, the Plaintiff filed a suit before this Hon'ble Court being 'CS (COMM) No. 555/2020 titled as Havells India Ltd. vs Mohit Talwar & Ors' seeking inter alia, directions from this Hon'ble Court to forthwith restrain the said Defendant from adopting an identical design thereby, resulting in infringement and passing off. The said suit is pending adjudication before this Hon'ble Court as on date.

30. It is submitted that while the aforementioned suit was listed for the first time on 17.12.2020, this Hon'ble Court was pleased to pass an ad-interim ex-parte injunction restraining the Defendants therein, from manufacturing and selling the impugned designs bearing the mark 'Havel's/Harvels' or any other product deceptively similar to the designs of the Plaintiff. That by way of the said order, this Hon'ble Court was also pleased to appoint Local Commissioners to visit the premises of the Defendant for ascertaining the quantum of infringement inter alia, by making inventory, seizing the impugned products on 'superdari' etc.

31. Pertinent to submit that during the commission conducted pursuant to the above directions of this Hon'ble Court by the Ld. Local Commissioner, it was revealed that in addition to the aforementioned infringement by the Defendant No.2 (Defendant No.1 in the said suit) with regard to the Plaintiff's designs and trademark, the Defendant was also copying the well-known trademark of the

Plaintiff being 'STANDARD'  by adopting an identical mark for its products viz. 'STANGUARD'. It is submitted that the said suit is still pending adjudication before this Hon'ble Court.

xxx xxx xxx"



16. No written statement has been filed on behalf of the defendants and the averments made in the plaint have remained un-rebutted. Therefore, the averments made by the plaintiff regarding the defendant being a habitual infringer, are undisputed.

17. Considering the aforesaid, this Court is of the view that the present is a fit case for awarding cost in favour of the plaintiff and against the defendants. On account of the infringing activities being carried out by the defendants, the plaintiff was constrained to file the present suit.

18. Thus, Supreme Court in the case of ***Vinod Seth Versus Devinder Bajaj and Another, (2010) 8 SCC 1***, while holding that costs are imposed to compensate the legal expenses incurred by a successful party, who was compelled to approach the Court on account of default of the other party, held as follows:

“xxx xxx xxx

45. Before concluding, it is necessary to notice the reason why the High Court was trying to find some way to protect the interests of the defendants, when it felt that they were being harassed by the plaintiff. It made the impugned order because it felt that in the absence of stringent and effective provision for costs, on the dismissal of the suit, it would not be able to compensate the defendants for the losses/hardship suffered by them, by imposing costs. If there was an effective provision for levy of realistic costs against the losing party, with reference to the conduct of such party, the High Court, in all probability would not have ventured upon the procedure it adopted. This draws attention to the absence of an effective provision for costs which has led to mushrooming of vexatious, frivolous and speculative civil litigation.

46. The principle underlying levy of costs was explained in Manindra Chandra Nandi v. Aswini Kumar Acharjya [ILR (1921) 48 Cal 427] thus: (ILR pp. 440-41)

“... We must remember that whatever the origin of costs might have been, they are now awarded, not as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected, or, as Lord Coke puts it, for whatever appears to



the Court to be the legal expenses incurred by the party in prosecuting his suit or his defence. ... The theory on which costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his rights in court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorised to allow such special allowances, not to inflict a penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases."

xxx xxx xxx"

(Emphasis Supplied)

19. Holding that a party who repeatedly conducts infringing activities should be imposed with cost, the Bombay High Court in the case of **Glenmark Pharmaceuticals Ltd. v. Curetech Skincare and Another, 2018 SCC OnLine Bom 11559**, has held as follows:

"xxx xxx xxx"

16. It is clear that the Defendant No. 2 is not only indulging in infringing activities by repeatedly copying brands of other companies but also appears to be in complete violation of the FDA regulations. The conduct of the Defendant No. 2 shows that this Defendant has no regard or respect to the rule of law. The consumers and general public are being repeatedly cheated by the Defendant No. 2. I am of the opinion that had this Defendant been imposed with exemplary costs at the very beginning of their infringing activities, this Defendant would not have been audacious in repeating its infringing activities. I also feel that this is a fit case where directions should be issued to various enforcement agencies to look into the affairs of the Defendant No. 2. No party, and particularly a party like this Defendant, should ever be under an impression that they can get away every time from the clutches of law despite being involved in these kinds of activities.

xxx xxx xxx"



2024:DHC:8074

*(Emphasis Supplied)*

20. This Court also notes the submission of the plaintiff, that on account of the undertaking of the defendants, the plaintiff is not claiming any damages, but only its legal cost.

21. The affidavit regarding statement of cost filed by the plaintiff shows that the plaintiff has incurred total cost of Rs. 3,71,370/-, excluding the court fees deposited by the plaintiff.

22. Considering the facts and circumstances of the present case, the suit is decreed in favour of the plaintiff and against the defendants in terms of prayers (A) and (B) of Para 67 of the plaint. The plaintiff is further held entitled to cost of Rs. 3,71,370/-, in terms of the affidavit filed by the plaintiff.

23. Decree sheet be drawn up.

24. The suit, along with the pending applications, is disposed of.

MINI PUSHKARNA, J

OCTOBER 16, 2024/au