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

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Date of Decision : 23.08.2024

+ **RFA(OS)(COMM) 16/2024**

M/S. KG MARKETING INDIA

.....Appellant

Through: Mr Deepak Dhyani, Advocate.

versus

RASHI SANTOSH SONI & ANR.

.....Respondents

Through: Mr Jaspreet Singh Kapur, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 48484/2024 (Early hearing)

1. This is an application for advancement of hearing scheduled on 13.09.2024. For the reasons stated in the application, the same is allowed.
2. With the consent of the counsel, the above captioned appeal is taken up for hearing.

RFA(OS)(COMM) 16/2024 & CM APPL. 47681-85/2024

3. The appellant has filed the present appeal impugning a judgment dated 02.07.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge in CS (COMM) No.18/2023 whereby, the learned Single Judge had directed the worthy Registrar General of this Court to take action within a period of four weeks and lodge a complaint with the concerned Judicial



Magistrate under Section 340 of the Code of Criminal Procedure, 1973 (hereafter *the CrPC*).

FACTUAL CONTEXT

4. It is stated that the appellant had filed the suit [CS (COMM) No. 18/2023] against the respondents seeking an injunction against the use of the mark/label 'SURYA' and the accompanying trade dress, which is set out below:



5. The appellant had placed on record certain newspaper advertisements of its trademark SURYA to establish that it was the prior user and had extensively advertised its trademarks. The said relevant pages of the newspapers, as filed by the appellant along with its plaint and application for interim relief, are set out below and the advertisements relied upon by the appellant have been highlighted by outlining the same.:



अमरनाथ मार्गावर भीतीचे वातावरण

[illegible][illegible][illegible]

Page 4 of 17



आझाद मैदाबाकीत जेडेवनी सागान्वत्या आवाद्याबादे

कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य

मुंबई, १० मार्च - कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य. कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य. कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य.



कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य. कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य. कोसलेत जेडेवनीका खयांचा प्रथम मुकद, रीटिंग टेकोरेटची पोद्य.

डिटिगकालीन शाळाच्या दुसरीवर ९ कोटी खर्च



मुंबई, १० मार्च - डिटिगकालीन शाळाच्या दुसरीवर ९ कोटी खर्च. डिटिगकालीन शाळाच्या दुसरीवर ९ कोटी खर्च. डिटिगकालीन शाळाच्या दुसरीवर ९ कोटी खर्च.

शिवासेनेचे खयसिमाप्रमुख प्रकाश यादवचे याचे भिन्न

मुंबई, १० मार्च - शिवासेनेचे खयसिमाप्रमुख प्रकाश यादवचे याचे भिन्न. शिवासेनेचे खयसिमाप्रमुख प्रकाश यादवचे याचे भिन्न. शिवासेनेचे खयसिमाप्रमुख प्रकाश यादवचे याचे भिन्न.

पाय एकर जमीन विक्रीची बसोबती काढून कासवधूक

मुंबई, १० मार्च - पाय एकर जमीन विक्रीची बसोबती काढून कासवधूक. पाय एकर जमीन विक्रीची बसोबती काढून कासवधूक. पाय एकर जमीन विक्रीची बसोबती काढून कासवधूक.

शेवारी पांढरे अराधना

मुंबई, १० मार्च - शेवारी पांढरे अराधना. शेवारी पांढरे अराधना. शेवारी पांढरे अराधना.

मुंबईत राजकीय बॅनरबाजी सुरूच

मुंबई, १० मार्च - मुंबईत राजकीय बॅनरबाजी सुरूच. मुंबईत राजकीय बॅनरबाजी सुरूच. मुंबईत राजकीय बॅनरबाजी सुरूच.

शासनाने पालिकेला अनुदान द्यावे!

मुंबई, १० मार्च - शासनाने पालिकेला अनुदान द्यावे! शासनाने पालिकेला अनुदान द्यावे! शासनाने पालिकेला अनुदान द्यावे!

मुंबईत राजकीय बॅनरबाजी सुरूच

पक्ष/गट	बॅनरबाजी
काँग्रेस	१०
भाजप	१०
शिवसेना	१०
महाराष्ट्र नरना	१०
अन्य	१०

EKTA SURYA

OVER A DECADE OF TRUST AND INNOVATION

At Ekta Surya, we've been a part of your life for over a decade, and we're proud to have earned your trust. Our commitment to quality and innovation has made us a household name. We offer a wide range of products, from solar panels to home appliances, all designed to meet your needs and enhance your lifestyle. Join the millions of satisfied customers who have chosen Ekta Surya for their home and business solutions.

वडा शिवासेच्या मुलाखा दाखून धडून गेलेल्या जोडप्याला अटक

मुंबई, १० मार्च - वडा शिवासेच्या मुलाखा दाखून धडून गेलेल्या जोडप्याला अटक. वडा शिवासेच्या मुलाखा दाखून धडून गेलेल्या जोडप्याला अटक. वडा शिवासेच्या मुलाखा दाखून धडून गेलेल्या जोडप्याला अटक.



6. The aforesaid newspaper advertisements were relied upon in the suit [CS (COMM) No. 18/2023] for the purposes of claiming prior user/adoption in the mark 'SURYA GOLD' since 2016.

7. By an order dated 16.01.2023, the learned Single judge, relying upon the pleadings of the appellant, granted an *ex-parte ad-interim* injunction and also appointed a Local Commissioner (LC) for search and seizure of allegedly infringing goods of the respondents.

8. Thereafter, the respondents had filed an application being I.A.10033/2023 dated 18.05.2023 under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (hereafter *the CPC*), alleging that the documents filed by the appellant were maliciously fabricated for the sole purpose of securing an order of interim injunction. The Court found merit in the aforesaid contention.

9. On 25.05.2023, the Court allowed the aforesaid I.A. No. 10033/2023 and vacated the *ad interim* injunction granted in terms of the order dated 16.01.2023. The appellant's application being [I.A. No.680/2023] was dismissed by the learned Single Judge.

10. In the meantime, the respondents filed a cross suit [being CS (COMM) No.477/2023] on 15.07.2023 seeking to injunct the appellant from using the mark 'SURYA GOLD' and the accompanying labels. In this suit, the respondents filed the original newspapers dated 17.06.2016 and 12.07.2017 to establish that the newspapers relied upon by the appellant in its suit [CS (COMM) No. 18/2023] were fabricated. In response, Mr. Karan Kumar, partner of the appellant company took the position that its main suit



[CS(COMM) No.18/2023] may be dismissed by the learned Single Judge.
The original newspapers dated 17.06.2016 and 12.07.2017 are extracted as below:





अमरनाथ मार्गावर भीतीचे वातावरण

[illegible]

मराठी व्यावसायिक वाद्यवृंद निर्माता संघाचे 'पाऊले चालती'

१००० रुपये। अगर चला, प्रत्यक्ष
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 लेगा, उतने रुपये वह देगा। लेकिन
 यह भी है कि (१) बहुत सारे
 लोग जो इसे देखते हैं, वे इसे
 समझते हैं। वे इसे समझते हैं।
 यह भी है कि (२) बहुत सारे
 लोग जो इसे देखते हैं, वे इसे



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नियम ३४(२) के अंतर्गत

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...the first time
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...the first time



McGraw-Hill
Higher Education

[illegible]

Small home, big savings, office looking for budgeting assistants

Candidates will receive sales of Product with the help of Wholesale Office Staff, with the Offices: Co-ops, Offices, Health, Restaurants, Gas, Offices, Location of Retailer Point, Another, BIC and Co. Graduate with Marketing Options or Degree, without Experience, Cost Communication (MS) or Sales Office.

SEE your name and P.O. for an application to wholesale@wholesale.com.

एनईपी
विश्वविद्यालय
 नई दिल्ली
 भारत

[illegible]

संस्कृत-भाषा-विभाग, दिल्ली विश्वविद्यालय

[illegible]



superimposed on the copies of the original newspaper. Thus, the advertisements were found to be tampered and forged.

12. *Prima facie*, the learned Single Judge accepted that the appellant was guilty of contempt as it had filed forged and tampered documents in this Court, which also constitutes various penal offences.

13. Accordingly, notice was issued to show cause as to why the appellant ought not to be punished in accordance with law. In response to the said show cause notice, Mr. Karan Kumar filed unqualified and unconditional apology by way of two affidavits dated 25.05.2023 and 08.07.2023.

14. The respondents filed an application being CRL.M.A. 18432/2023 under Section 340 of the CrPC in CS(COMM) No.18/2023 alleging that the appellant has committed offences under Section 196, 199, 200, 209, 463, 465, 468, and 470 of the Indian Penal Code, 1860 (hereafter *the IPC*) and appropriate proceedings be initiated.

15. The appellant filed a reply and contended that the proceedings under Section 340 of the CrPC were not maintainable in view of the law settled by the Constitution Bench of the Supreme Court in ***Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.***: (2005) 4 SCC 370. It was contended on behalf of the appellant that the said decision drew a distinction between alleged forgery committed prior to the filing of legal proceedings and forgery and fabrication done during the course of the legal proceedings. It was submitted that the court could not initiate the proceedings in respect of forgery and fabrication allegedly done prior to institution of those proceedings. According to the appellant, proceedings under Section 340 of



the CrPC could be initiated only in cases of where the forgery and fabrication was done in court. The appellant contended that since in the present case, the allegedly fabricated documents were filed along with the suit, it was apparent that the documents were fabricated prior to the filing of the suit. The appellant also placed reliance upon the judgment of the Supreme Court in ***Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and Others: (2023) 9 SCC 539.***

16. The learned Single Judge did not reject the said contention but proceeded on the basis that, since the Statement of Truth was filed in the Court in support of the averments made in the plaint and the documents filed along with the plaint, the appellant could be proceeded against.

17. The learned Single Judge also observed that the offence had taken place once the suit was filed and the document was relied upon for obtaining relief. This, in the opinion of the learned Single Judge disclosed an offence of forgery, fabrication, and filing of a false affidavit.

18. Since the alleged offence of forgery/fabrication of newspapers was admitted and the false newspaper advertisements were relied upon in court proceedings, the learned Single Judge, held that a case for registration of a complaint under Section 340 of the CrPC was made out. Accordingly, the learned Single Judge directed the worthy Registrar General to take action within four weeks in this regard and lodge a complaint with the concerned Judicial Magistrate.

19. The suit in question, CS(COMM) No.18/2023, was dismissed with cost of ₹5,00,000/- and the suit bearing CS(COMM) No. 477/2023 was



decreed and the appellant was restrained from using the mark ‘SURYA GOLD’.

20. The learned Single Judge also directed that cost as imposed be deposited within a period of three months from the date of the impugned judgment. The appellant states that it has also enclosed a partial payment toward the said cost.

21. The appellant has preferred the present appeal assailing the impugned judgment. The learned counsel for the appellant contends that the order directing the Registrar General to lodge a complaint with the concerned Judicial Magistrate be set aside and the cost as imposed be reduced.

REASONING AND CONCLUSION

22. It is apparent from the above that there are good grounds to find that the appellant had produced forged and fabricated documents (copies of newspapers) showing advertisements reflecting its trademarks, that were not published. The newspapers, as published, did not bear any such advertisement.

23. It is undisputed that the said forged and fabricated documents were produced to secure interim orders from the Court. Copies of the said advertisements were also filed along with the plaint, which was supported by a Statement of Truth affirming as to the genuineness of the said documents.

24. The learned counsel appearing for the appellant does not contest the finding that the documents were forged and fabricated. He also does not dispute that the Statement of Truth, which was filed in the Court affirming



the genuineness of the said documents, is also false. He, however, assails the impugned judgment on two grounds.

25. First, he submits that the appellant had no option but to file a Statement of Truth as that is a requirement under Order VI Rule 15A of the CPC as amended by the Commercial Courts Act, 2015. Therefore, it was necessary for the appellant to file the said Statement of Truth. He submits that since, the said affidavit merely affirmed the disclosure of the document which was forged or fabricated prior to the filing of the suit, the appellant could not be proceeded against under Section 340 of the CrPC. He submitted that a person cannot be proceeded against for doing an act – in this case filing the Statement of Truth – which he is mandatorily required to do. He has also drawn attention to the observations made by the Court accepting that the forgery had taken place prior to the filing of the suit.

26. Second, he referred to the decision of the Supreme Court in ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another*** (*supra*), in support of his contention that Section 340 of the CrPC would not be applicable in respect of a document which although, produced in the Court, was fabricated prior to the institution of the said action. He also relies on the recent decision of the Supreme Court in ***Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and Others*** (*supra*), in support of the aforesaid proposition.

27. We find no merit in the aforesaid contentions.

28. The fact that the forged and fabricated documents have been produced in the proceedings before the Court is admitted by the appellant. By virtue of



Section 16 of the Commercial Courts Act, 2015, certain provisions of the CPC were amended. In terms of Order VI Rule 15A(5) of the CPC, a party to an action in regard to a commercial dispute of a specified value, is required to file a Statement of Truth in the format as set out in Appendix to the Schedule. It is also clearly provided that absent the Statement of Truth affirming the averments made in the pleadings, the same would not have any evidentiary value. It also clearly implies that the object of filing of the Statement of Truth is to confer certain evidentiary value on the averments made in the plaint as well as the documents annexed along with the plaint.

29. The contention that since the appellant had no option but to file a Statement of Truth in the specified format, the appellant not be proceeded against under Section 340 of the CrPC is insubstantial. The requirement is to file a correct Statement of Truth and not a false one. The entire object requiring a party to affirm the contents of the pleadings and the documents annexed to the plaint is to ensure that only true and correct pleadings and genuine documents are filed in the proceedings.

30. We find that the averments made by the appellant that he was compelled to file a false Statement of Truth because it had committed a forgery prior to the filing of the suit is an extraordinary submission, which obviously cannot be accepted.

31. We find no infirmity with the conclusion of the learned Single Judge that filing of a false Statement of Truth in the Court would attract the provisions of Section 340 of the CrPC.



32. The reliance placed by the appellant on the decision of the Supreme Court in the case of *Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another* (supra) and *Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and Others* (supra), is misplaced. The decision of the Supreme Court in *Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another* (supra) is not an authority for the proposition that the Court would have no jurisdiction under Section 340 of the CrPC if a forged and fabricated document prepared earlier, is produced in the Court.

33. The controversy involved in *Iqbal Singh Marwah's* case was the interpretation of the expression “when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court” as occurring in Clause (b)(ii) of sub-section (1) of Section 195 of the Cr.P.C. The Supreme Court noted that the relevant clause is capable of two interpretations. This controversy was articulated by the Supreme Court in paragraph 7 of the said decision, which is reproduced below:

“7. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or



giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.”

34. As is apparent from the above, the central dispute was whether a complaint by a Court would be necessary in respect of a document that was prepared prior to filing the same in the court proceedings. The Supreme Court referred to its earlier decision in ***Mahadev Bapuji Mahajan & Anr. v. State of Maharashtra: 1994 Supp (3) SCC 748*** and observed that “*the contention that the absence of a complaint by the Revenue Court was a bar to taking cognizance by the criminal court in respect of offences under Sections 446, 468, 471 read with Section 120-B IPC which were committed even before the start of the proceedings before the Revenue Court, was not accepted*”.

35. The Supreme Court explained that there was no bar on the criminal court taking cognizance of such offences. Plainly, there was no cavil as to the Court’s power to initiate proceedings under Section 340 of the Cr.P.C. It was nobody’s case that the Court was precluded from causing a complaint to be made under Section 340 of the Cr.P.C. in case of offences against administration of justice.

36. The learned counsel for the appellant has relied upon paragraph 17 of the decision of the Supreme Court in ***Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and Others*** (supra). The said paragraph is set out below :-



“17. It could thus clearly be seen that this Court, on unequal terms, has held that the view taken in *Sachida Nand Singh* [*Sachida Nand Singh v. State of Bihar*, (1998) 2 SCC 493 : 1998 SCC (Cri) 660] that Section 195(1)(b)(ii) CrPC would be attracted only when the offence enumerated in the said provision was committed in respect of a document after it has been produced or filed in evidence during proceedings before any court i.e. during the time when the document is custodia legis. The Court has clearly held that, insofar as the will which is alleged to have been fabricated before it was produced in the Court, the embargo created by Section 195(1)(b)(ii) CrPC would not come into play.”

37. It is clear from the last sentence of the aforesaid paragraph that the Court was concerned with the embargo created under Section 195(1)(b)(ii) of the CrPC. Clearly, in case of the document which was fabricated before it was produced in Court, the embargo under Section 195(1)(b)(ii) of CrPC which proscribes any Court from taking cognizance of the offence would not apply.

38. Thus, if a party had committed an offence as described in Section 463 of the IPC or punishable under Section 471, Section 475 or Section 476 of the IPC in proceedings before the Court, no Court could take cognizance of the same. This embargo would not be applicable if the forgery was prior to the forged documents being produced in Court. However, there is no proposition that the Court would have no jurisdiction under Section 340 of the CrPC in respect of such forged and fabricated documents filed in the court proceedings.

39. We find no merit in the present appeal and the same is liable to be dismissed. Considerable time was consumed in hearing this appeal, which we



find was an unjustifiable imposition on judicial time. We, accordingly, consider it apposite to impose cost quantified at ₹2,00,000/-.

40. The appeal is dismissed with cost quantified at ₹2,00,000/-. The aforesaid amount shall be deposited by the appellant with the Delhi High Court Legal Services Committee within a period of four weeks from date.

41. The hearing scheduled on 18.09.2024 is cancelled.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 23, 2024

r/M/gsr

Click here to check corrigendum, if any