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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 585/2021 & I.A. 20916/2023**
SANDVIK INTELLECTUAL PROPERTY AB & ANR. Plaintiffs

Through: Mr. Siddhant Chamola and Ms.
Pallavi Bhatnagar, Advs.

versus

MR. KALYAN SINGH & ORS. Defendants

Through: Mr. Neeraj Gogia, Mr. Manu
Prabhakar and Mr. Avinash Kumar,
Advs. for D-1 & 3.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
16.05.2024

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I.A. 20916/2023

1. This application has been filed seeking summary judgment under Order XIII-A Rules 3 and 6(1)(a) read with Order VIII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”) in favour of plaintiff.
2. An *ex parte ad interim* injunction was passed in favour of plaintiff on 22nd November, 2021 restraining *inter alia* the defendants in dealing with impugned products manufactured by the defendants or in any manner dealing with distributor plates, rotor tip holders and turbo tips compatible with the SANDVIK VSI crushers or any other products which infringe the plaintiff's suit patents IN 248934, IN 219520 and IN 326138. Defendants thereafter, did not appear before this Court despite advance notice. Defendants' right to file written statement was closed by order dated 05th July, 2022 and thereafter,



they were proceeded *ex parte* by order dated 25th August, 2022. The injunction order dated 22nd November, 2021 was made absolute.

3. Pursuant thereto, I.A. 2078/2023 was filed under Order XXXIX Rule 2A of CPC which was heard by this Court on 31st January, 2024. In terms of the reasons given in the said order, the contempt proceedings were not pressed by plaintiff and directions were given to defendant to deposit costs for Rs.1 Lac within four weeks before the Delhi High Court Legal Services Committee.

4. Counsel for defendants has produced a receipt for the said deposit today. The same may be placed on record.

5. In these circumstances, counsel for plaintiff seeks a decree of injunction in their favour, to which counsel for defendants has no objection, as stated on instructions.

6. The background facts in this matter are narrated in the order dated 22nd November, 2021 in *paras 10 – 16*, which are not being repeated herein and are extracted as under:

10. The plaintiff is a manufacturer and importer of equipment and tools for mining and construction industries, under the brand name

“SANDVIK”. One of the products of the plaintiff, which, according to the plaint, has garnered considerable reputation in the market, is a Vertical Shaft Impact (VSI) Crusher, which is used for crushing hard and brittle materials such as rock, grinding material, refractory material, cement clinker and quartzite and is used in crushing rocks to make sand for construction of roads and other such activities.



11. The suit patents IN 248934, IN 219520 and IN 326138, of which the plaintiff is the owner and proprietor, deal with parts of such VSI crushers. IN 248934 relates to a rotor distributor plate for use in Vertical Shaft Impact crusher, IN 219520 relates to a holder for a wear part of a crusher and IN 326138 relates to a wear part for a VSI crusher and a method for reducing the wear on the rotor of such a crusher. More specific details, of these patents, are provided in the plaint; however, for the purpose of the present order, it is not necessary to allude thereto.

12. Mr. Pravin Anand, learned Counsel for the plaintiff, submits that Defendants 1 and 2, who are interlinked entities, had, with impunity, been infringing the plaintiffs' patents by making the parts of the SANDVIK VSI Crusher, patented in the plaintiff's favour, available to third parties, without any authority from the plaintiff.

13. The plaint alleges that the plaintiff became aware of the infringing activities of the defendants, around November, 2019, whereupon the plaintiff issued a cease and desist notice to Defendant 2 on 9th March, 2020.

14. Thereafter, it is averred that the website of Defendant 2 became non-operational, leading the plaintiff to believe that Defendant 2 had discontinued its infringing activities. However, in September, 2020, it is alleged that, on websites of third parties, the plaintiff found listings of Defendant 2, under which products, infringing the plaintiff's suit patents, were made available.



15. The plaintiff initiated an investigation into these activities. Mr. Anand has drawn my attention to various telephonic and electronic communications between the plaintiff, its attorneys and Defendants 1 and 2. The following communications were, in particular, emphasised:

(i) On 4th May, 2021, Defendant 1, trading as M/s Devine Industrial Corporation, had written to the plaintiffs' attorney, assuring that Defendant 1 was "not manufacturing and supplying the SANDVIK VSI parts" and that it was not doing business in the said parts.

(ii) On 15th June, 2021, the plaintiff's attorney spoke to Defendant 2, who assured the plaintiff's attorney that V.K. Metals, being one of the entities which was dealing in the infringing products, was completely closed.

(iii) My attention was next invited to the transcript of conversation between the plaintiffs' investigator, and Defendant 1 which took place on 8th July, 2021. The plaintiffs' investigator, during the said conversation, sought, of Defendant 1, whether he could provide "Rotor Tip Holder, Rotor Tip Set Hard 110 mm and Distributor Plate for Sandvik VSI Crusher, Model CV218". To this query, Defendant 1 answered stating that V.K. Metal Casting was not under operation but that parts could be supplied from another company, namely, Devine Industrial Corporation, for which he provided the e-mail ID devineindlcorpn@gmail.com.



(iv) On the very next day, i.e. 9th July, 2021, the investigator spoke to Defendant 2, again expressing his requirement for “Rotor Tip and other crusher spare parts for our Sandvik VSI Crusher, Model CV218”. Defendant 2 responded that this part could be supplied and requested the investigator to provide his requirement at the e-mail id vkcrusherspareparts@gmail.com.

(v) Thereafter, on 12th August, 2021, a *pro forma* invoice was provided by Divine Industrial Corporation, relating to the products patented in favour of the plaintiff.

16. Mr. Anand has, thereafter, drawn my attention to the comparative statement of the products of the plaintiff and those being traded by the defendants, to emphasise that the parts being traded by the defendants were in fact those in respect of which the plaintiffs hold suit patents. Tabular statements in this regard, as provided in the documents filed with the plaint, which, too, indicate that the products in which the defendants were trading were the parts for which the plaintiffs hold patents.

7. It is also informed by counsel for the plaintiff that patents IN 248934 and IN 219520 have since expired and the injunction is sought only in relation to IN 326138.

8. Counsel for plaintiff presses for costs as well as legal fee and the amount which was incurred for purchasing products in order to press their contempt. Counsel for defendants refutes the same and states that they have agreed to the injunction despite having put forward their submissions on the



last date, relating to the facts and circumstances of the matter.

9. The Court has perused the respective submissions of the parties which are recoded in the order dated 31st January, 2024. In particular *para 10*, it is recorded that a reply was filed by defendants to the application, putting forward their response. The Court had already directed defendant No.1 to deposit costs of Rs.1 Lac to the Delhi High Court Legal Services Committee, which has since been deposited.

10. In these circumstances, since the matter has been disposed of at a summary stage upon a concession on injunction by the defendant, the plaintiff's request for costs of Rs.5 Lacs is not accepted.

11. In view of the same, decree is passed in terms of Prayer in *para 119(i)* of Plaint, which is as under:

“A decree of permanent injunction restraining the Defendants themselves or trading as another entity, their partners, related parties, servants, employees, officers, agents, stockists, distributors, dealers and all others acting for and on their behalf from making, using, selling, distributing, advertising, offering for sale, selling, importing, and in any other manner, directly or indirectly, commercializing or dealing in any product that infringes the subject matter of Indian Patent No.326138.”

12. Suit is accordingly, disposed of. Pending applications, if any, are rendered infructuous.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 16, 2024/MK/na