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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 292/2017, I.A. 4800/2017, I.A. 4801/2017 & I.A.**
15971/2018

BAYERISCHE MOTOREN WERKE AG Plaintiff

Through: Mr. Urfee Roomi, Ms. Janaki Arun
and Mr. Jaskaran Singh, Advs.

versus

OM BALAJEE AUTOMOBILE (INDIA) PRIVATE LIMITED

..... Defendant

Through: Mr. Sanchit Bhushan, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
27.05.2024

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1. Pursuant to previous order dated 09th May, 2024, Court Notice was issued to counsel for defendant. Mr. Imran Khan, Advocate, appears through VC and seeks discharge from the matter, alongwith Mr. Shiv Charan Garg and Mr. Yash Mittal.

2. Accordingly, the said counsels are discharged from the present matter.

3. Mr. Sanchit Bhushan, Advocate, enters appearance on behalf of the defendant, and states on instructions that their client is not using the mark

‘DMW’ or ‘DMW’ stylized mark  anymore and have no objection if a decree is passed in this regard.



4. A judgment dated 23rd March, 2020 had been passed by this Court in the following terms:

“27. The plaintiffs have made out a prima facie case. Balance of convenience is in favour of the plaintiff and against the defendant. An ad interim injunction is passed restraining the defendants, its officers, agents etc. from manufacturing, exporting, importing or offering for sale, advertising or in any manner dealing with goods not limited to E-Rickshaws bearing the mark DMW or any other mark which are identical or deceptively similar to the plaintiff’s BMW marks.”

5. The facts and circumstances which are relevant to the matter had been traversed in the said judgment and are not being repeated here.

6. Defendant is willing to suffer a decree, in the event plaintiff is not seeking any costs or damages.

7. Mr. Urfee Roomi, Counsel for the plaintiff, states on instructions that a decree may be passed in terms of para 70 (a) – (e), which is reproduced hereunder:

- a. An order for permanent injunction restraining Defendant, its proprietors, directors, any related entity, officers, agents, representatives, managers, employees and agents, as the case may be, and all others acting for and on behalf of the Defendant, from manufacturing, exporting, importing, offering for sale, selling, displaying, advertising, marketing, whether directly or indirectly, and whether on the Internet or otherwise, any goods, including but not limited to, E-Rickshaws, bearing the Defendant’s DMW Marks or any mark that is either identical or deceptively similar to the Plaintiff’s BMW Marks;



- b. An order for permanent injunction restraining Defendant, its proprietors, directors, any related entity, officers, agents, representatives, managers, employees and agents, as the case may be, and all others acting for and on behalf of the Defendant, from using the Defendant's DMW Marks or any mark that is either identical or deceptively similar to the Plaintiff's BMW Marks as part of a corporate name or trade name or domain name or corporate logo;
- c. An order for permanent injunction restraining the Defendant, its proprietors, directors or any related entity, including, officers, agents, representatives, managers, employees and agents, as the case may be, and all others acting for and on behalf of the Defendant, from doing any act that amounts to infringement of the Plaintiff's BMW Marks;
- d. An order for permanent injunction restraining the Defendant, its proprietors, directors or any related entity, officers, agents, representatives, managers, employees and agents, as the case may be, and all others acting for and on behalf of the Defendant, from passing-off their goods as those of the Plaintiff or that may suggest a connection or association with the Plaintiff;
- e. An order directing the Defendant to withdraw the trade mark Application Nos. 2865906, 3170107, 3170108, 3505613 and 3505614 and any other application(s) it may have filed for the Defendant's DMW Marks or a mark that is identical or deceptively similar to the Plaintiff's BMW Marks;



8. Accordingly, decree-sheet be drawn up in the above terms.
9. The defendant will withdraw the trademark applications mentioned in para 70 (e) above in the next eight weeks, and confirmation by communication in that regard will be made to counsel for plaintiff, within two weeks thereafter.
10. Mr. Roomi, Counsel for the plaintiff, states that there is another application No. 400222, which has been filed by the defendant in Class 12. In case the application is still valid, counsel for the defendant states that they shall take steps within the next eight weeks to file for withdrawal of the said mark as well, and record it as part of their compliance.
11. Suit is disposed of in these terms. Pending applications, if any, are rendered infructuous.
12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 27, 2024/MK/rj