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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1062/2024 & I.A. 46744-46750/2024**
KENT RO SYSTEMS LTD AND ANRPlaintiffs

Through: Ms. Rajeshwari H. and
Mr. Deepanshu Nagar, Advocates.

versus

JITENDAR RATHI AND ORSDefendants

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

% **ORDER**
02.12.2024

I.A. 46745/2024 (exemption from filing certified/typed copies etc.)

1. Allowed, subject to the plaintiffs filing legible copies of the annexures within four (4) weeks from today.
2. The application stands disposed of.

I.A. 46746/2024 (u/O XI Rule 1 (4) of CPC)

3. The present application has been filed on behalf of the plaintiffs seeking leave to file additional documents under the Commercial Courts Act, 2015.
4. The plaintiffs are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
5. Accordingly, the application is disposed of.



I.A. 46747/2024 (u/S 12-A (1) of the Commercial Courts Act, 2015)

6. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

7. The application stands disposed of.

I.A. 46748/2024 (seeking exemption from advance service to defendants)

8. Plaintiffs seek urgent interim relief against infringing products and for this purpose, an *ex-parte* appointment of Local Commissioners is also sought to confiscate the goods. It is submitted that there is a probability that the defendants may remove the infringing products if the defendants are given advance service of the plaint paper book. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

9. The application is disposed of.

I.A. 46750/2024 (seeking extension of time for filing Court fees)

10. This application has been filed on behalf of the plaintiffs seeking extension of time for filing court fees.

11. Ms. Rajeshwari H., counsel appearing on behalf of the plaintiffs submits that the requisite court fees shall be paid within one (1) week.

11.1 The aforesaid statement is taken on record.

12. The application stands disposed of.

CS(COMM) 1062/2024

13. Let the plaint be registered as a suit.

14. Issue summons.



15. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

16. Liberty is given to the plaintiffs to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

17. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

18. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

19. List before the Joint Registrar on 4th February, 2025 for completion of service and pleadings.

20. List before the Court on 26th March, 2025.

I.A. 46744/2024 (u/O XXXIX Rules 1 and 2 of CPC)

21. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the plaintiffs' design no.312406, passing off along with other ancillary reliefs.

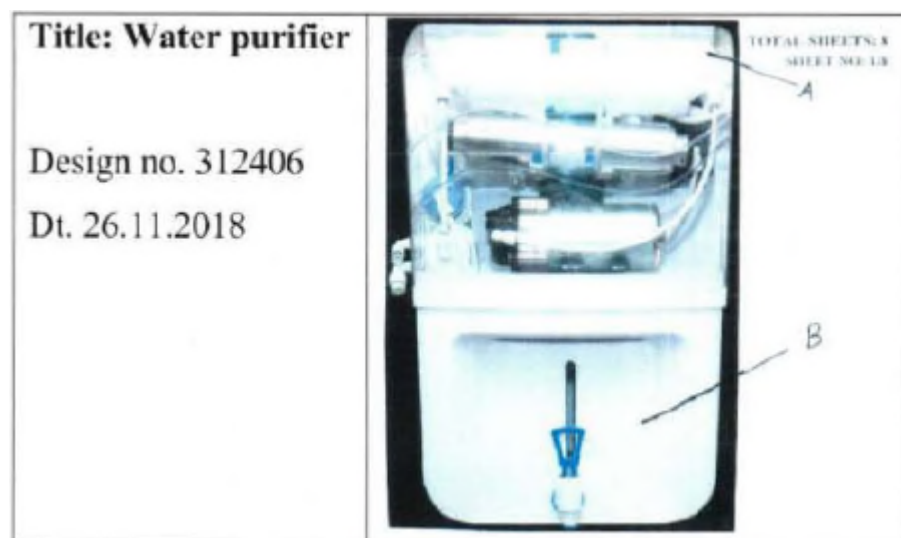
22. It is the case of the plaintiffs that the plaintiff no.1 is conducting business under the well-known trademark "KENT" and is one of the leading



companies in India, engaged in the business of manufacture and sale of a diverse range of home electronic items like water purifiers, air purifiers, kitchen appliances, vacuum cleaners, water softeners, automatic water pressure boosting systems, CCTV Cameras, *etc.*

23. The plaintiff no. 2, through its predecessor adopted the trademark "KENT" in the year 1988. Initially, plaintiff no.2 conducted the business of oil meters through the entity SS Appliances and subsequently, expanded its footprint in various other product segments such as water purifiers, air purifiers, kitchen appliances, etc. The said entity SS Appliances has assigned its trademark 'KENT' under various classes in favour of plaintiff no. 2 vide Deed of Assignment dated 2nd July, 2007.

24. It is submitted that the plaintiffs, wherever appropriate, have sought protection and have been granted design registrations in respect of the aesthetic appearance of its water purification systems. In particular, plaintiff no.2 has been granted the following design registration in respect of its water purifier (*design no.312406*), which forms the subject matter of the present suit, extracted below:





25. Attention of the Court is drawn to the design certification granted in favour of the plaintiffs wherein it is stated that the novelty resides in the ‘stepped construction’ (Portion A) and ‘concave depression’ (Portion B).

26. Ms Rajeshwari submits that besides the aforesaid features, the plaintiffs’ design no.312406 has the following other distinctive features:

- The middle portion of the design contains a wavelike pattern and has an inverted-truncated frustum shape.
- The middle portion has a belt-like construction. The upper and lower half, are separated by a prominent belt.
- The edges of the lower half are curved with a flat bottom. The features have an aesthetic appeal having no functionality.

26.1 It is submitted that the shape of the purifier stands out from the designs and shapes of other products existing in the market. It is the combination of all these features that makes the design unique.

27. The abovementioned design registration has been licensed to plaintiff no.1 by plaintiff no.2. The aforesaid design granted to plaintiff no.2 is valid and subsisting.

28. The cause of action arose in or around November 2024 it came to the knowledge of the plaintiffs that defendant no.2 is advertising and offering for sale water purifiers under the mark ‘KSU GREAT’, which has an identical shape as that of the aforesaid product of the plaintiffs. These products are available on its website as well as other e-commerce platforms, such as, India Mart.

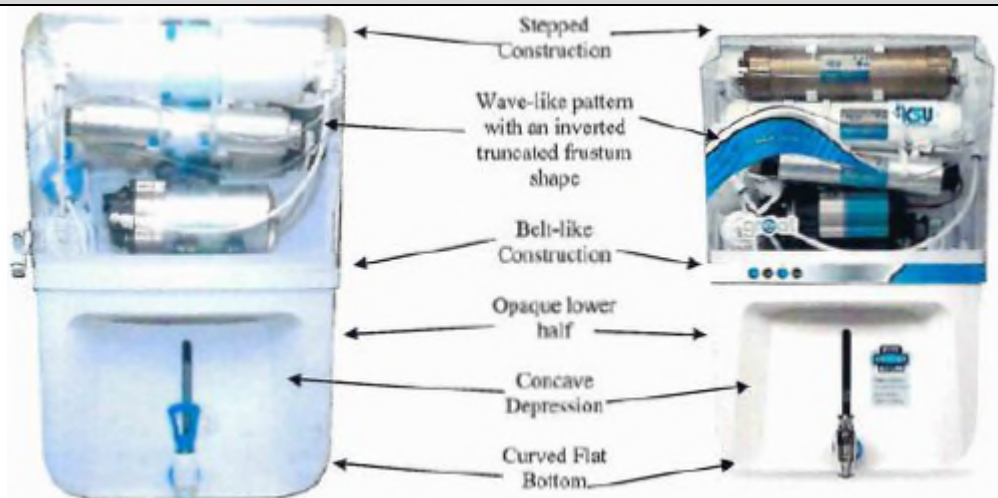
29. The defendants no.3 and 4 are the manufacturers who manufacture the aforesaid product of the plaintiffs. It appears that defendant no.2 gets the



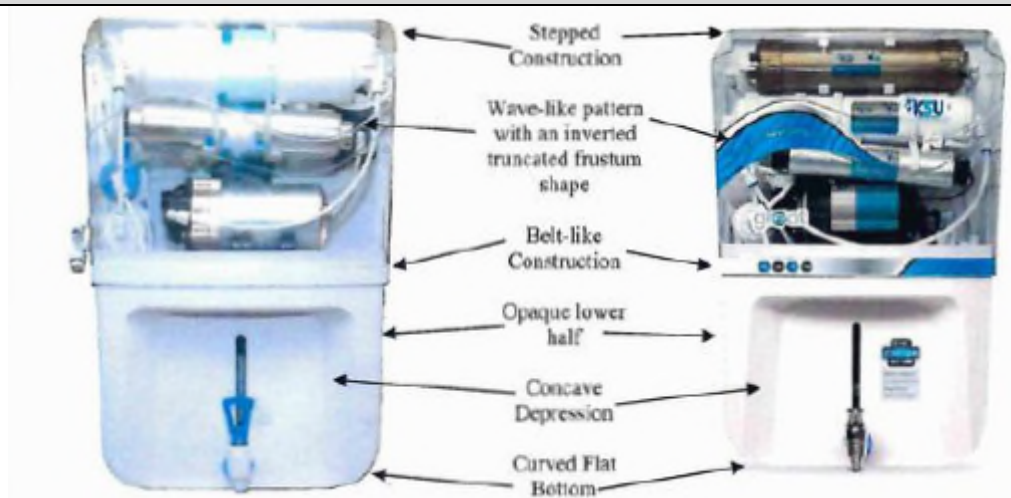
infringing products manufactured from defendants no.3 and 4.

30. A comparison between the design of plaintiffs' product and the defendant no.2's product (*available on defendant no.5 website*) as given in paragraph 38 of the plaint is set out below:

COMPARISON BETWEEN PLAINTIFFS' DESIGN AND DEFENDANT NO.2's PRODUCTS



COMPARISON BETWEEN PLAINTIFFS' DESIGN AND PRODUCTS AVAILABLE ON DEFENDANT NO.5's WEBSITE





31. The comparison above would show that the defendants have slavishly copied all the distinctive features of the plaintiffs' product, including, the 'Stepped Construction and the 'Concave Depression'.

32. The counsel for the plaintiffs has produced samples of infringing product in Court to demonstrate that the manner in which the mark is being used by the defendants is identical to that of the plaintiffs.

33. Further, this Court also notes that in similar cases with respect of the infringement of the same product and same design, by other entities, the Court has already passed interim orders in favour of the plaintiffs herein. [See order dated 11th September 2024 in CS(COMM) 784/2024 and order dated 1st October 2024 in CS(COMM) 858/2024]

34. Based on the averments in the plaint and submissions made on behalf of the plaintiffs, a *prima facie* case of infringement of design has been made out on behalf of the plaintiffs. Balance of convenience is also in favour of the plaintiffs and against the defendants. Irreparable harm would be caused not only to the plaintiffs but also to the public if an *ex parte ad interim* injunction as prayed for is not granted in favour of the plaintiffs.

35. Consequently, till the next date of hearing, the defendants, their proprietors, partners or directors, their principal officers, servants, and agents, and all others acting for and on behalf of the defendants, are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any water purifier that infringes/passes off the plaintiffs' registered design no. 312406.

36. The defendant no.5 to take down and block all the links and listings as provided in the list of documents from its platform that infringes/passes off plaintiffs' registered design no.312406.



37. Further, the defendant no.5 is directed to disclose to the Plaintiffs the KYC details of entities which are selling the infringing products on Defendant No. 5's platform that are infringing the design no. 312406 of the Plaintiffs.

38. Issue Notice.

39. Notice be issued to the defendants through all permissible modes.

40. Reply(ies) be filed within four (4) weeks.

41. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

42. In view of the fact that the plaintiffs have sought appointment of Local Commissioners to seize the infringing devices, the very purpose of grant of *ex parte ad interim* injunction would be defeated if the defendants are given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter "CPC") prior to the execution of the commission. Hence, it is directed that the plaintiffs shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.

43. List before the Joint Registrar on 4th February, 2025 for completion of service and pleadings.

44. List before the Court on 26th March, 2025.

I.A. 46749/2024 (u/O XXVI Rule 9 of CPC)

45. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of Local Commissioners to visit the premises of the defendants no.1 to 4, make an inventory of all the goods having the impugned design and effect seizure of the same.

46. In view of what is stated above, the plaintiffs have made out a case for appointment of Local Commissioners.



47. The following persons are appointed as Local Commissioners at the cost of the plaintiffs and shall visit the premises of the defendants no.1 to 4 in the following manner:

<u>Local Commissioner</u> Mr. Uday Chauhan Mobile no. +91-9212843448	<u>Premise A (Defendant no.1)</u> <i>Ward no.6, Mehrauli, New Delhi - 110030.</i>
<u>Local Commissioner</u> Mr. Mahender Kumar Arya Mobile no. +91-9717901055	<u>Premise B (Defendant no.2)</u> <i>Kh No-154, Plot no.587, EXT LAL Dora Village, Pooth Khurd, New Delhi - 110039. (warehouse)</i>
<u>Local Commissioner</u> Mr Harish Gupta Mobile no. +91-9810956773	<u>Premise C (Defendant no.3)</u> <i>Unit no.314, 315 & 316, Sec-3, Plot no.10, District Centre at Manglam, Rohini, North Delhi, Delhi - 110085.</i>
<u>Local Commissioner</u> Mr. Ashwini Kumar Singh Mobile no. +91-9990995921	<u>Premise D (Defendant no.4)</u> <i>276/32/17/2, Malikpur Road, Daturi, Sonipat, Haryana - 131039.</i>

48. The following directions are passed in this regard:

- a. The Local Commissioners, along with a representative of the plaintiffs and their counsel, shall be permitted to enter upon the



premises of the defendants mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.

- b. The Local Commissioners shall conduct a search and seize all the infringing products including but not limited to label/package material and promotional material (*hereinafter referred to as 'infringing material'*).
- c. After seizing infringing material, the same shall be inventoried, sealed and signed by the Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- d. The Local Commissioners shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing material.
- e. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- f. In case, the aforesaid premises of the defendants or any part thereof is found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commission.
- g. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the Local Commissioners, if



and when sought.

- h. The Local Commissioners shall have the liberty to take photographs and/or videos of the stock seized of the infringing products to be filed along with the Report.

49. The Local Commissioners shall file their Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

50. The fees of the Local Commissioners, to be borne by the plaintiffs, is fixed at Rs.1,00,000/-, each. The plaintiffs shall also bear expenses for travel and other miscellaneous out-of-pocket expenses for the execution of the commission.

51. The application stands disposed of in the above terms.

52. The order passed today shall not be uploaded for a period of two (2) weeks from today.

53. *Dasti.*

AMIT BANSAL, J

DECEMBER 2, 2024

Vivek/-