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

+ **CS(COMM) 567/2021 & CC (COMM) 2/2022.**

NOVATEUR ELECTRICAL & DIGITAL SYSTEMS PVT LTD

..... Plaintiff

Through: Mr. Hemant Singh, Ms. Mamta Rani
Jha, Ms. Pragya Jain and Ms. Soumya
Khandelwal, Advocates.

versus

V-GUARD INDUSTRIES LTD

..... Defendant

Through: Mr. Saikrishna Rajagopal, Mr. Nitin
Sharma, Ms. Deepika Pokharia and Mr.
Angad S. Makkar, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **15.01.2024**

I.A. 16442/2023 (Under Order XXXIX Rule 4, CPC) & I.A. 16444/2023

[Under Order XI Rule 1(10), CPC]

1. These applications are up for consideration.
2. Both the applications have been filed by the defendants, the former being under Order XXXIX Rule 4 read with Section 151 of the Code of Procedure, 1908 ("CPC") seeking vacation of injunction granted by this Court *vide* judgment dated 04th January, 2023 (the review of which was also dismissed *vide* judgment dated 17th January, 2023); the latter application relates to placing on record certain additional documents under Order XI Rule 1(10) of the CPC.
3. Gravamen of the issues is that the defendant claims to have discovered certain prior art documents which had been filed by the sister company of the plaintiff in another jurisdiction aside from India. The defendant, therefore,



contends that on the basis of these documents, which ought to have been produced by the plaintiff themselves, the injunction granted by the judgment dated 04th January, 2023 would not have sustained. Defendant has raised the defence on the invalidity of plaintiff's registered design and these submissions are made in this regard.

4. Mr. Hemant Singh, Advocate for the plaintiff, however, raises an issue of maintainability of both the applications – under Order XXXIX Rule 4 and Order XI Rule 1(10) of the CPC.

5. The objection to the former is on the scope and purview of Order XI Rule 1(10), CPC wherein he states that these documents were part of public domain and nothing precluded them from discovering the same and placing them on record in support of their defence.

6. The objection to the latter application is that the second proviso to Order XXXIX Rule 4, CPC would allow setting aside of an injunction order only in view of change of circumstances, which this situation does not bear out.

7. Further, he states that even the prior art documents, which the defendant claims belong to the sister companies, are *prima facie* same as the registered designs of the plaintiff; the question of them being material to any determination under Order XXXIX Rule 1 and 2, CPC would not arise.

8. Mr. Saikrishna Rajagopal, Advocate for defendant, however, states that the very act of suppression of documents is dishonest and these documents ought to have been brought on record or rightly pleaded in the plaint and the application under Order XXXIX Rules 1 and 2, CPC; and that disclosure, if it had taken place, would remove the substrate of the plea for injunction by the plaintiff.

9. Pleadings are complete in the said applications.



10. List for hearing 04th March, 2024.

I.A 2117/2023 (Under Order XXXIX Rules 1 and 2, CPC)

11. This application under Order XXXIX Rules 1 and 2, CPC has been filed by the defendant as part of their counter claim.

12. Pleadings are complete with respect to the same application.

13. The said application would be considered consequent to the two applications noted as above.

14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 15, 2024/RK/sc