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

+ **CS(COMM) 124/2019**

CDE ASIA LIMITED

..... Plaintiff

Through

Mr.Sudhir Chandra, Sr.Adv. and
Mr.Chander Mohan Lall, Sr.Adv.
with Mr.Rajat Manchanda, Adv.

Versus

JAIDEEP SHEKHAR & ANR.

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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08.03.2019

IA No.3365/2019 (exemption)

Allowed subject to all just exceptions.

IA No.3366/2019

This application is filed under section 151 CPC seeking permission to file Compact Disk and Pen Drives.

Application is allowed.

IA No.3368/2019

Additional documents may be filed within three days.

Application stands disposed of.

IA No.3369/2019

Time for filing Court Fees is extended by two weeks. Application stands disposed of.



CS (COMM.)124/2019

Let the plaint be registered as suit. Issue summons to the defendants by speed post and ordinary process, returnable for 11.7.2019.

IA No.3364/2019

1. Issue notice to the defendants by speed post and ordinary process, returnable for date fixed above.
2. This application is filed under Order 39 Rule 1 and 2 CPC seeking *ex parte* interim injunction to restrain the defendants, their directors, servants, agents, licensee etc. from making, manufacturing, using, offering for sale, selling and importing the impugned product “FM 120 CONEXUS” or any other product which is covered under the subject patent No.307249 or which is causing infringement of the plaintiff’s Patent No.307249. The accompanying suit is filed seeking a decree of permanent injunction to restrain the defendants from offering for sale the impugned product or any other product which is covered by the subject patent No.307249. A decree of permanent injunction is also sought to restrain the defendants from selling, manufacturing or importing the impugned product “FM 120 CONEXUS” or any other product having similar design as of the plaintiff’s registered design No.262629 so as to cause infringement of the plaintiff’s registered design. Other connected reliefs are also sought.
3. It is pleaded in the plaint that the plaintiff is a material washing plant and equipment designing and manufacturing company having its clientele and base of operation spread across India and foreign jurisdictions. The plaintiff has pioneered the advance wet processing technologies in India and South-East Asia. The plaintiff filed an application on 3rd September 2013 for grant of a patent for the invention which seeks to achieve standard modular



systems for producing/manufacturing artificial sand from existing waste of stone crushing operations. It is pleaded that the patent was granted on 12.2.2019 which relate back to the date of application and by virtue of grant of patent under section 48 of The Patents Act, 1970 the plaintiff has obtained, for a period of 20 years from the date of filing of application, an exclusive right to prevent third parties from making, using, offering for sale, selling or importing the subject invention in India.

4. It is also pleaded that the plaintiff has filed its design application on 15.5.2014 titled as “System Device Process for Classification of Various Materials” under the Designs Act, 2000. The design was registered as design No.262629 on 20.3.2015. It is pleaded that the plaintiff has obtained a copyright in the design for a period of 15 years from the date of filing of the application under the Designs Act.

5. The plaintiff is marketing the subject invention by the trademark COMBO. COMBO is directed to produce manufactured sand, (M-sand) by washing and grading hard crushed stone fines that will eventually be used for construction purposes or supplied to ready mix producers for production of concrete. The said product COMBO was launched in the year 2014-15.

6. It is further pleaded that in the last week of November 2018 the plaintiff came to know that the defendants are engaged in manufacturing, offering for sale, selling products similar to plaintiff’s invention and plaintiff’s registered design and product COMBO and the defendants are intending to exhibit their product in an exhibition to be held in Gurugram from 11 to 14 December 2018. It is also pleaded that the defendants sold about 3-4 products that were offered for sale of the product called “FM 120 Conex” in Delhi.



7. It is pleaded that upon comparison of the defendant's product "FM 120 Conexus" vis-a-vis the plaintiff's patent the defendants' product has all the elements of at least claim 5 of the plaintiff's patent. It is also pleaded that a comparison of the defendants' product with the plaintiff's registered design would reveal that the defendants' product is an imitation of the plaintiff's design registration and that the defendants have in fact copied all the features including the shape and configuration of the plaintiff's registered design.

8. Perusal of the plaint reveals striking similarity in the designs and technology being used by the defendants with that of the plaintiff's product. Plaintiff has made out a prima facie case. Balance of convenience is in favour of the plaintiff. Defendant is restrained by an ex parte injunction from manufacturing, selling or dealing with the impugned product "FM 120 CONEXUS" or any other product which is covered by the plaintiff's subject patent No.307249. Defendant is also restrained from manufacturing or offering for sale the impugned product "FM 120 CONEXUS" or any other product having a similar design as the plaintiff's registered design No.262629. Plaintiff to comply with the provisions of Order 39 Rule 3 CPC within two weeks from today.

IA No.3367/2019

1. This application is filed under Order XXVI Rule 9 & 10 CPC seeking appointment of a Local Commissioner. It is pleaded that to ensure that the interim order that is passed today by this court in IA No.3364/2019 is properly implemented Local Commissioners be appointed to make an inventory of the impugned product and its component.

2. It is necessary for the purpose of implementing the interim order that



Local Commissioners be appointed. Ordered accordingly.

3. Ms.Aakanksha Kaul, Advocate (Mobile No.:9818131566) is appointed as the local commissioner to visit the premises of the defendants at following address:-

Terex India Private Limited,
212, Mahatta Towers, B Block,
Community Centre,
Janakpuri,
New Delhi-110058

4. Mr.Piyush Kaushik, Advocate (Mobile No.:9910263212) is appointed as the local commissioner to visit the premises of the defendants at following address:-

Terex India Private Limited
Plot No. E-18, Phase-II
Expansion-II
Sipcot Industrial Complex
Hosur Krishnagiri
Tamil Nadu-635109

5. Ms.Ragini Verma, Advocate (Mobile No.:9716026520) is appointed as the local commissioner to visit the premises of the defendants at following address:-

Terex India Private Limited
907-908, 9th Floor
Palm Spring Plaza, Golf Course Road
DLF Phase 5, Sector 54
Gurugram, Haryana - 122 003

6. Mr.Manish Srivastava, Advocate (Mobile No.:9871102052) is appointed as the local commissioner to visit the premises of the defendants at following address:-

Terex India Private Limited



5th Floor, West Wing
#942 & 95/2
E-City, Tower 2
Electronics City, Phase 1
Bangalore - 560 100

7. The Local Commissioners are directed to conduct a search of the defendants' premises and/or warehouses and/or the ports of dispatch, and/or the premises of any dealer, manufacturer, distributor and to make an inventory of all infringing products, patent and registered design No.262629 or any other material covered under Patent No.307249 or bearing the mark "FM 120 CONEXUS" or any other product having a similar design as the plaintiff's registered design No.262629. The Local Commissioners shall also conduct a search in the computers/account books of the defendants to get the detail of the stocks of the defendants.

4. The Local Commissioners need not give any advance notices to the defendants. The representative of the plaintiff and their counsel will assist the Local Commissioner in carrying out the necessary work. The Local Commissioners are also permitted to hire a photographer who will take photographs of the infringing products at the site. Fee of the Local Commissioners is fixed at Rs.1,00,000/- each plus out of pocket expenses including air fare and hotel accommodation as required which shall be borne by the plaintiff. The Local Commissioners are also entitled to break open any locks at the premises of the defendants at any time for the purpose of implementing the order.

5. The SHO of the concerned Police Station where the above four premises are located will ensure that appropriate police protection is granted to the Local Commissioners to enable them to execute the necessary work.



6. Application stands disposed of.
7. A copy of the order be given *dasti* to learned counsel for the plaintiff under signatures of the Court Master.

JAYANT NATH, J

MARCH 08, 2019

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