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

+ **CS (COMM) 929/2016**

KRBL LTD

..... Plaintiff

Through: Mr. S. K. Bansal, Mr. Ajay Amitabh
Suman and Mr. Veerendra Kumar
Sinha, Advocates. (M:9990389539)

versus

LAL MAHAL LTD. AND ANR.

..... Defendants

Through: Mr. Mohan Vidhani, Mr. Sumit
Aggarwal and Ms. Shweta Thakur,
Advocates. (M:9811083706)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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04.10.2018

I.A. 13698/2018 (u/O XXII Rule 10 CPC)

1. This is an application seeking substitution of M/s. Vigyat Trade Pvt. Ltd. in place of the present Defendant No.1 as the said entity has now purchased the trademark CHURCH GATE from Shri Lal Mahal Ltd. For the reasons stated in the application, M/s. Vigyat Trade Pvt. Ltd. is impleaded as Defendant No.3 in the matter. However, the original Defendant, Shri Lal Mahal Ltd. shall remain a Defendant in the present suit. Ordered accordingly.

2. I.A. is disposed of.

REVIEW APPLICATION 381/2018

3. Mr. Vidhani, learned counsel appearing for the Defendants/review applicants submits that the order dated 7th September, 2018 is liable to be reviewed, inasmuch as the delay before the Local Commissioner and the



non-appearance on three dates was completely inadvertent. He has pointed out various dates on which the Plaintiff sought adjournments before the Local Commissioner.

4. The background of the present suit is that vide order dated 23rd February, 2015, while expediting the trial in the suit, injunction application was disposed of. Since 2015, for whatsoever reasons, trial has not been concluded. On 30th July, 2018, the Local Commissioner had put up the matter before the Court by passing the following order.

“30.07.2018

Case is listed for further cross examination of PW1 Sh. Sunil Kapoor, who is present.

None is present on behalf of the defendant. Even on the last two dates no one was present on its behalf.

However today arrangement of computer operator has not been made nor judicial file has been summoned. Ld. Counsel for the plaintiff submits that the plaintiff has been spending money in making arrangement for recording of evidence including on the last two dates also, but suddenly, Ld. Counsel for the defendant has stopped attending. Consequently there is a prayer that the right of the defendant to cross examine PW1 Sh. Sunil Kapoor, be closed.

PW1 Sh. Sunil Kapoor has filed certain documents. In view of the continued absence of the defendant today and also on the last two consecutive dates, it is observed that the defendant has failed to avail right of further cross examination of the said witness.

In view of the above report will be filed before the Hon'ble Court.”

5. Accordingly, right of the Defendants to cross examine was closed on 27th August, 2018. None appeared for the Defendants even on the said date and the matter was listed for final arguments.



6. When the matter was listed for hearing final arguments on 7th September, 2018, learned counsel for the Defendants appeared before the Court and informed the Court that trademark *CHURCH GATE* has been sold to M/s. Vigyat Trade Pvt. Ltd. After perusing the assignment deed, which was placed on record by learned counsel for the Defendants, this Court directed the Defendants to deposit a sum of Rs.30 lakhs in the Court in order to safeguard the interests of the Plaintiff. No leave was sought by the Defendants prior to the sale of the said trademark. Admittedly, the present suit in respect of the very same mark was pending.

7. Today, in the review application, learned counsel for the Defendants submits that right from the beginning, the Plaintiff has been delaying the recordal of evidence. Mr. Vidhani submits that the entire suit is itself valued at Rs.20 lakhs and so he is willing to deposit a bank guarantee for a sum of Rs.10 lakhs.

8. It is noticed that the suit has been pending since 2014. For whatsoever reasons, there is no injunction in the matter. Shri Lal Mahal Ltd., which is the impleaded Defendant, has participated in the proceedings since beginning and at no point of time, any intention was expressed before the Court that the trademark *CHURCH GATE* was being sold by it to a third party. The trademark, being subject matter of the dispute in the present case, the Defendant has earned a huge sum of money by selling the said trademark during the pendency of the present suit. Admittedly, on three dates there was no appearance before the Local Commissioner. Prior to that, when the Plaintiff delayed the recordal of evidence, the Defendants did not raise any grievance, obviously, because there is no injunction in the matter. Mr. Vidhani submits that there is no order of this Court not to sell the



trademark during the pendency of the suit. Hence, the order for deposit of Rs.30 lakhs ought to be reviewed. However, when the matter was listed for final arguments on 7th September, 2018, for the first time the Defendants chose to inform the Court that the trademark has been sold to a third party.

9. The present review application seeks to place on record the facts about the Commissioner's proceedings. Irrespective of the Plaintiff's and Defendants' conduct before the Local Commissioner, the reasons behind directing deposit of Rs.30 Lakhs is two fold i.e. firstly to safeguard the interest of the Plaintiff in the present suit in respect of any final order that may be passed by this Court, and secondly, because Defendant No. 1 had chosen to sell the trademark without taking permission of this Court. The trade mark is like a property about which questions have been raised in the suit. If the trade mark is held to be infringing or if an injunction is granted or if a decree for damages is passed, the new purchaser may be able to completely shirk the liability by claiming ignorance. The order dated 7th September, 2018 thus directed the Defendants i.e., the parties who had sold the mark, with complete knowledge of the present litigation, to deposit an amount of Rs.30 lakhs within four weeks from the said date. Time for deposit expires on 6th October, 2018.

10. At this stage, Mr. Vidhani submits that he represents the newly impleaded Defendant also. He further submits that the Defendants are willing to give a bank guarantee. If that is so, a bank guarantee be submitted in favour of the Registrar General of this Court within two weeks for a sum of Rs.30 lakhs by any of the Defendants. Review application is disposed of.

List before the Registrar General on 26th October, 2018 for acceptance of bank guarantee.



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11. In the last order, there is a typographical error and a part of the sentence appears to have been missed, which has been corrected. Corrected order be uploaded.

12. Amended memo of parties be filed within 10 days. Remaining cross examination of the Plaintiff's witnesses shall be conducted on two dates before the Local Commissioner. The entire fee of the Local Commissioner shall be borne by the Plaintiff. After conclusion of the evidence of the Plaintiff, the Defendants shall lead their evidence before the Local Commissioner. The newly added Defendant Company is permitted to lead evidence along with Defendant No.1, however, not more than five witnesses shall be examined in total by the Defendants. The evidence of the Defendants shall be concluded within three months from the date when the Plaintiff's evidence is closed.

13. List on 30th October, 2018 before the Local Commissioner for fixing the dates for Plaintiff's evidence.

14. List before the Court on 30th January, 2019.

PRATHIBA M. SINGH, J.

OCTOBER 04, 2018/dk