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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 13.08.2024+ **FAO (COMM) 78/2024 & CM No.25213/2024**

UZAIR KHAN

.....Appellant

Through: Mr Atul Sharma, Mr Karan Sachdeva,
Ms Richa Sharma, Mr Sanjay
Sharma, Ms Abhilasha Singh, Ms
Aastha Arora and Mr Shouryankar
Kaushik, Advs. along with appellant-
in-person.

versus

NIKE INNOVATE CV & ANR.

.....Respondents

Through: Mr Anirudh Bakhru and Mr Deepak
Shrivastava and Mr Shravan Kumar
Bansal, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the judgment and order dated 15.04.2024.
2. Via the impugned judgment and order, the trial court has concluded that the appellant has deliberately disobeyed the orders dated 02.11.2021 and 12.12.2023. In this regard, the provisions of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 [in short "CPC"] have been taken recourse to by the trial court.
3. Mr Atul Sharma, learned counsel, who appears on behalf of the



appellant, has argued before us that the Local Commissioner (LC) had filed two (02) reports before the trial court, i.e., the reports dated 23.11.2021 and 08.01.2024.

3.1 Mr Sharma says that insofar as the second report is concerned, objections were filed, which were not taken into account by the trial court while passing the impugned judgment and order.

4. As a matter of fact, Mr Sharma also argues that an application had been moved for the appellant being supplied with the documents and video clips on which reliance was placed by respondent no. 1, which were not furnished prior to decision being rendered via the impugned judgment and order.

5. Messrs Anirudh Bakhru and Shravan Kumar Bansal, learned counsel, who appear on behalf of the respondents, contend to the contrary.

5.1 According to Messrs Bakhru and Bansal, the trial court has dealt with the principal objection taken by the appellant that the infringing goods were “planted” by the representatives of the respondents.

6. Notwithstanding the above, it appears that the trial court has, somehow, overlooked the fact that objections were filed on 09.02.2024 *vis-a-vis* the second report submitted by the LC, i.e., the report dated 08.01.2024.

7. That said, there is weight in Messrs Bakhru’s and Bansal’s argument that, in any event, no objections were preferred by the appellant *vis-a-vis* the first report, i.e., report dated 23.11.2021

8. Besides this, what has compounded the complexity arising in the matter is an application preferred on behalf of the appellant for examining the LC, to meet, perhaps, one of the allegations levelled against the appellant



that he obstructed the execution of the commission.

9. The record shows that the arguments in the application preferred under Order XXXIX Rule 2A of the CPC were heard on 27.03.2024.

10. The application was listed for orders on 03.04.2024, when it was directed to be re-listed for orders on 10.04.2024. The record shows that on that date i.e., 10.04.2024, the learned trial court judge was made cognizant of the fact that the appellant was taking steps for having the matter transferred. The manner in which the information was communicated was rightly found fault with by the learned trial court judge.

11. That said, the application for transfer was dismissed by the Principal District & Sessions Judge (Central). Resultantly, as directed by the trial court, the application under Order XXXIX Rule 2A of the CPC came up for pronouncement of orders on 15.04.2024.

12. As far as the conduct of the appellant is concerned, we had, on 01.05.2024, taken a very dim view concerning the same and, accordingly, directed the appellant to file an affidavit of apology and also present himself before the trial court judge.

13. The record shows that an affidavit of apology dated 04.05.2024 was filed. 13.1 The record also discloses that the appellant, pursuant to the order dated 12.07.2024 passed by the Court, has been appearing physically before the learned trial court judge.

14. The trial in the matter is on, although a suggestion was made by Mr Sharma that the appellant, in order to put a quietus to the matter, would be willing to suffer a decree.

15. Messrs Bakhru and Bansal submitted that in a case like this, it would not suffice and that they would want the matter to proceed to trial so that



damages could be ascertained.

16. It is also the submission of Messrs Bakhru and Bansal that upon the LC carrying out the commission in the first instance on 10.11.2021, he had identified 287 infringing goods, i.e., the shoes which had disappeared when the LC visited the said premises for the second time, i.e., on 29.12.2023.

17. We may also note that, according to Messrs Bakhru and Bansal, in fact, nearly, 2,000 infringing pairs of shoes were available in the subject premises on 10.11.2021, which could not be counted since the LC was forcibly removed from the subject premises.

17.1 Mr Sharma, on the other hand, argues that the shop where, allegedly, the infringing goods, i.e., the shoes were kept, was not the shop that was owned/operated by the appellant.

18. Given this position, it has been suggested by Messrs Bakhru and Bansal that the appeal can be closed with an undertaking being furnished by the appellant to the Court by way of an affidavit that infringing activity would not be carried out.

18.1 Furthermore, Messrs Bakhru and Bansal submit that the closure of this appeal should not impact the application filed on behalf of the respondents for making a reference to this Court for triggering criminal contempt against the appellant.

19. Besides this, as noticed above, the respondents are also keen that the suit action should be adjudicated as per law.

20. Having regard to the aforesaid, the appeal is disposed of with the following directions:

(i) The appellant will file an affidavit-of-undertaking with this Court that he/his employees/associate/agents/assignees shall not manufacture, sell, deal



with, import, trade, market or advertise the goods which infringe the trademarks of the respondents.

(ii) The affidavit will be filed within one week. A copy of the affidavit will be furnished to Mr Bansal.

(iii) The disposal of this appeal will not, in any manner, impact the adjudication of the applications pending before the trial court, including the application filed for making a reference concerning the alleged criminal contempt committed by the appellant.

(iv) The adjudication of the suit will proceed as per law.

(v) The appellant will not upload any videos showing the infringing goods, i.e., the shoes. In case, the infringing videos uploaded by a third party are brought to the notice of the appellant, the appellant will write to the channel within 24hrs. of acquiring knowledge for deletion of the video(s).

21. The appeal is disposed of, in the aforesaid terms. Consequently, the pending application shall stand closed.

22. The parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 13, 2024

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