

M/S Products And Ideas (India) Pvt. Ltd vs Nilkamal Limited And Ors on 27 August, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 715/2024

M/S PRODUCTS AND IDEAS (INDIA) PVT. LTD ...

Through: Mr. Chander M. Lall,
Advocate with Mr. Vij
Mr. Aditya Yadav, Mr.
Kaushik and Mr.
Chaudhary, Advocates

versus

NILKAMAL LIMITED AND ORS

.....Def

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE
ORDER

% 27.08.2024 I.A. 37342/2024-Exp from pre-institution mediation.

1. The plaintiff vide the present application is seeking exemption from instituting pre-litigation mediation.

2. Considering the averments made therein and as the plaintiff is seeking an urgent ad-interim relief as also in view of the orders passed in Yamini Manohar v. T.K.D. Krithi 2024 (5) SCC 815 and Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application is allowed and disposed of. I.A. 37341/2024-Exp

4. The plaintiff vide the present application is seeking exemption from This is a digitally signed order.

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5. The applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance upon within four weeks from today.

6. Accordingly, the application is allowed and disposed of. I.A. 37343/2024-Addl.doc.

7. The plaintiff vide the present application under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 is seeking to place on record additional documents within a period of four weeks.

8. The plaintiff will be at liberty to file additional documents within a period of four weeks as also, albeit, strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

9. Accordingly, the present application is allowed and disposed of. I.A. 37344/2024-Exp from advance service on defendants.

10. The plaintiff vide the present application is seeking exemption from advance service on the defendants.

11. Learned senior counsel for the plaintiff submits that considering the position involved, particularly since appointment of Local Commissioner(s) for search and seizure at the premises of defendants are being sought, there is a likelihood that the apprehensions of the plaintiff will become a reality in case advance service is affected and therefore, an exemption from effecting advance service is necessary.

12. Therefore, for the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiff This is a digitally signed order.

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13. Accordingly, the present application is allowed and disposed of. I.A. 37345/2024-Extension for filing hash report

14. The plaintiff vide the present application is seeking grant of an extension of 30 days for filing the Hash Report under Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023.

15. In terms of Rule 24 of Chapter XI of the Delhi High Court (Original Side) Rules 2018, let the electronic record by way of an encrypted CD/DVD/Medium with a hash value in a non-edited form be filed before the Registry within a period of four weeks.

16. Let the same accordingly form a part of the record of the present suit by way of an electronic folder in such a manner that it can be opened to view by this Court as and when required. Also let the hash value shall be kept separately by the Registry on the file.

17. Accordingly, the present application is allowed and disposed of. CS(COMM) 715/2024

18. The plaintiff has instituted the present suit, seeking a decree of permanent injunction for infringement of trademark, passing off, unfair competition, dilution, rendition of accounts, delivery up and damages against the defendants.

19. Let the plaint be registered as a suit.

20. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the Joint Registrar on 27.11.2024.

21. The summons shall state that the written statement(s) be filed by the defendants within a period of thirty days from the date of the receipt of the This is a digitally signed order.

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22. Replication(s) thereto, if any, be filed by the plaintiff within a period of fifteen days from the date of receipt of written statement(s). The said replication, if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of fifteen days.

23. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

24. List before the Joint Registrar for completion of pleadings on 27.11.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

25. List before the Court on 16.01.2025.

I.A. 37339/2024 (Order XXXIX rule 1 & 2 CPC, 1908: Stay)

26. The plaintiff, vide the present application is seeking to restrain the defendants and all those acting on their behalf from infringing upon the trademarks namely 'STELLADEXIN' and registered in the plaintiff's name.

27. As per plaint, the plaintiff is a private limited company incorporated under the Companies Act, 1956, having its presence in more than 56 cities in India and dealing in the business of selling commercial induction Kitchen cooktops and Bakery equipment. The plaintiff represents some of the top brands in the industry, including Stella Commercial Inductions, This is a digitally signed order.

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Spar Bakery Machines, Antunes, Convotherm, among others.

28. Learned senior counsel for plaintiff submits that the mark "STELLADEXIN" was first adopted by the Chinese company Stella Industrial Co. Ltd., founded in 1983 in Taiwan, a high-tech enterprise specializing in the development, production, and sales of electromagnetic household appliances. Further, Stella Industrial Co. Ltd. licensed/ allowed the plaintiff company to use the mark/ brand name 'STELLADEXIN' in India. The agreement between Stella Industrial Co. Ltd. and the plaintiff company granted it exclusive rights to the said mark, including the authorization to register it as a trademark, ensuring that the plaintiff has the sole right to market and sell products under the brand/ mark 'STELLADEXIN'.

29. Learned senior counsel submits that the plaintiff has acquired significant goodwill and recognition in the market qua the registered trademark 'STELLADEXIN' and for commercial induction products. Further, the plaintiff vide application nos. 5316033, 5316034 and 5316035, has acquired registrations of 'STELLADEXIN' (Word) under Classes 7, 9 and 11 respectively, however, its application for registration of the device mark under Class 11 is presently under objection by the Trade Mark Registry.

30. Learned senior counsel submits that ever since its inception, the plaintiff has spent tremendous time, effort and resources for promoting and marketing its registered marks. Further the plaintiff's products symbolize in itself a mark of quality and in a short span of time has become synonymous with a high degree of excellence, connoting This is a digitally signed order.

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31. Learned senior counsel further submits that the goodwill and reputation of the plaintiff's brand can be further ascertained from its annual turnover. The plaintiff has clubbed a sales turnover of Rs.1,92,88,692 for the financial year 2020-2021, Rs.10,42,72,903 for the financial year 2021-2022, Rs.16,27,53,877 for the financial year 2022- 2023.

32. As per learned senior counsel, the defendant no.1 is a company engaged in the business of manufacturing and selling moulded plastic furniture and material handling products pan India. The defendant no.1 offers a wide range of products including chairs, tables cabinets racks, and has diversified into other segments such as mattresses, home furnishings, and retails stores under the brand name @home.

33. Learned senior counsel then submits that as per the LinkedIn account of defendant no.2, it is a joint venture between the defendant no.1 since 2011 and has been engaged in the business of selling products including kitchen equipment and that cater to the food storage, services and handling the needs of hotels, restaurants, fast food chains and other related businesses. Further, the defendants nos.3 and 4 appear to be the distributors of the impugned products.

34. It is submitted that the plaintiff came to know in June, 2024 that the defendants are selling a kitchen product i.e. commercial induction Kitchen cooktops under the impugned mark/ brand name 'STELLA' which is similar to and identical to the plaintiff's registered mark. The plaintiff then This is a digitally signed order.

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35. Learned senior counsel further submits that one of the employees of the defendants approached the plaintiff to purchase their registered mark as also to use the same however, the said offers were rejected thus, the said acts of the defendants clearly establishes that they are well aware of the plaintiff.

36. In the wake of the above, the plaintiff has instituted the captioned suit against the defendants wherein the present application has been filed and the learned senior counsel for the plaintiff has made the aforesaid submissions.

37. This Court has heard the submissions advanced by the learned counsel for the plaintiff and gone through the pleadings as also perused the documents on record.

38. A comparative table of the competing marks of the parties are as under:-

PLAINTIFF'S MARK

PLAINTIFF'S PRODUCT

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39. Of the marks 'STELLA', 'STELLADEXIN' and , the defendants have chosen to adopt and use the mark 'STELLA', which is incidentally similar to that of the plaintiff. The impugned mark of the defendants is in the same font, manner and style as that of the plaintiff. It is thus identically similar

to that of the plaintiff in more than one way(s). Like the mark 'STELLA' of the plaintiff wherein the only alphabet 't' is written in small letter but rest of the alphabets thereof are in capital letters, the defendants have also chosen to adopt and use the same as it is. In fact, the manner in which the impugned mark is depicted in the products of the defendants are also identically similar to that of the plaintiff.

40. The only (barely visible from a distance) disjunctive difference is the choice of black and white by the defendants as against the specific colour mark of the plaintiff. There is no visible and/ or identifiable difference inter se the competing marks and/ or the products of the parties involved. Such competing marks can hardly be decipherable to anyone of average intelligence and normal mindset.

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41. Since the competing products are relating to the same line of business of kitchen equipment, which would be in/ through the same hands of the tradesmen involved dealing with them to be passed on to the same set of eligible interested customers, the competing products can cause confusion and deception in more than one way and is likely to create turmoil in the market(s) giving rise to speculation qua some sort of connection inter se the defendants with the plaintiff.

42. The defendants have tried to make all possible attempts in coming as close as possible to the plaintiff and portray to the general public at large as also the members of the trade that their products are a mere variation/ derivative of the already existing marks 'STELLA', 'STELLADEXIN' and the products under those marks, though the same is not the case as they actually belong to the plaintiff.

43. It can be safely inferred that the defendants were/ are always aware of the plaintiff and its marks 'STELLA', 'STELLADEXIN' and since they are in the same line of business who are operating with the same set of trade channels qua their products under the impugned mark to the very same set of customers, and that too all across India. Alas, the adoption and use by the defendants without seeking any permission/ authorisation from the plaintiff can be solely with the intention to take undue benefit thereof and to somehow be able to slip in without making much/ any effort as it is likely to raise a suspicion in the minds of one and all.

44. In this backdrop, the plaintiff has been able to make out a prima facie case in its favour and against the defendants and the balance of This is a digitally signed order.

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continue using the impugned mark lest it would cause irreparable harm, loss and injury to the plaintiff.

45. Accordingly, till the next date of hearing, the defendant nos.1 to 4, and all those acting on their behalf for providing any products/ services, advertising, and promoting is/are restrained from using the trade mark 'STELLA' and/ or any other mark/ name/ label/ device/ domain name that is identical to and/or deceptively similar/ infringing to the plaintiff's registered mark 'STELLADDEXIN' and device mark as the same is/ are identical with or confusingly/deceptively similar to the plaintiff's registered trademarks.

46. Upon filing of the process fee, issue notice to the defendants by all permissible modes returnable before the Joint Registrar on 27.11.2024.

47. Reply, if any, be filed within a period of thirty days from the date of service. Rejoinder thereto, if any, be filed within a period of fifteen days thereafter.

48. The provisions of Order XXXIX rule 3 CPC be complied within one week from the receipt of this order.

49. List before the Court on 16.01.2025.

I.A. 37340/2024 (Order XXVI Rule 9 CPC, 1908: Appointment of Local Commissioner)

50. The plaintiff, vide the present application, is seeking appointment of Local Commissioner to visit the premises of the defendants.

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51. The defendants are aware of the plaintiff and their products and the infringing materials placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believe that the infringing products are sold/ manufactured at the location set out in the prayer clause of the present application and the defendants are likely to remove all physical evidence or deny their involvement in the infringing activities.

52. As such, considering the factual matrix involved as also to preserve the counterfeit and infringing products involved, in the considered opinion of this Court, it is deemed appropriate to appoint a Local Commissioner to visit the premises of the defendants.

53. Accordingly, Ms. Gargi Jha, Advocate (+91-7836815605) is appointed as Local Commissioner with a direction to visit the premises of the defendants at Chefshield India Pvt. Ltd. S-20, Gate 2, Sahibabad Industrial Area IV, Sahibabad-201010, Uttar Pradesh.

54. The Local Commissioner is to execute the commission in the premises of the defendants with the following directions:-

- a) The Local Commissioner be accompanied by a representative of the plaintiff and/ or its counsel, who shall be permitted to enter into the premises of the defendants.
- b) The Local Commissioner to seize, pack and seal the infringing products and handover the same on Superdari to the defendants upon the said defendants giving an 'Undertaking' that he shall not tamper with or remove the sealed products as also shall in compliance of the orders of this Court, as and when passed, produce the sealed products under Superdari.

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c) The Local Commissioner is permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers, cashbooks, bill books, purchases and sales records or any document(s) deemed necessary found in the premises of the defendants, etc. for placing the hard copies or e-copies thereof on record.

d) The Local Commissioner is permitted to make a video recording of the execution of the commission at the premises of the defendants in compliance of the present order.

e) The Local Commissioner is permitted to take the assistance of the Station House Officer [SHO] of the local Police Station within whose jurisdiction the premises of the defendants are situated. The said SHO is directed to render and provide all and every necessary assistance and protection to the Local Commissioner, if as and when sought for ensuring unhindered and effective execution of the commission at the premises of the defendants in compliance of the present order.

f) If the premises of the respective defendants is found under lock(s), the Local Commissioner is permitted to break open the said lock(s) in the presence of the SHO/ any designated police officer from the local Police Station.

55. The fee of the Local Commissioner is fixed at Rupees One Lakh Fifty Thousand Only [Rs.1,50,000/-] in addition to all the related expenses for travel as also any other miscellaneous out of pocket expenses for the execution of the commission. All the aforesaid expenses shall be borne by the plaintiff and paid in advance to the Local Commissioner.

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56. The commission be executed within a period of one week from today, i.e. on or before 03.09.2024.

57. The report of the Local Commissioner be filed within a period of two weeks from the execution of the commission.

58. A copy of this order be provided to the Local Commissioner.

59. Accordingly, the application is allowed and disposed of.

Dasti.

SAURABH BANERJEE, J AUGUST 27, 2024/akr This is a digitally signed order.

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