

CS (COMM) No.2081/22
Suprajit Engineering Ltd. Vs. Ashok Kumar & Ors.

03.02.2023

Present: Sh. Mayank Bhardwaj and Sh. Bhavya Jain,
counsels for the plaintiff.
Sh. S.K. Verma, counsel for the defendant No.1 /
Shivam Pandey @ Shivpat Pandey along with
defendant No.1.
Sh. Vijay Kumar Yadav, counsel for defendant
No.2 / Anuj Kumar along with defendant No.2, who
as per report of LC Ms. Karuna Bala was given
notice on 10.09.2022.
None for defendant No.3.

Photocopies of medical documents as directed vide
order dated 30.11.2022 filed on behalf of defendant No.1 on
12.12.2022.

Written statement along with an application under
Order VIII Rule 1 CPC r/w Section 151 filed on behalf of
defendant No.2 on 23.12.2023 has been put up today.

An application U/s 151 CPC for proof of service has
been filed by counsel for plaintiff on 28.01.2023 has been put up
today.

In its application U/s 151 CPC, plaintiff has prayed
that date of service of defendants no.1 to 3 be taken as
10.09.2022 on which date notice was served upon them by the
Local Commissioners Sh. Mohit Aggarwal and Ms. Karuna Bala
before carrying out the proceedings.

Heard. File perused. Vide order dated 03.09.2022,
plaintiff's application U/o XXXIX Rule 1&2 CPC as well as
application U/s 135(2) of Trademarks Act r/w Order XXVI Rule
9 and 10 and Order XXXIX Rule 7 r/w Section 151 CPC were

Contd..2/-

disposed off and Local Commissioners were appointed to inspect the premises of the defendants, whose names were not known to plaintiff till then, and to submit report in terms of order passed on even date. Both the Local Commissioners carried out inspection and submitted their respective reports. During the course of proceedings of Commission, plaintiff got to know particulars of defendants and file an application under Order I Rule 10 r/w Section 151 CPC to implead defendants no.1 to 3 in place of unnamed defendants/Ashok Kumar no.1 to 3. The said application was allowed vide order dated 30.11.2022. In view of the same, submissions made by counsel for plaintiff that date of service of defendant no.2 and 3 be taken to be 10.09.2022 when the Local Commission proceedings were carried out cannot be sustained. **The application U/s 151 CPC filed on behalf of plaintiff is dismissed.**

Since defendant no.1 and 2 had put in appearance on 30.11.2022, both these defendants are deemed to have been served on 30.11.2022 for the purposes of filing of written statement.

The defendant no.1 has already filed written statement and reply to plaintiff's application U/o XXXIX Rule 1&2 CPC on 30.11.2022. Since defendant no.1 has filed written statement within stipulated period, **application U/o VIII Rule 1 r/w Section 151 CPC is not called for and is disposed off accordingly.**

The defendant no.2 has filed written statement on 23.12.2023. Copy supplied to counsel for plaintiff. The defendant no.2 has also filed written statement within 30 days

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from the date of deemed service. Written statement filed on behalf of defendant no.2 is also taken on record. **Application U/o VIII rule 1 r/w Section 151 CPC filed on behalf of defendant no.2 also disposed off** in this view of the matter.

Counsel for plaintiff prays for adjournment to file replication qua WS filed on behalf of defendants no.1 and 2. Be filed.

In the meantime, defendant no.3 be served afresh on filing of PF/RC/speed post/approved courier/email, if any.

Steps be taken within three weeks from today.

Defendant No.3 shall file the written statement and reply within 30 days from the date of service.

Be listed awaiting for appearance/filing of Written Statement/reply by defendant no.3, filing of replication qua WS of defendants no.1 and 2, admission/denial of documents, framing of issues as well as case management hearing on 19.04.2023. Parties/AR shall remain present on the said date for admission/denial of documents.

(Illa Rawat)
District Judge (Commercial Court-03)
Central/ THC/ Delhi.
03.02.2023