



2024:DHC:9876-DB



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

Date of decision: 20.12.2024

+ **FAO (COMM) 239/2024**

RADHA KISHAN AGARWAL AND ANRAppellants

Through: **Mr. Shailesh Kumar Pandey,**
Adv.
Mr. Sanchay Mehrotra, Adv.

versus

MS IGNYT ELECTRICALSRespondent

Through: **Mr. Rajat Wadhwa, Mr. Vikas**
Sood, Mr. Gurpreet Singh, Mr.
Harsh Vikram and Ms. Divya
Kanwar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 75072/2024 (Exemption)

1. Allowed, subject to all just exceptions.

REVIEW PET. 487/2024

2. Issue notice.

3. Notice is accepted by Mr. Shailesh Kumar Pandey, the learned counsel on behalf of the appellants.

4. By the present Review Petition, the respondent in the appeal prays for a review of our Order dated 17.12.2024 and for dismissal of the appeal. The Review Petitioner also prays for initiating contempt proceedings under the Contempt of Courts Act, 1971, alleging a



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breach of the undertaking and violation of the said Order dated 17.12.2024 by the appellant.

5. The above appeal had been filed by the appellants challenging the Order dated 12.12.2024 passed by the learned District Judge (Commercial Court-03), West District, Tis Hazari Courts, Delhi in CS (COMM) 220/2024, titled ***M/s Ignyt Electricals v. Radha Kishan Agarwal and Anr.***, by which the learned Trial Court, while disposing of the two applications filed by the respondent herein under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (in short, 'CPC'), passed the following directions:

"8.2. This constrains this Court to order that all goods bearing the trademark "IGLYTE" as were available at the time of joint inspection and as available today, be handed over to the plaintiff for its safe custody.

8.3 The plaintiff is directed to arrange for necessary transportation and a safe house. The plaintiff is to obtain all these goods from the premises of the defendants within a week of this order.

8.4 The defendants shall render all necessary assistance in handing over the custody of these "IGLYTE" products to the plaintiff within a week of this order.

8.5 The plaintiff would keep all those goods in the gunny bags in the presence of the defendants and seal and sign each of the gunny boxes which should also be signed by the defendants. All inventory at the time of receiving these articles be prepared. Necessary videography and photography be also done and the plaintiff to keep "IGLYTE" products in safe custody till further orders."

6. As a brief background, the learned Trial Court *vide interim* Order dated 03.09.2024, had restrained the appellants herein from



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infringing the trademark of the respondent, namely “IGNYT” or “IGLYTE”, except to the extent that they were allowed to dispose of the original “IGNYT” trademark goods belonging to the respondent herein.

7. By the Order dated 03.09.2024, the learned Trial Court further directed the release of the goods confiscated by the learned Local Commissioner by observing as under:

“9.5 No useful purpose would be served by directing the goods to be preserved further. It would unnecessarily burden the defendants financially and also the goods may become outdated by the time trial is over. No prejudice is going to be caused to the plaintiff, if these goods are allowed to be sold with a different trade name. As to the damages portion of the prayer of plaintiff, same can be taken care of by passing appropriate directions. There is no adequate reason for this Court to allow the application of the plaintiff to hand over custody of those goods to the plaintiff.

9.6 Since a detailed inventory has been prepared jointly by the parties, the quantity of goods can be conveniently proved from it during trial. And the prayer of the plaintiff to grant damages is a subject of trial which would require evidence, and the quantum of damages can always be ascertained from the detailed inventory and by directing the defendant to keep in safe custody all the invoices and account books qua sale of goods.

9.7 In the disputed trademark “IGLYTE”, presently the defendants have prefixed two letters ‘BR’ and the remaining trademark is same. Therefore, it cannot be said that the defendant has coined a word which is completely distinct from the disputed trademarks. It would be better if the defendant coins some new word by preferably avoiding the use of letters contained in the trademark of the plaintiff i.e. “IGNYT” or disputed one i.e.



“IGLYTE”, and at least by preferably avoiding use of those letters in that very sequence. That would also allay the fear of plaintiff qua further infringement.

9.8 Accordingly, it is ordered that so far as goods bearing the trademark **“IGLYTE”** are concerned, the defendants are permitted to sell them in the market, but not under the trademark **“IGLYTE”** or **“BRIGLYTE”**, Defendants may coin 5-6 new words, which preferably should not include the letters **“IGNYT”** or **“IGLYTE”** in that combination or in that sequence. Let 5-6 new such words be coined by the defendants and the defendants can then approach the Court seeking permission to dispose of the goods after changing the trademark **“IGLYTE”** under new trademark.

9.9 This order is subject to the condition of removing or changing trademark **“IGLYTE”** on all the goods, including those which are embossed or engraved on the products itself as well as on the packaging materials. The defendants may apply some sticker on the products also, so that the new trademark only is visible and not the trademark **“IGLYTE”**.

9.10 Entire process of changing of trademark shall be photographed and videographed by the defendants and it shall be filed in the court with necessary Affidavits and Certificates. Sequence of changing the trademark be kept according to the inventory jointly prepared recently, as far as possible. Copies of photos, videos, affidavits and certificates be also supplied to the plaintiff.

9.11 Sale shall be made only under genuine invoices with complete particulars as to the products description as well as the buyers. Proper account thereof shall be maintained by the defendants. The defendants shall keep in safe custody entire invoices and related documents as also the ledger accounts qua selling of those category of goods, and file them on record as soon as the articles are disposed of, so that during trial those



documents can be assessed and then damages can be ascertained. Their copies be supplied to the plaintiff also.

*9.12 It is also directed that the defendants shall retain one sample each of every category of products **without changing** existing trademark and also one sample each of the packaging material for those products without changing the trademark. It is also directed that the defendants shall retain one sample each of every category of products **after changing** existing trademark and also one sample each of the packaging material for those products after changing the trademark.*

*9.13 The defendant shall also retain in original and keep in safe custody all those packaging materials which bear the date of manufacturing as that of any date or month after 22.03.2024, **without changing anything qua them**, and shall produce the same as and when directed by the Court. The defendant shall keep those packaging materials in safe custody till further orders.*

9.14 It is also made clear that while selling the goods after changing the trademark, the defendants shall comply with the necessary statutory provisions as to the details of the month of manufacturing and other standard disclosures in confirmation to the BIS Act or any other Law as may be applicable for sale of such products.

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10.3 Accordingly, it is ordered that the goods bearing trademark “IGNYT”, except the packed rope lights which are disputed, the defendant can dispose of and sell those goods. However, the defendant shall maintain invoices and statement of account/ledger qua all those goods also, and in case required those documents shall be summoned and be looked into during trial.

10.4 So far as the packed rope lights with the trade name “IGNYT” are concerned, though the plaintiff claims them to be duplicate,



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whereas the defendant claims it to be genuinely supplied by the plaintiff himself, but it would be a question of trial and therefore so far as packed rope lights are concerned, they be handed over to the plaintiff by the defendant against due receipt and while executing the documents of handing over of those packed rope lights by the defendants to the plaintiff, the inventory shall be prepared afresh mentioning complete particulars of those bundles/loose packed rope lights with photography/videography which would be done by the plaintiff at its cost. And at the time of taking custody those rope lights be kept in gunny bags which be sealed and signed by both the sides in presence of each other. Plaintiff shall preserve those articles safely till further orders."

8. The above order has not been challenged by either party.
9. The respondent herein, complaining that the said *interim* order has been violated by the appellant, then filed two applications under Order XXXIX Rule 2 A of the CPC before the learned Trial Court, which came to be disposed of by the learned Trial Court by its Impugned Order dated 12.12.2024, with the directions that have been reproduced hereinabove. In passing the above Impugned Directions, the learned Trial Court observed that the appellant had clearly used the mark "IGLYTE" in breach of the *interim* order. The learned Trial Court has observed as under:

"8.1 Though the defendants in response to the contempt application dated 09.10.2024 claims, that only adhesive tape and the cloth bag bearing the trademark "IGLYTE" were used on 26.09.2024 and 27.09.2024 while selling/transporting goods of other description/manufacturers, but a perusal of the photographs affixed with the application



reveals that in a photograph at page no.22 there is one long carton box which reflects the trademark "IGLYTE" and which does not match with the photograph of the adhesive tape relied by the defendant as at page no.9 Annexure D1 to the reply to this application in question. It seems that at least one carton box bearing the trademark "IGLYTE" was used on 26.09.2024 & 27.09.2024 while transporting goods contained inside the carton for either "IGLYTE" products or maybe some other product. Since no test purchase was done by the plaintiff qua the infringed goods from the third-party shopkeeper at that time, therefore, it is not clear as to what products were contained inside the carton were transported by the defendants. But the said fact of one of the cartons bearing an infringed trademark does raise a strong suspicion against the defendants. Once an injunction order was passed against the defendant, obviously the defendant should not have even used the adhesive tapes, the carton box, or the carry box.

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8.6 This Court has been constrained to pass the above-mentioned order because of the above-mentioned reasons and also because of the fact that though the defendants expressed a hurry to get the trade name changed from "IGLYTE" to some other trade name before this Court passed an order on 03.09.2024, despite 03.09.2024's order of this Court to coin some dis similar trade names, the defendants kept quiet till now and has not proposed any change of trade name till now. It's been more than 3 months now and although earlier the defendant was expressing hurry, now the defendant is quiet for some months which may also be an indication of the defendant's ill intention regarding these products. Therefore, let the above-mentioned direction be complied with within a week from today."



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10. From a reading of the Impugned Order, it is apparent that the learned Trial Court had directed the handing over of the goods bearing the impugned trademark to the respondent as the appellant was found selling the goods bearing the impugned trademark in violation of the Interim order passed in the suit. After hearing the learned counsels for the parties, we found no reason to interfere with the direction passed by the learned Trial Court.

11. On 17.12.2024, when the present appeal was listed before this Court, we were not inclined to interfere with the Impugned Order in view of the conduct of the appellant as recorded by the learned Trial Court in its Impugned Order. At that stage, however, the learned Senior Counsel appearing for the appellants submitted that the appellants be at least granted some more time to remove the infringing mark from the goods rather than handing over the goods bearing the said mark to the respondent for safe custody.

12. It is only on basis of the above submission, and at the request of the learned Senior Counsel appearing for the appellants, and with the consent of the learned counsel for the respondent, that we disposed of the appeal of the appellants on 17.12.2024 with the following directions, which were issued with the consent of the parties:-

“3. The learned senior counsel appearing for the appellant, after some arguments, prays that the Impugned Order be not implemented for the next three days, within which time the appellant shall ensure that the trademark ‘IGLYTE’ or any other mark deceptively similar to the mark ‘IGLYTE’ is removed from all goods and/or packaging material, including adhesive tapes, gunny bags, and cartons. The learned senior counsel for the



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appellant submits that the appellant undertakes not to, in any manner, remove or transport the goods bearing the above trademarks during the interregnum. The appellant will allow the representative of the respondent to be present while undertaking the above process of removal of the mark.

4. The learned counsel for the respondent, who appears on advance notice, does not oppose the above prayer.

5. Accordingly, the present appeal is disposed of, binding the appellant to the submissions recorded hereinabove and to his undertaking. In case the appellant is able to remove the infringing trademark from his goods/packaging materials to the satisfaction of the respondent, the Order dated 12.12.2024 shall, by its own operation, remain un-operative thereafter.

6. The above exercise shall commence tomorrow, that is, 18.12.2014 at 11:00 AM, at the premises of the appellant."

13. The Review Petitioner alleges that when its representative reached the premises of the appellants on 18.12.2024, he was informed that the goods bearing the mark "IGLYTE" had already been sold. On inspection, only a negligible amount of stock was seen on the ground floor of the appellants' premises. When an inventory of the said products was sought to be made, suddenly, the appellant no. 1 pretended that he was not feeling well because of which the further inventory taking process was not allowed to be undertaken. The Review Petitioner alleges that, however, later the Review Petitioner discovered that the goods were being removed from the shop of the appellant. Photographs showing the same have been placed on record.

14. The Review Petitioner further alleges that despite the learned Trial Court not allowing the appellants to use the mark "BRIGLYTE",



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goods bearing the said mark were also found at the premises of the appellants, clearly evidencing that the appellants have no respect for the orders passed by the Courts.

15. The learned counsel for the appellants produces before us a prescription and states that the appellant no. 1 has been admitted to a hospital. He, however, is not in a position to dispute the assertion of the learned counsel for the respondent that at the time of inspection on 18.12.2024, only a negligible amount of stock bearing the impugned mark was present at the appellant's premises.

16. Having considered the submissions made, we find from the repeated conduct of the appellants that they have shown no respect for the orders passed by the Courts. In fact, our Order dated 17.12.2024 was passed with the consent of the parties. As noted hereinabove, at that time, we were about to dismiss the appeal and were in the process of dictating the order, when it was at the request of the learned Senior Counsel appearing for the appellants that we disposed of the appeal on consent terms.

17. We, during the course of submissions, were also informed by the learned Senior Counsel for the appellants on that day that goods worth more than Rs. 5,00,000/- are lying at the appellants' premises. Clearly, these goods were removed post our Order and before the inspection on 18.12.2024 was carried out.

18. *Prima facie*, as we find that the appellants have breached the consent terms, we deem it proper to recall our Order dated 17.12.2024. The appellant cannot be allowed to retain the benefit of its contemptuous conduct.



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19. Accordingly, the Review Petition is allowed. The Order dated 17.12.2024 is recalled. The appeal shall be treated as dismissed.

20. As far as the prayer of the respondent to proceed against the appellants in contempt jurisdiction is concerned, it shall be open to the respondent to avail of its remedies in accordance with the law.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 20, 2024/ss/sk/SJ

Click here to check corrigendum, if any