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

+ **CS(COMM) 146/2018 & I.A. 42057/2024**

TAPARIA WARE & CABLE

.....Plaintiff

Through: Mr. Umesh Mishra, Ms. Yashodhara
Raina, Advocates (M:9868401295)
Email: u_k_mishra@yahoo.com

versus

NAVPAD CABLES & ORS.

.....Defendants

Through: Ms. Priyanka Parmar, Mr. Luv
Kumar, Advocates for D-1. (Through
VC)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

06.12.2024

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I.A. 42057/2024

1. The present is an application under Order III Rule 4 of the Code of Civil Procedure, 1908 ("CPC") read with Rule 5 of Chapter V of the Delhi High Court Original Side Rules, 2018 on behalf of counsel for defendant no.1 seeking discharge of the advocates named in *Vakalatnama*.

2. Learned counsel for defendant no.1 submits that they have taken all necessary steps to inform defendant no.1 of their intention to withdraw their *Vakalatnama* and defendant no.1 has been given reasonable time to make alternate arrangements for legal representation. A notice in this regard was also issued by learned counsel to defendant no.1.

3. It is submitted that despite repeated efforts and communications, counsels have been unable to obtain proper and necessary instructions from defendant no.1.



4. Accordingly, considering the submissions made before this Court and in the present application, the advocates whose names appear in the *Vakalatnama* dated 25th January, 2016, are discharged from representing defendant no.1 in the present suit.

5. With the aforesaid directions, the present application is disposed of.

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6. The present suit has been filed seeking permanent injunction restraining infringement, passing off of trademarks and copyright, label, device, trade dress, rendition of account, delivery up, etc.

7. The facts as canvassed on behalf of the plaintiff in the plaint are as follows:

- I. The plaintiff through its predecessor, is engaged in the business of manufacturing and marketing of electrical and electronics apparatus and instrument, as included in Class-09 of the Trade Marks Act, 1999 since the year 2001.
- II. The predecessor-in-interest of the plaintiff, i.e., M/s Manglam electrical electronics adopted and conceived the trade mark 'INDOFLEX' in relation to its business in or around the year 2001. In the year 2001 the said M/s Manglam electrical electronics applied for the registration of the trade mark 'INDOFLEX' vide application bearing no. 1054734 falling in class 09 and the same was registered with user detail proposed to be used in the year 2006.
- III. In the year 2009, the said M/s Manglam electrical electronics assigned the said trade mark vide assignment deed dated 31.10. 2009 in favour of Mr. Mahesh Kumar Taparia trading as M/s Taparia polymers.
- IV. Later on in the year 2013 the said trade mark was further assigned in



favour of the plaintiff vide assignment deed dated 05.06.2013.

- V. Further, a request on TM-24 has already been filed in the Trade Mark Registry, by the plaintiff for the change of the constitution in respect of the assignment deed dated 31.10.2009 and assignment deed dated 05.06.2013. Thus, it is the case of the plaintiff that the plaintiff is the registered proprietor of the trade mark 'INDOFLEX' in class 09.
- VI. The predecessors of the plaintiff *bonafidely*/honestly coined and adopted the trademark 'INDOFLEX' in relation to the said goods in or about the year 2001. The said use of the mark 'INDOFLEX' has been done continuously, extensively and openly in relation to the said goods since the time of its adoption.
- VII. The user of the trademark 'INDOFLEX' has been open and without any hinderance and objection from any corner of the consumers and the members of the trade.
- VIII. Plaintiff for the first time in the month of July, 2014, learnt about the defendants, its impugned adoption and use of the impugned trade mark/label and the impugned business activities, when the plaintiff was informed during the course of trade and business about the defendants impugned adoption and user of the trade mark, 'INDOFLAX'.
8. It is the case of the plaintiff that though the defendants had filed an application for registration of the mark 'INDOFLAX', however, there is no registration in favour of the defendants at all. He further submits that the status of the said application filed on behalf of defendant no.1 for registration of its mark 'INDOFLAX', shows as 'Refused'.
9. When the matter was listed for hearing on 06th September, 2024, it



was noted that defendant nos. 2 to 6 have already been proceeded *ex-parte* and that the only contesting defendant is defendant no.1.

10. This Court had further noted vide order dated 06th September, 2024 that learned counsel for defendant no.1 had submitted that his office was not receiving any instructions from defendant no.1 and that he shall be moving an application for seeking discharge from the present matter.

11. Today, directions have been passed in *I.A. 42057/2024*, whereby, learned counsel for defendant no.1 has been discharged from appearing on behalf of the defendant no.1. It is noted that in the application seeking discharge, learned counsel for defendant no.1 has categorically stated that they are not receiving any instructions from defendant no.1.

12. It is to be noted that written statement has been filed on behalf of the defendant no.1, wherein, defendant no.1 has stated in categorical terms that defendant no.1 has discontinued the use of its mark 'INDOFLAX' for the products manufactured by it. The relevant portion of the written statement is extracted as follows:

“D. It is during this interregnum period that defendant No. 1, after making an enquiry from the office of the trade mark registry and after coming to the conclusion that there is no other trade mark with the name INDOFLAX in Class 9, started using the same. Moreover, in order to avoid any controversy, defendant has also discontinued the use of its mark “INDOFLAX” for the products manufactured by it.”

13. It is to be noted that in view of the submissions made by learned counsel for defendant no.1 that defendant no.1 was in the process of filing an application for seeking discharge from appearing on behalf of defendant no.1, court notice was issued to defendant no.1. As per the office noting, the court notice issued to defendant no.1 through speed post and courier stands delivered. However, despite service, defendant no.1 has not put in



appearance.

14. The earlier counsel appearing on behalf of defendant no.1 has already been discharged by today's order. Further, it is to be noted that learned counsel for defendant no.1 had put the defendant no.1 to due notice.

15. It is noted that vide order dated 21st August, 2015, an injunction order was passed against the defendants, thereby restraining the defendants from using the trademark 'INDOFLAX' or any other trademark identical or deceptively similar to the trade mark of the plaintiff 'INDOFLEX'.

16. Accordingly, since the year 2015, defendant no.1 stands injuncted from use of the trademark 'INDOFLAX'. The said order is still continuing till date and has not been modified. This Court also notes the submissions made by defendant no.1 that defendant no.1 has already stopped use of the mark 'INDOFLAX'.

17. Learned counsel for the plaintiff submits that the plaintiff is satisfied with the statement made on behalf of defendant no.1 in the written statement that the defendant no.1 has already stopped the user of the impugned mark. He, thus, prays that the suit be decreed in his favour and that he gives up other prayers with respect to costs and damages.

18. Accordingly, the suit is decreed in favour of the plaintiff and against the defendant no.1 in terms of paragraph 28(a), 28(b) and 28(c) of the plaint.

19. Decree sheet be drawn up.

20. The present suit is accordingly disposed of.

MINI PUSHKARNA, J

DECEMBER 6, 2024

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