

TM 292/21

AMAR TULSIYAN Vs. CORONA PLUS INDUSTRIES LTD

17.11.2023

Present : Sh. Deepak Shrivastava, counsel for the plaintiff.
Defendant is ex-parte.

The matter is listed for ex-parte PE.

At this stage, counsel for plaintiff prays that since, defendant has already been proceeded ex-parte, therefore, the suit may be decreed even without leading evidence. In this regard, counsel has placed reliance on the decision of the High Court of Delhi in **“Satya Infrastructure Vs Satya Infra” 2013(54) PTC 419**.

The High Court of Delhi observed in the matter of **“Indian Performing Rights Society Ltd. Vs Gauhati Town Club” MANU/DE/0582/2013** that where the defendant is *ex-parte* and the material before the court is sufficient to allow the claim of the plaintiff, the time of the court should not be wasted in directing *ex-parte* evidence to be recorded which mostly is nothing but repetition of the contents of the plaint. This was a suit wherein plaintiff has claimed infringement of a registered trade-mark and violation of its copyright by the defendant as well as passing off the goods. In the matter, the court relied on the report of the Local Commissioner as well as other material placed on record and decreed the suit without requiring the plaintiff to lead further evidence. Similar view was taken by the court in the matter of **“United Coffee House Vs Raghav Kalra & Anr.” 2013 SCC OnLine Del 2133** and **“S.Oliver Bernd Freier Gmbh & Company KG Vs Jaikara Apparels & Anr.” 2014 SCC OnLine 2686**. Relying upon the rationale of the judgments given in **S.Oliver Bernd Freier Gmbh & Company KG’s case (supra)**, the High Court of Delhi decreed a trade-mark suit for infringement in the matter of **“Imagine Marketing Pvt. Ltd. Vs Green Accessories” 2022 SCC OnLine Del 805** with following observations:

“8. Insofar as Defendant No.6 is concerned, the Local Commissioner had visited the premises bearing the

address M/s. Shree Balaji Accessories, Building No.2827, Ground Floor, Gali No.8, Opposite Max Plaza, Beadonpura, Karol Bagh, New Delhi-110005 and met a few employees, as also, Mr. Dinesh, who claim to be the Manager of the Defendant No.6-Shop. Various goods bearing the Plaintiff's mark 'BOAT' were found at the said premises. A total of more than 120 pieces of Bluetooth headsets, Wireless Headsets, Earphones, Wireless Earphones, Portable Speakers and packaging material were also found. The same were seized by the Local Commissioner.

9. From the Local Commissioners' reports, and the pleadings on record it is clear that the Defendants are engaged in manufacturing or selling or offering for sale various electronic or electric products bearing the mark 'BOAT' as also the logos thereof. The Defendants choose not to appear despite having knowledge of the proceedings which are pending before this Court. The Local Commissioners' reports along with the evidence there of also clearly reveals that the Defendant Nos.1 and 6 were engaged in the sale of counterfeit products.

10. Under these circumstances, following the rationale of the judgment of a Id. Single of this Court in Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014], no ex parte evidence would be required in this matter. The same has been reiterated by the Court in S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors. [210 (2014) DLT 381], as also, in United

Coffee House v. Raghav Kalra and Ors. [2013 (55) PTC 414 (Del)]. The relevant observations from the judgment in Disney Enterprises Inc. (supra), are as under:

3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex-parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of exparte evidence.

4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex-parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex-parte evidence to be recorded and which mostly is nothing but

a repetition of the contents of the plaint.

11. Thus, the Plaintiff, being the owner of the registered trademark 'BOAT' in various forms, including the logo, is entitled to protection of its rights in the trade mark 'BOAT', as also device mark and the logos thereof. Accordingly, the present suit is decreed in terms of the reliefs sought in paragraph 30 (a), (b), and (c) of the amended plaint."

Coming to the present matter, defendant abandoned the proceedings and it was proceeded ex-parte. The situation in the present matter is akin to the one in Imagine Marketing Pvt. Ltd.'s case (supra) where the ex-parte matter was decreed by the High Court of Delhi without insisting on the plaintiff to lead evidence. In view of this, there is no point in directing the plaintiff to lead further ex-parte evidence, which would be nothing but a repetition of the contents of the plaint. In view of the observations made in the aforesaid paras, PE stands disposed with.

Part final arguments heard.

Put up on 03.02.2024 for further arguments.

(Sudhanshu Kaushik)
ADJ-02 & Waqf Tribunal
NDD/PHC/ND/17.11.2023