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

+ **CS(COMM) 568/2017**

M/S DART INDUSTRIES INC. & ANR.Plaintiffs

Through: Ms. Shruttima Ehersa, Advocate

versus

M/S TECHNO PLAST AND ORS.Defendants

Through: Mr. N. Mahabir, Mr. P.C. Arya,
Advocates (M:9818119491)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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19.11.2024

1. The present suit has been filed by the plaintiffs seeking permanent injunction restricting the defendants in reference to plaintiff's trade dress, copyright, registered designs. As per the plaint the products manufactured and sold by the defendants, are identical/deceptively similar to that of the plaintiff's products.
2. This Court notes that the perusal of the various order sheets manifests that the matter has been pending for substitution of plaintiffs' witness since August, 2023. Thus, when the matter was listed for hearing on 22nd October, 2024, upon request of the learned counsel for the plaintiffs, a last opportunity was granted to learned counsel for the plaintiffs to take requisite instructions as regards the substitution of the plaintiffs' witness.
3. Subsequently, on 13th November, 2024, further opportunity was granted to learned counsel for the plaintiffs.
4. Today, learned counsel appearing for the plaintiffs has handed over a copy of the document to show that the plaintiffs are facing bankruptcy



proceedings in the United States. She, thus, submits that on account of the aforesaid, the plaintiffs have not given any instructions even now with respect to substitution of the plaintiffs' witness.

5. It is to be noted that the present suit was filed in the year 2005 as *CS(OS) 589/2005*, and subsequently renumbered as commercial suit, i.e., *CS(COMM) 568/2017*.

6. An *ex-parte* injunction was granted by this Court vide order dated 05th May, 2005. However, by order dated 04th June, 2007, the *ex-parte* injunction granted in favour of the plaintiffs was vacated by this Court by a detailed judgment.

7. Against the aforesaid judgment dated 04th June, 2007, the plaintiffs preferred an appeal, being *FAO(OS) 326/2007*, which was dismissed by the learned Division Bench by order dated 21st July, 2016.

8. Issues in the present matter were framed on 08th January, 2008. The plaintiffs were directed to file evidence by way of affidavit within a period of four weeks of filing of the list of witnesses.

9. Ultimately, the affidavit of the plaintiffs' witness – 1, i.e., PW-1 was tendered in evidence on 04th March, 2014.

10. Since PW-1 was not present for his cross-examination on various dates, vide order dated 25th February, 2015, cost of ₹ 25,000/- was imposed upon the plaintiffs, in the following manner:

"Today the case is coming up for cross-examination of PW-1.

PW-1 not present. Ld. counsel for plaintiffs requests time on the ground that PW-1 left the company and further submits that he has filed an application for substitution of PW-1 with some other witness.

It is seen from record that PW1 was not present even on last date of hearing. This is a suit filed in the year 2005. Already sufficient opportunities are given to the plaintiff.



However, in the interest of justice, case is adjourned, subject to costs of Rs.25,000/- to be deposited with Delhi High Court Staff Welfare Fund.

Put up for plaintiff's evidence on 10.07.2015."

11. Subsequently, an application being *I.A. 6674/2015*, was filed by the plaintiffs under Section 151 of CPC, seeking permission to substitute PW-1, which was allowed vide order dated 10th July, 2015. Thus, Ms. Vandita Batta, was substituted as PW-1, in place of Mr. Puneet Narula.

12. PW-1, i.e., Ms. Vandita Batta, tendered her evidence on 18th November, 2015. Thereafter, PW-1 was partly cross-examined on 05th February, 2016, and further cross was deferred. Likewise, PW-1 was further cross-examined in part on 02nd March, 2016 and further cross was deferred.

13. Subsequently, an application being *I.A. 5479/2016* was filed by the plaintiffs for substitution of witness/PW-1, i.e., Ms. Vandita Batta. The said application was allowed vide order dated 06th May, 2016, and Ms. Saloni Ahuja was substituted as PW-1. By order dated 06th May, 2016, affidavit of evidence of new witness, i.e., Saloni Ahuja was directed to be filed within a period of four weeks.

14. Subsequently, an application being *I.A. 14023/2016* was also filed on behalf of the plaintiffs to amend the plaint on 11th November, 2016. The said application was allowed vide order dated 21st February, 2017.

15. Subsequently, the matter was referred for mediation. However, vide order dated 02nd April, 2018, it was clarified that recording of evidence shall not be disturbed, owing to pendency of the mediation proceedings.

16. Subsequently, there was another substitution of witness, PW-1 of the plaintiff and Mr. Puneet Narula, was again substituted as PW-1. The said



Mr. Puneet Narula, PW-1, was examined-in-chief on 31st January, 2019 and his cross- examination was thereafter deferred. Mr. Puneet Narula was recalled for cross-examination on 19th March, 2019 and further cross-examination was deferred. Subsequently, Mr. Puneet Narula, PW-1 was cross-examined partly on 27th July, 2019 and further cross-examination was deferred.

17. Subsequently, vide order dated 12th May, 2022, it is recorded that PW-1 had not appeared on account of COVID-19 pandemic. Thus, last and final opportunity was granted to the plaintiffs subject to costs for concluding evidence of PW-1. The order dated 12th May, 2022 reads as under:

“Today, the case is fixed for concluding the evidence of PW-1 Mr. Puneet Narula, as last opportunity. PW-1 has still not appeared and learned counsel for the plaintiff has requested that due to COVID-19 Pandemic, PW-1 could not appear today.

However, this reason for adjournment cannot be accepted as the full fledged physical hearing is going on and witnesses are appearing in other cases also for evidence.

However, at request of learned counsel for the plaintiff, last and final opportunity is granted to the plaintiff, subject to cost of Rs. 2,000/- to be paid by plaintiff to learned counsel for defendant for concluding evidence of PW-1.

Put up for cross-examination of PW-1 on 24th August, 2022 at 2:00 PM.”

18. Further, vide order dated 22nd December, 2022, it was again recorded that the plaintiffs’ witness, i.e., PW-1 had not appeared and an adjournment was sought on behalf of the plaintiffs on account of non-availability of PW-1. Thus, an opportunity was granted to the plaintiffs to conclude the evidence of PW-1, subject to cost of ₹ 5,000/-, in the following manner:

“No PW is present.

Plaintiff was given last opportunity to conclude the evidence of PW-1



Mr. Puneet Narula despite that PW-1 Mr. Puneet Narula did not appeared.

Even today the witness has not appeared and Ld. Counsel for the plaintiff is seeking adjournment on the ground that in ease of his non availability, plaintiff will move an application for his substitution. Same is strongly opposed.

However, in the interest of justice, one more opportunity is granted to the plaintiff to conclude the evidence of PW -1 Mr. Puneet Narula subject to cost of Rs.5000/- to be paid to the defendant.

Put up for PE on 31.01.2023.”

19. Subsequently, the plaintiffs filed an application, i.e. I.A. 5871/2023 under Order XVI Rule 1(3) read with Section 151 of CPC, seeking substitution of witness, i.e., Mr. Puneet Narula with Mr. Nitin Malhotra. Subsequently, the said application was withdrawn vide order dated 16th October, 2023 on the ground that Mr. Nitin Malhotra, who was to be substituted in place of Mr. Puneet Narula, has also resigned.
20. Thereafter, the matter has been pending for substitution of the plaintiffs' witness since 2023.
21. Despite various opportunities, the plaintiffs have not taken steps for substitution of its witnesses.
22. Learned counsel for the plaintiffs again submits today that no instructions are forthcoming from the client, on account of the fact that the plaintiffs have declared bankruptcy in the United States.
23. Considering the aforesaid facts and circumstances of the present case, it is clear that the plaintiffs are not prosecuting the present case. Accordingly, the present suit is dismissed for non-prosecution.

MINI PUSHKARNA, J

NOVEMBER 19, 2024

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