ODC-1

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA No. GA 2 of 2020
In
CS 94 of 2020

DUROPLY INDUSTRIES LIMITED AND ANR.
Versus
MA MANSA ENTERPRISES PRIVATE LIMITED

AND

IA No. GA 1 of 2020
In
CS 94 of 2020

DUROPLY INDUSTRIES LIMITED AND ANR.
Versus
MA MANSA ENTERPRISES PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : February 22, 2021.

(Via Video Conference)

Appearance:
Mr. Debnath Ghosh, Adv.
Mr. Sarosij Dasgupta, Adv.
Ms. Harshita Ginodia, Adv.
Ms. Pubali Sinha Choudhury, Adv.

Mr. Jishnu Saha, Sr. Adv.
Ms. Sonal Shah, Adv.
Mr. Kushagra Shah, Adv.
Mr. Sourish Ray, Adv.

The Court: These applications were heard by this Bench in respect of an ex parte ad-interim order passed by this Court on 8th October, 2020 restraining the defendant from selling or distributing its goods under the mark 'Duro Touch' or any other mark deceptively similar to the plaintiffs' trademark 'Duroply'. The order was passed ex-parte in favour of the plaintiffs upon the Court being informed that several attempts were made by the plaintiffs to inform the defendant of the matter. The defendant thereafter applied for vacating the ex parte ad-interim order of injunction which was taken up together for hearing on several dates in December 2020 and January 2021. The matter was made reserved for judgment by an order dated 15th January, 2021.

The judgment was drafted thereafter and steps taken to deliver the same in the week beginning 22nd February, 2021 after this Court returned from Circuit at Jalpaiguri, North Bengal.

On going through the papers annexed to the 4/5 volumes of documents filed by the parties to their respective applications, two orders of 10th May, 2005 and 29th December, 2006 were found which record the appearance of a "Miss M. Bhattacharya" and "Ms. Mousmi Chatterjee". A clarification was sought from counsel appearing for the plaintiffs in this regard on 19th February, 2021. Counsel appearing for both the parties submitted that the name referred to me but offered to furnish undertakings/affidavits from their respective clients containing an assurance that the parties have no objection to the judgment being delivered by this Court.

Despite the assurance given, I find that releasing the matter is the only and the best course of action available in the present circumstances since I had appeared for the plaintiff no.1 and in relation to the same trademark on which the plaintiffs have claimed exclusivity in these proceedings. An undertaking given by a litigant to a Court with any form of assurance may be construed in a totally different light at a subsequent stage of the proceedings depending on the twists and turns of the litigation itself. It is also important to bear in mind that a matter should be released by a Court on the call of conscience of the Judge who is to decide and not on any assurance of the parties before the Court. Preserving the purity of the process of dissemination of justice is a collective responsibility which rests both on the Court as well as on counsel, advocates-on-record and instructing attorneys who act as officers of the Court on behalf of the parties.

A litigant receiving a judgment must be convinced, for all times to come, that the judgment was delivered solely on the applicable law and facts relevant to the matter and not on any other considerations. A litigant can never be under the impression that it can control or influence the outcome of an adjudication by factors unconnected to the litigation and least of all by a professional connection which a Court may have to the matter. Although it is shocking that none of the two orders were pointed out to this Court by counsel despite the matter being heard on several occasions, finding the two orders before delivering the judgment was indeed fortunate. Since the parties cannot be saddled with the judgment in the given facts, the instant matter, though is a case of Love's Labour's Lost, is blessed with the silver lining that none of the parties before this Court will ever

question the basis of the Court's reasoning. The perception that parties have been treated fairly is as much a part of the justice dissemination process as the steps taken by the Court to ensure fairness.

The state of affairs, namely, that I had appeared for the plaintiff no.1 in respect of the same trademark, existed on the date when the ex parte ad-interim order of injunction was passed on 8th October, 2020. Since the petition for interim relief contained averments in relation to the proceedings where the two orders were passed and considering the fact that my appearance was not brought to my notice by counsel/instructing advocates despite the aforesaid, the order of injunction is recalled. However, as the order of injunction has continued from 8th October, 2020 till date, the effect of this order to the extent of the recalling part, shall remain in abeyance for a period of seven days from date to enable the plaintiffs to apply for appropriate orders or as they may be advised.

The order dated 8th October, 2020 is, accordingly, recalled. IA No.GA/1/2020 and IA No.GA/2/2020 are released from my list for the reasons stated above. The order dated 15th January, 2021 by which GA 2 of 2020 was reserved for judgment is cancelled for the reasons stated above.

The application, IA No.GA/1/2020, is treated as on the day's list.

(MOUSHUMI BHATTACHARYA, J.)

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